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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: **MAY 01 2012**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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, Nebraska Service Center, denied the employment-based immigrant visa petition on May 20, 2010. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on June 22, 2010. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the field of acrobatic performance, 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 that the petitioner has 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; 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)-(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 submits a brief and the following evidence: (1) an unpublished May 21, 2010 AAO decision issued in a case unrelated to the petitioner’s case, (2) a 2010 American Immigration Lawyers Association (AILA) InfoNet document, entitled “Nebraska Service Center Liaison Meeting Agenda, May 6, 2010,” (3) a 2010 AILA InfoNet document, entitled “Field Adjudicator’s Manual, § 23.2(l), Adjustment of Status Issues,” and (4) a May 9, 2000 legacy Immigration and Naturalization Service (INS) memorandum on employment-based immigrant visa petitions. In her brief filed in support of the instant appeal, counsel asserts that the director erroneously found that the petitioner does not meet the prizes or awards for excellence criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material about the alien criterion under 8 C.F.R. § 204.5(h)(3)(iii), the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), the display at artistic exhibitions or showcases criterion under 8 C.F.R. § 204.5(h)(3)(vii), the leading or critical role for organizations or establishments criterion under 8 C.F.R. § 204.5(h)(3)(viii), and the high salary or other significantly high remuneration criterion under 8 C.F.R. § 204.5(h)(3)(ix).

For the reasons discussed below, the AAO, conducting appellate review on a *de novo* basis, finds that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the AAO withdraws the director’s finding that the petitioner meets at least three of the ten categories of evidence, and finds that the petitioner has not met at least three of the ten regulatory criteria under the regulation at 8 C.F.R. § 204.5(h)(3), and that, in the final merits determination, the petitioner has not demonstrated that he is one of the small percentage who are at the very top of the field and he has not achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h)(2), (3). Accordingly, the AAO must dismiss the petitioner’s appeal.

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 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. 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, internationally 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). Moreover, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See 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); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In 2010, the U.S. Court of Appeals for the 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 the evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R.

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 (vi).

§ 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.” *Kazarian*, 596 F.3d 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).” *Kazarian*, 596 F.3d 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 case, the AAO, conducting appellate review on a *de novo* basis, withdraws the director’s finding that the petitioner meets at least three of the ten categories of evidence. See *Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043; *Soltane*, 381 F.3d at 145-46. Instead, the AAO finds that the petitioner does not satisfy the antecedent regulatory requirement of three types of evidence under the regulation at 8 C.F.R. § 204.5(h)(3), and that, in the final merits determination, the petitioner has not demonstrated that he is one of the small percentage who are at the very top of the field and he has not achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3).

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. 8 C.F.R. § 204.5(h)(3)(i).

When counsel initially filed the visa petition on February 12, 2010, she asserted that the petitioner meets the prizes or awards for excellence criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), because the petitioner was the French national champion on floor exercise in 2001. The petitioner has provided the following evidence: (1) a color photograph with handwritten notations of “National French Championship Gymnastic 2001. Cholet (France). [The petitioner], Floor Exercises French Champion (1st on the right)”; and (2) a June 5, 2009 certificate from Pierre-Henri Bourlier, Executive Officer of the Gymnastics Federation of France, confirming that the petitioner was the “Floor France Champion” in 2001.

Notwithstanding the evidence in the record, the AAO concludes that the petitioner has not met this criterion. First, the certificate from Gymnastics Federation of France has not been properly

² Counsel does not claim that the petitioner meets the regulatory categories of evidence not discussed in this decision.

translated as required under the regulation at 8 C.F.R. § 103.2(b)(3), which provides, “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” It is not clear if Caroline Dumeste, who provided partial English translations of the petitioner’s French articles, also translated the Gymnastics Federation of France certificate from French into English. Even if she did, however, the AAO would nonetheless find that the requirements under the regulation at 8 C.F.R. § 103.2(b)(3) have not been met, because Caroline Dumeste failed to certify that she is competent to translate the document, or that the translation is complete and accurate. In addition, she does not identify the specific foreign language documents for which she is certifying the translations. Moreover, a 2009 certificate purporting to confirm a 2001 award is not primary evidence of the award, which would be a copy of the award or medal or a photograph of the trophy. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2).

Second, the AAO finds that the petitioner’s color photograph is insufficient to show that he was the French champion on floor exercise in 2001, because the AAO is unable to determine from the photograph the nature or name of the competition, the date of the competition or the identity of the six individuals who stood on the podium. Moreover, although the photograph is accompanied by self-serving handwritten notations, going on record without supporting documentary evidence is not sufficient for purposes of meeting the petitioner’s burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Third, even if the AAO were to conclude that the petitioner was the 2001 French champion on floor exercise, it would nonetheless conclude that the petitioner has failed to meet this criterion. Specifically, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of qualifying prizes or awards in the plural, consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. Even if the AAO were to find that the petitioner’s first place finish on floor exercise in the 2001 French national championship constitutes a lesser nationally or internationally recognized prize or award for excellence, this single example of a prize or award is insufficient evidence of prizes or awards in the plural.

