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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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DATE: **MAR 12 2012**

Office: TEXAS SERVICE CENTER

FILE



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act; and 8 C.F.R. § 204.5(h)(3); *see also* H.R. 723 101st Cong., 2d Sess. 59 (1990). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel provides a statement on the Form I-290B, Notice of Appeal or Motion, and indicates that he would submit a brief to the AAO within 30 days of the appeal. Counsel dated the appeal October 4, 2010. As of this date, more than 16 months later, the AAO has received nothing further. The AAO will adjudicate the appeal based on the record before the director, taking into account counsel’s assertions on the Form I-290B. The AAO upholds the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought.

I. Law

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

II. Analysis

A. Evidentiary Criteria²

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that she is a member of more than one association in her field. Second, the petitioner must demonstrate that the associations require outstanding achievements (in the plural) of its members. The final requirement is that admittance is judged, or adjudicated, by nationally or internationally recognized experts in their field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

As evidence under this criterion, the petitioner submits a foreign language document and its translation into English. The author of this letter is [REDACTED]. [REDACTED] states in his letter that the petitioner is a "senior member" of his association. The petitioner failed to submit evidence of the membership requirements for this association. The AAO will not presume exclusive membership requirements from the general reputation of a given association, as the association's reputation may derive from its size, the number of symposiums it hosts or other factors independent of the exclusive nature of its membership. As the record does not contain the bylaws or other official documentation of the association's membership criteria, the AAO cannot evaluate whether the petitioner's membership is a qualifying one. The petitioner also failed to provide evidence that admittance to the [REDACTED]

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

Association of Performing Arts is determined by nationally or internationally recognized experts in the field. Thus, the petitioner has not established that she meets the requirements of this criterion.

Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of “associations” in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

Therefore, the petitioner has not submitted qualifying evidence of memberships that meets the plain language requirements of this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

This criterion contains three evidentiary requirements that the petitioner must satisfy. First, the published material must primarily be about the petitioner and the contents must relate to the petitioner’s work in the field under which she seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item’s title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion. The director determined that the petitioner met the plain language requirements of this criterion. The AAO departs from the director’s eligibility determination related to this criterion for the reasons outlined below. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff’d*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Counsel does not assert that the submitted evidence appeared in professional or major trade publications, and as a result, the AAO will not consider the submitted evidence to originate from these types of publications. At issue is whether the material appeared in other major media. The petitioner provides evidence in the form of several news articles about her troupe appearing in the *Houston Chronicle*, the *State Times* of Baton Rouge, the *Toronto Star*, and the *Times Journal*. She also submitted articles about her that appeared in the *World Journal*, *Community News* and *Overseas Chinese Community*. Two other translations contain the phrase "Toronto News Report" and "[redacted] News" but these phrases appear to represent the section of the publication rather than name of the publication itself, which the translator did not identify. All of the articles that are in a foreign language are accompanied by a certified English translation.

The articles about the petitioner's troupe are not "about" her relating to her work as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Of the remaining articles, only one translation identifies the author of the material. That article is entitled, "[redacted] Show Supported by the Local Professors," appearing in *Community News* and authored by [redacted]. Yet, this translation fails to provide the date in which the article was published, and consequently fails to meet the requirements plainly stated under this criterion. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation." Because the petitioner failed to comply with 8 C.F.R. § 204.5(h)(3)(iii), the AAO cannot determine that the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Notwithstanding the above defect of the translations, if the petitioner contends that the published material constitutes major media, she has failed to establish the circulation data of the above named newspapers, and she has consequently failed to establish these newspapers are a form of major media. The petitioner also provides no information related to the distribution data of the newspapers to establish this published material has a national rather than a regional reach within the country in which each newspaper is published. Publications with only a regional reach are not considered to be major media. While the petitioner submitted a few articles reflecting published material about the petitioner and her work, the petitioner failed to establish that the material was published in professional or major trade publications or other major media. Merely submitting published material about the petitioner and her work without establishing that the material was published in professional or major trade publications or other major media is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The burden is on the petitioner to establish that the evidence satisfies every element of this criterion.

The petitioner has not submitted qualifying evidence that meets the plain language requirements of this criterion. As such, the AAO withdraws the decision of the director for this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director determined that the petitioner meets the plain language requirements of this criterion. The AAO concurs with the director's determination.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether the petitioner has made scientific, scholarly, artistic, athletic or business-related contributions, whether they are original, and whether they rise to the level of contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

On appeal counsel asserts that various forms of evidence indicate that the petitioner's "unique original performance and pioneering works are selected by top academic institutions of Chinese operas in contemporary China as teaching showcase [sic] and research subjects." While some of the expert letters contain such assertions, each letter lacks specifics of how the petitioner's work has produced a significant impact on her field as a whole.

