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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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DATE:

Office: TEXAS SERVICE CENTER

FILE:



**MAR 13 2012**

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:

SELF-REPRESENTED

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, 8 U.S.C. § 1153(b)(1)(A). The petitioner listed her proposed employment as a “Dance Choreographer/Performer/Director.” In her initial statement, she asserts that the petition is based on her contributions “to the field of dance choreography and pioneering work in Ethno-contemporary dance.” 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). 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, the petitioner submits a statement and additional evidence. For the reasons discussed below, 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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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.<sup>1</sup> 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)).

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

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<sup>1</sup> 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).

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien be the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to the event. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provides evidence of funding grants, her nomination in the category of Company Performance from the Isadora Duncan Dance Awards (the Izzies) Committee, a certificate of honor from the San Francisco board of supervisors, and an achievement award from San Francisco State University. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, the petitioner offers no additional evidence relating to awards under this criterion.

In her appellate statement, the petitioner abandoned her assertions that her funding grants are qualifying evidence relating to this criterion. Regarding her nomination in the category of Company Performance from the Izzies, the petitioner failed to establish that this nomination resulted in any nationally or internationally recognized prizes or awards for excellence in her field. Therefore, this nomination will not serve as qualifying evidence under this regulatory criterion. In reference to the certificate of honor and the achievement award, the petitioner did not provide any evidence supporting the contention that these are nationally or internationally recognized prizes or awards. These awards do not demonstrate that the petitioner has received qualifying prizes or awards pursuant to 8 C.F.R. § 204.5(h)(3)(i).

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of 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

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

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.

The petitioner has provided two letters from [REDACTED], Committee Chair of the Izzies and a certificate of appreciation as a member of this same committee. The petitioner also initially claimed her membership in the International Council of Ballroom Dancing, but failed to provide evidence of this membership or to address this membership after the initial filing statement. The director determined that the petitioner failed to meet the requirements of this criterion.

First, the regulation requires membership in associations, not “membership” on a committee within an organization. Regardless, the petitioner has not demonstrated that committee membership requires outstanding achievements. The May 14, 2010, letter from [REDACTED] asserts that, “an essential condition for committee membership is outstanding achievement in one or more artistic fields, that the awards given by the committee reach beyond the local level, and that [the petitioner’s]’s specific contributions to the committee are outstanding and unique.” [REDACTED] also asserts members are voted onto the committee by a panel of recognized national or international experts in their fields. 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. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Within this same letter, the author indicates that committee bylaws exist. This letter is a form of secondary evidence. Where the regulations require specific, objective evidence of achievements, such as membership requirements, the primary evidence of such requirements would be the bylaws or other official documentation of the association’s membership criteria. Affidavits attesting to membership requirements, therefore, would need to comply with 8 C.F.R. § 103.2(b)(2) and “overcome the unavailability of both primary and secondary evidence.” The petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, and therefore the petitioner is presumed ineligible. *Id.* The petitioner failed to provide the bylaws or other official documentation of the association’s membership criteria. The burden is on the petitioner to establish that she meets every element of this criterion. Without documentary evidence demonstrating that this association requires outstanding achievements of its members, the AAO cannot conclude that the petitioner meets this criterion.

Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of “membership in 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(1)(2) requires a single degree rather than a combination of academic credentials).

As such, the petitioner has not submitted evidence 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 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 petitioner provides three reviews, several articles, and one advertisement. The director determined that the petitioner failed to meet the requirements of this criterion.

In response to the request for evidence (RFE), the petitioner asserts that because these reviews and articles are available through the Internet, that they have a much larger reach than printed media. She also provides background information relating to culturevulture.net, a website relating to one of the reviews. Regarding the reviews from culturevulture.net, from *Ballet Magazine*, and the *Gilded Serpent*, the petitioner failed to provide the entire text of the review article; she only provides one paragraph from a multi-page document in all three instances. As the petitioner failed to provide the entire article, the AAO is precluded from determining if the published material actually meets the regulatory requirements under this criterion.