Accordingly, the AAO finds that the petitioner has not met this criterion, as he has not presented documents of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of acrobatic performance. See 8 C.F.R. § 204.5(h)(3)(i).

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. 8 C.F.R. § 204.5(h)(3)(ii).

When counsel initially filed the visa petition, she claimed that the petitioner meets the membership in associations criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), because the petitioner was

selected to join Cirque du Soleil in 2003. In support of her assertion, counsel provided a May 6, 2003 online article, entitled "Former Trampoline World Champion Works for Cirque du Soleil," published on GYMmedia.com, and a September 8, 2007 *Wall Street Journal* article, entitled "Talent Scouts for Cirque du Soleil Walk a Tightrope." These two articles discuss Cirque du Soleil performers' selection process.

The AAO finds that the petitioner has not met this criterion. First, the petitioner has not shown that Cirque du Soleil is an association with a membership. Rather, the evidence shows that it is a circus performing business enterprise that hires performers as employees. Second, although the evidence shows that performers go through a lengthy selection process before being hired by Cirque du Soleil, the evidence does not show that during the selection process, the performers are being judged by recognized national or international experts in their disciplines or fields, as required under the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Finally, 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 documentation. *See* section 203(b)(1)(A)(i) of the Act. As such, even if the AAO were to conclude that the petitioner's employment with Cirque du Soleil constitutes a qualifying "membership" in an "association," this single example is insufficient evidence of membership in associations, which require outstanding achievements of their members, in the plural.

Accordingly, the AAO finds that the petitioner has not met this criterion, as he has not presented documents of his 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. *See* 8 C.F.R. § 204.5(h)(3)(ii).

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.
8 C.F.R. § 204.5(h)(3)(iii).

When counsel initially filed the visa petition, she claimed that the petitioner meets the published material about the alien criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In support of her assertion, counsel filed the following documents: (1) a May 6, 2003 online article, entitled "Former Trampoline World Champion Works for Cirque du Soleil," published on GYMmedia.com, (2) a September 8, 2007 *Wall Street Journal* article, entitled "Talent Scouts for Cirque du Soleil Walk a Tightrope," (3) a September 17, 2009 online article, entitled "KA, MGM Grand Hotel & Casino, Las Vegas," published on EntertainmentToday.net, (4) an undated color photograph of a Las Vegas public bus with an image of the petitioner as a character in Cirque du Soleil's KA production, (5) color photographs of the petitioner in his KA character posted on the production's page at Facebook.com, (6) a video, entitled "Athletes of Cirque du Soleil [the petitioner]," posted on Vimeo.com, (7) a March 30, 2010 email from Acey Harper, a photographer with a book scheduled for publication and distribution in fall 2010, and (8) a number of partial English translations of

articles in French, written by unspecified authors and published in unspecified publications, on unspecified dates.³

The AAO finds that the petitioner has not met this criterion because of the following reasons. First, the petitioner has not shown that [REDACTED]

[REDACTED] constitute professional or major trade publications or other major media. Although the petitioner has provided a two-sentence description of EntertainmentToday.net, the AAO finds that the description gives no information on the size of the readership, the reach of the publication or the nature or contents of the publication. Moreover, the description is from the publisher's website. USCIS need not rely on self-promotional material. *See Braga v. Poulos*, CV-06-05105-SJO (C. D. CA July 6, 2007), *aff'd*, 317 F. App'x 680, 2009 WL 604888 (9th Cir. Mar. 9, 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Although the petitioner has provided two online articles about Facebook.com, the AAO finds that the reach or popularity of a user generated content social media website does not render each page on the website a professional or major trade publication or other major media.

Second, while the AAO finds that the *Wall Street Journal* constitutes a major media publication, the article "Talent Scouts for Cirque du Soleil Walk a Tightrope" is not about the petitioner. The article does not mention the petitioner by name or make reference to him in any way. As its name suggests, the article is about Cirque du Soleil's search for performers.