██████████ founder and President of the ██████████ indicates that hundreds of performers have studied under the petitioner. However, ██████████ fails to explain how the petitioner's instruction is original or identify any impact that the petitioner's instruction has had on the field as a whole. Merely instructing students in a traditional art form without some identifiable original influence on the field is insufficient to meet the plain language requirements of this criterion. ██████████

██████████ also indicates that she uses the petitioner's work as teaching materials. However, ██████████ fails to explain why the recordings of the petitioner's performances are original or how ██████████ use of the petitioner's work has impacted or influenced the field, so as to demonstrate that the petitioner's work has been of major significance. ██████████

██████████ indicates that the petitioner's recent performances in Canada have been closely studied by leading Chinese opera institutes who subsequently use these performances as teaching and research material. ██████████'s only explanation as to the originality of the petitioner's work is that her "versatile performances . . . brought fresh air to Chinese Opera." At best, the study of the petitioner's performances might assist students of ██████████ but falls short of demonstrating an original impact on the petitioner's field of traditional Chinese Opera as a whole. The petitioner did not support these letters with other evidence of her original impact on the teaching of traditional Chinese Opera, such as trade articles, academic texts or class curriculum.

The remaining expert letters describe the petitioner's achievements and recognition without specifically explaining how the petitioner's contributions are original or of major significance. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d at 1036 *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). While the petitioner has earned the admiration of her references, there is no evidence demonstrating that she has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's original influence on other Chinese Opera performers working in this traditional field, nor does it show that the field has significantly changed as a result of her work.

The record lacks evidence demonstrating that the petitioner's work is original or has significantly impacted her field or otherwise equates to an original contribution of major significance in the field. Without additional, specific evidence showing that the petitioner's work is original and has been unusually influential, widely applied by the field, or has otherwise risen to the level of contributions of major significance, the petitioner cannot establish that she meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In the director's decision, he concluded that the petitioner established eligibility for this criterion based on the petitioner's "performances in the Chinese Beijing Opera exhibitions." However, based on a review of the record of proceeding the AAO must withdraw the findings of the director for this criterion for the reasons discussed below. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

The AAO withdraws the decision of the director for this criterion as the evidence is not qualifying under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must also demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."³ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or a similar reputation. In the director's decision, he concluded that the petitioner established eligibility for this criterion. The AAO departs from the director's eligibility determination related to this criterion. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the

³ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on February 28, 2012, a copy of which is incorporated into the record of proceeding.

Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

As evidence under this criterion, the petitioner submits several letters from experts in the field. The director found that the initial evidence submitted with the petition was insufficient to demonstrate eligibility for this criterion and served the petitioner with a request for additional evidence (RFE). In response to the RFE, the petitioner provided a letter from [REDACTED], dated August 23, 2010.

The initial filing brief asserts that the petitioner has performed in a leading role for the [REDACTED] in performances around the world. The fact that an organization provides performances in multiple venues around the world is insufficient to demonstrate that it enjoys a distinguished reputation. [REDACTED] drafted a letter submitted with the initial petition dated May 1, 2008, wherein he states, "During her distinguished career, [REDACTED] has performed as the lead actress with the [REDACTED] – one of the foremost operatic companies in the world – and many other organizations." The *Houston Chronicle* article focuses on the company's struggle with lost luggage and the *State Times* article merely reviews a performance. Neither article addresses the reputation of the [REDACTED]. The record contains no evidence regarding the [REDACTED] reputation. Since the petitioner has failed to establish that this organization is one that meets the plain language requirements of the regulation, she may not rely upon it as a qualifying entity under this criterion.

[REDACTED] references counsel's initial assertion regarding the petitioner's role as an educator in the Department of South-East Asian Studies at the [REDACTED]. [REDACTED] President of the [REDACTED] states that the petitioner was a research fellow and "Peking opera professor" at the University of Toronto. However, neither [REDACTED] first-hand knowledge of this role and the petitioner provides no corroborating evidence from the [REDACTED] that she worked there and that her role at the university was leading or critical. As such, the assertions [REDACTED] makes will not serve to qualify the petitioner under the leading or critical role criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Regarding the letter from [REDACTED] he indicates the China National Peking Opera Theater is the "world's top Peking opera house." However, the record lacks evidence to substantiate this assertion. As previously noted, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Consequently, the petitioner may not rely upon the content within [REDACTED] letter to meet the plain language requirements of this criterion.

In his initial brief, counsel also references a single instance in which the petitioner performed for [REDACTED] Theater in September 2008 as an example of the petitioner's performance at

a prestigious venue. A single performance at a venue is not a leading or critical role for that venue. Moreover, the record lacks evidence relating to this establishment's distinguished reputation, and as previously noted, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. As a result, the petitioner may not rely upon this assertion to meet the plain language requirements of this criterion.

letter dated August 23, 2010, states: "only performs in lead roles, and receives top recognition by sponsoring organizations and the general public whenever and wherever she performs, such as [at] the annual [redacted] and the Toronto Arts Council in 2007, 2008 and 2010." continues by indicating that the ticket prices increase when the petitioner performs. letter fails to identify any specific organizations or establishments for which the petitioner performed in a leading or critical role. mentions annual Peking Opera Galas that are supported by two organizations. However, the petitioner failed to provide evidence to demonstrate that the Peking Opera Gala is a qualifying entity contemplated by the regulation rather than an annual festive event.