The petitioner has not demonstrated that any of the submitted evidence constitutes professional or major trade publications. Major media is therefore, the remaining publication type in which the material must have appeared. The AAO is not persuaded that articles posted on the Internet from a printed publication or from an organization are automatically considered major media. The petitioner failed to submit independent, objective evidence establishing that the websites are considered major media. Instead, the petitioner submitted background information from only one of the organizations’ websites rather than impartial documentary evidence demonstrating that the websites are major media. In today’s world, many organizations and newspapers, regardless of size and distribution, post at least some of their

stories on the Internet. To ignore this reality would be to render the “major media” requirement meaningless. The AAO is not persuaded that international accessibility by itself is a realistic indicator of whether a given website is “major media.”

In view of the above, the petitioner has not submitted evidence that meets the plain language requirements of 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.*

This criterion requires not only that the petitioner was selected to serve as a judge, but also that the petitioner is able to produce evidence that she actually participated as a judge. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same field in which the petitioner seeks an immigrant classification within the present petition. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provides a list of Izzie committee members and on appeal, a letter from [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion.

Although the list of Izzie committee members indicates that the petitioner is a committee member, it does not reflect the duties of the petitioner as a committee member. As such, this evidence is insufficient to demonstrate that committee membership will contribute to the petitioner meeting the plain language requirements of this criterion. Regarding the letter from [REDACTED] she asserts that the petitioner “is a significant contributor to the artistic discussion from which we glean the nominations for awards” but does not expressly assert that the petitioner participates in actually selecting nominees or awardees. She also indicates numerous other functions, such as maintaining the bylaws and the website, that the petitioner fulfills, but falls short of attributing any judging duties to the petitioner.

As such, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner’s contributions (in the plural) to her field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

At the time of filing the petitioner stated: "I am among the very few choreographers or dancers who can master more than two or three cross-cultural disciplines . . . In the past few years, I have innovated by introducing the Ethno-Contemporary dance, which merges traditional international dance forms with contemporary concepts." The petitioner also claimed that her founding of the [REDACTED] Dance Company demonstrates her eligibility under this criterion as it "has quickly attracted several talented traditional dancers who are interested in pushing the boundaries of traditions." She also lists her volunteer efforts as relating to the original contributions of major significance criterion. As evidence with the initial petition filing, the petitioner provided several expert letters. In response to the director's RFE, the petitioner provided several additional expert letters. On appeal, the petitioner provides three additional letters from experts in her field. The director determined that the petitioner failed to meet the requirements of this criterion.

The petitioner's claimed area of expertise is dance choreography. As such she must establish eligibility for this criterion by demonstrating significant contributions in her field to such a degree that she has influenced the field of dance choreography as a whole. In the letter from [REDACTED] Executive Director, [REDACTED] she states, "I can with complete confidence [sic] that there is nobody in Northern California contributing to the cultural landscape of our region and our nation like [REDACTED]. The petitioner's contributions must impact the fields as a whole rather than the region of "Northern California" as this letter's author indicates. [REDACTED] also identifies the originality of the petitioner's choreography in her work titled, "Keep Her Safe, Please!" fusing different dance traditions, but she does not indicate what impact if any this original work has had on the petitioner's field. Regarding the letter from [REDACTED], founder and director of [REDACTED] Dance Company, she also identifies the originality of the petitioner's works, but fails to note what impact these works have had on the field as a whole.

[REDACTED] Run For Your Life! . . . it's a dance company!, also notes the petitioner's original efforts of blending a "true fusion of her varied artistic heritages, and now works in a style which is completely and uniquely her own." He also notes that her contribution to her field is that she is a "valuable asset" to the cross-cultural exploration of "emphasizing our common humanity, while still respecting our differences." While [REDACTED] view of the petitioner's contribution is notable, it falls short of demonstrating that her original contributions to her field have been of major significance. With the exception of the letter from [REDACTED] Associate Professor [REDACTED] University, Taiwan, the letters submitted in response to the RFE and on appeal also note the petitioner's originality, but fail to explain how her originality has impacted her field. [REDACTED] letter indicates that the impact the petitioner's work in her field is that her "dances inspired further interest in Indonesian culture and dance tradition," and "her call for appropriate dance footwear stimulated awareness of dance

injury prevention.” Neither [REDACTED] nor the petitioner has demonstrated how these are contributions of major significance to the petitioner’s field.

The director noted that several of the letters are from the petitioner’s personal contacts rather than from independent experts in the field. The letters appear to be solicited in support of the petitioner’s immigrant visa petition and at least four of the letters are from the petitioner’s current or former collaborators and cannot be considered wholly independent. None of the letters provide an explanation of the impact the petitioner’s performances have made on her field.

While many of the letters praise the petitioner for her talents as a dancer and note her original dance style, they fail to indicate any contributions of *major significance* to the field of dancing. The letters provide only general statements without offering any specific information to establish how the petitioner’s work has been of major significance. This regulatory criterion not only requires the petitioner to make original contributions; it also requires those contributions to be significant. While performing in and choreographing original productions may reflect a contribution, the petitioner failed to demonstrate that those contributions were significant. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not specifically identify how the petitioner’s contributions have influenced the field. *See generally 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.).

USCIS may, in its discretion, use as advisory opinion 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 of support from the petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may 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). Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance. The petitioner failed to submit any documentation establishing that her dance performances have impacted or influenced the field of dancing as a whole. Without extensive documentation showing how the petitioner’s dancing and choreography have already impacted her field, that it has been unusually influential, or has otherwise risen to the level of original contributions of major significance, the AAO cannot conclude that she has submitted evidence that meets this criterion.

Accordingly, the petitioner has not provided evidence that meets the plain language requirements of this criterion.

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

This criterion contains multiple evidentiary elements the petitioner must satisfy. The plain language requirements of this criterion requires that the work in the field is directly attributable to the alien.

Additionally, 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. *See Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*8 (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)). The alien's work also must have been displayed at an artistic exhibitions or showcases (in the plural). While neither the regulation nor precedent speak to what constitutes an exhibition or a showcase, Merriam-Webster's online dictionary defines exhibition as, "a public showing (as of works of art),"<sup>3</sup> and showcase as, "a setting, occasion, or medium for exhibiting something or someone especially in an attractive or favorable aspect."<sup>4</sup> 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 display of her work in the field claimed under this criterion occurred at artistic exhibitions or at artistic showcases. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner is a dancer. When she is performing before an audience, she is not displaying her abilities in the same sense that a painter or sculptor displays his or her work in a gallery or museum. Not every performance is an artistic exhibition designed to showcase the performer's art. If the AAO was to accept that a performance artist such as the petitioner meets this criterion, it would render the regulatory requirement that the petitioner meet at least three criteria meaningless as this criterion would effectively be collapsed into the criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(viii). *See Negro-Plumpe*, 2:07-CV-820-ECR-RJJ at \*8. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, she has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

*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 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."<sup>5</sup> Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix*, 149 U.S. at 306.

<sup>3</sup> <http://www.merriam-webster.com/dictionary/exhibition>, [accessed on March 6, 2012, a copy of which is incorporated into the record of proceeding.]

<sup>4</sup> <http://www.merriam-webster.com/dictionary/showcase>, [accessed on March 6, 2012, a copy of which is incorporated into the record of proceeding.]

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. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner only contests her role on the Izzie Award committee and she provides additional evidence in the form of a new letter dated October 3, 2010, from Ms. [REDACTED] Committee Chair of the Izzie awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a lead or critical role for "organizations or establishments" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). As previously noted, the AAO can infer that the plural language in the regulatory criteria has meaning and that federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya*, Civ. Act. No. 06-2158 (RCL) at \*12; *Snapnames.com Inc.*, 2006 WL 3491005 at \*10.

Notwithstanding the above shortcoming, the AAO will evaluate the petitioner's claimed critical role as a vital member of the Izzie award committee. The [REDACTED] Dance Awards constitutes the organization or establishment contemplated by the regulation. Therefore, the petitioner must demonstrate that she performed in a leading or critical role for the organization as a whole rather than for a subgroup within this organization. [REDACTED] claims that the petitioner impacted The Isadora Duncan Dance Awards Committee. She does not claim that the petitioner impacted The Isadora Duncan Dance Awards organization as a whole. The burden is on the petitioner to establish that she meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion.

Accordingly, the petitioner has not provided evidence that meets the plain language requirements of this criterion.

#### B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

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<sup>5</sup> <http://www.merriam-webster.com/dictionary/distinguished>, [accessed on March 6, 2012, a copy of which is incorporated into the record of proceeding.]

### 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.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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” 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>6</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

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.

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<sup>6</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).