The petitioner provides no evidence of performing in a leading or critical role for any organizations or establishments as required by the regulation. Additionally, none of the letters the petitioner provided establish that she has played a leading or critical role for the organizations named in the letters. The petitioner provides insufficient evidence to establish any of the above named organizations enjoy a distinguished reputation.

The petitioner failed to establish that she meets the plain language requirements of this criterion. As such, the AAO withdraws the decision of the director for this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion anticipates a petitioner will establish eligibility through volume of sales or box office receipts as a measure of the petitioner's commercial success in the performing arts. The director determined that the petitioner failed to meet the plain language requirements of this criterion.

As evidence relating to this criterion, the petitioner provided a photocopy of a foreign language document and its translation into English. This document reflects the ticket prices for a performance in which the petitioner appeared. The document, however, does not provide the number of tickets sold.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of commercial successes in the form of "sales" or "receipts"; simply submitting documentation indicating that the petitioner appeared in performances does not meet the requirements of this regulatory criterion. The record does not include evidence of documented "sales" or "receipts" showing that the petitioner has achieved commercial successes in the performing arts. For instance, there is no evidence showing that performances headlined by the petitioner consistently drew record crowds, were regular sell-out

performances, or resulted in greater audiences than other similar performances that did not feature her. While ██████████ August 23, 2010, letter asserts that when the petitioner performs at the Leah Posluns Theater, ticket prices are increased and the shows are virtually sold out, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Accordingly, the petitioner has not established that she meets the plain language requirements of this criterion.

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Notwithstanding this fundamental defect and because the director reached the next step, the AAO will review the evidence in the aggregate as part of the final merits determination.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, the next step is a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119-20.

The petitioner offers her membership in a single association, for which she failed to provide the membership requirements, and she failed to provide evidence indicating that members are selected by nationally or internationally recognized experts in her field. In addition to not meeting the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the evidence is not indicative of sustained acclaim. The petitioner failed to establish that her single membership with the China Association of Performing Arts reflects that she has sustained national or international acclaim and that her achievements have been recognized in the field of expertise. *See* 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

In instances such as this, where the petitioner fails to demonstrate the caliber or the geographic reach of the publications upon which she relies, and she does not even establish that the published material about her appears in professional or major trade publications or other major media, she cannot demonstrate that she is one of that small percentage who have risen to the very top of her field of endeavor, or that she has sustained national or international acclaim and that her achievements have been recognized in the field of expertise.

Although the AAO found that the petitioner met the plain language requirements of the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of the petitioner’s judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121, to determine if such

evidence is indicative of the extraordinary ability required for this highly restrictive classification. In this case, the petitioner based her eligibility on four instances of judging for the Chinese Artists Society of [REDACTED], and the five invitations to serve as a judge [REDACTED] identified in his August 16, 2010, letter. However, without evidence pre-dating the petition filing that sets the petitioner apart from others in her field, such as evidence that she has served as a judge of acclaimed opera performers or of a national or international competition rather than aspiring students or amateurs, the petitioner failed to demonstrate that she “is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). *Cf.*, *Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard).

The petitioner’s claim to have made contributions of major significance rests almost entirely on recommendation letters. The letters submitted on behalf of the petitioner fail to reflect any original contributions of major significance made by the petitioner and their simple repetition of the statutory and regulatory requirements is insufficient to establish her national or international acclaim. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The petitioner did not demonstrate that she has performed in a leading or critical role for any organization or establishment. The petitioner also failed to demonstrate that any of the claimed organizations have a distinguished reputation. This evidence is not representative of sustained national or international acclaim or of an alien who has attained the status as one of that small percentage who have risen to the very top of their field of endeavor, as it relates to performing in a leading or critical role for distinguished organizations or establishments.

In regard to the regulation at 8 C.F.R. § 204.5(h)(3)(x), while the petitioner submitted evidence of her performances, she failed to submit documentation of her commercial successes in the form of receipts or sales. Further, there is no documentary evidence showing that the petitioner’s performances are indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, a Chinese opera performer, relies on a single membership with undocumented membership requirements, published material in publications that lack the caliber to meet the regulatory requirements, judging duties that fail to set her apart from others in her field, contributions that fail to demonstrate an impact on her field, and performing in roles that were neither leading nor critical in nature for organizations that she failed to show have a distinguished reputation. Moreover, the most persuasive evidence dates from several years prior to the filing of the petition and, thus, is not evidence of sustained national or international acclaim in Canada, where she has lived since 1990. This evidence hardly distinguishes the petitioner from other Peking opera performers.

III. Conclusion

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as an opera performer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as an opera performer, especially several years prior to the filing date, but is not persuasive that the petitioner's achievements currently set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.