Third, the AAO cannot consider a book that was scheduled to be published in fall 2010 as evidence of published material about the petitioner, because the petitioner must demonstrate eligibility for the visa petition at the time of filing, in this case, in February 2010. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Moreover, an author's plan to publish a book does not render the book published material, as required under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Finally, the AAO finds that none of the foreign language articles have been properly translated, as required under the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner has not provided the full English translation for any of the French articles. Also, although the petitioner has provided a Translation Credits from Caroline Dumeste, Caroline Dumeste has not certified that she is competent to translate the articles from French into English, nor has she certified that the English translations she provided are complete and accurate. She also fails to identify which translations she is certifying. Furthermore, the petitioner has failed to provide the dates and authors of the articles, or

³ These French articles are entitled "Historical Quarter Finals," "[The petitioner] and Millot on Mission," "Golden [the petitioner]," "La Teste France Champion," "[The petitioner] Triumphs," "Great Performances in Billiere," "Tough Finals," "Highlights on Rodez," "Great Gymnastics Season," "Moreau and [the petitioner] at the Top of the Junior Class," and "Fruitful Juniors."

any information on the articles' publishers, as required under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Accordingly, the AAO finds that the petitioner has not met this criterion, as he has not presented published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. *See* 8 C.F.R. § 204.5(h)(3)(iii).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

When counsel initially filed the visa petition, she contended that the petitioner meets the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v), because the petitioner has "conceived and created" a "novel trampoline system for use in live stage performances." In support of this contention, counsel provided (1) three pages of handwritten notes, entitled "What's Possible?!", (2) drawings of the trampoline system, (3) a June 5, 2009 letter from [REDACTED], the petitioner's patent attorney, (4) a May 23, 2009 letter from the [REDACTED], the petitioner's sales representative, and (5) a document entitled "Trampoline Entertainment System and Methods Thereof." On appeal, counsel asserts that the trampoline system has been "patented by the U.S. Patent and Trademark Office and has been considered for use in live performances."

Notwithstanding the petitioner's patent attorney's speculation that "[i]t seems that with this system, [the petitioner] will make a unique and significant contribution to [the U.S.] economy, and to the quality and innovation of the arts in the United States," the AAO finds that the petitioner has not met this criterion. Initially, the AAO notes that although counsel claims that the petitioner's trampoline system has been patented, the petitioner has filed no document from the U.S. Patent and Trademark Office to corroborate this claim. Moreover, regarding the patent, the AAO has held that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 n.7 (Comm'r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* A patent recognizes the originality of the idea, but it does not demonstrate that the petitioner has made a contribution of major significance in the field through his development of this idea. Indeed, although Golden Song Productions' Heidi Thompson stated in her letter that the petitioner's trampoline system "came very close to being placed in [Britney Spears 'Circus'] tour," the petitioner has provided no evidence showing that anyone, other than perhaps himself, in the field of acrobatic performance has used or intends to use the trampoline system.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of qualifying contributions in the plural, consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. Even if the AAO were to conclude that the petitioner's trampoline system constituted a single example of original contribution of major significance, the petitioner has not provided evidence of contributions of major significance in the plural.

Accordingly, the AAO finds that the petitioner has not met this criterion, as he has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of acrobatic performance. *See* 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

When counsel initially filed the visa petition, she claimed that the petitioner meets the display at artistic exhibitions or showcases criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vii), because “[a]s a performance artist, [the petitioner’s] work is on display each time he takes the stage.” The AAO disagrees.

The plain language of the criterion suggests that the criterion is limited to evidence relating to the visual arts. This interpretation is longstanding and has been upheld by a federal district court. *See Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 1, 7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under the regulation at 8 C.F.R. § 204.5(h)(3)(vii)). In this case, as the petitioner is not a visual artist and has not created tangible pieces of art that were on display at artistic exhibitions or showcases, the AAO finds that he has not met this criterion. *See* 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. 8 C.F.R. § 204.5(h)(3)(viii).

When counsel initially filed the visa petition, she asserted that the petitioner meets the leading or critical role criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii), because the petitioner “has played a critical or leading role for Cirque du Soleil,” and that “Cirque du Soleil is an organization with a distinguished reputation.” In support of her assertion, counsel provided (1) an undated printout, entitled “Cirque du Soleil at a Glance,” (2) a March 31, 2009 letter from [REDACTED] Shows Division Publicist, (3) a November 2009 letter from [REDACTED], (4) an April 2, 2010 letter from [REDACTED], (5) an April 1, 2010 letter from [REDACTED], and (6) color promotional material on Cirque du Soleil’s KA production at the MGM Resort and Casino in Las Vegas, Nevada. On appeal, counsel asserts that the petitioner “played a leading or critical role for KA,” because he “placed a highly coveted role of ‘Valet’ in KA and that, in that position, he appeared in advertisements for KA all over Las Vegas.”

The AAO finds that the petitioner has not met this criterion based on the following reasons. First, although the evidence shows that the Cirque du Soleil valued the petitioner’s acrobatic skills and, according to Diane Quinn, cast him in “a highly coveted position as a ‘character’” in its KA production, the evidence does not show that the petitioner performed either a leading or critical role for Cirque du Soleil. Specifically, the petitioner has not provided the AAO with information on the number of Cirque du Soleil characters or the number of characters in the KA production. Moreover,

according to the color promotional material on the KA production, the petitioner was one of nearly seventy cast members. There is no indication from the promotional material that the petitioner contributed to the show more than any other cast member.

Second, even if the AAO were to conclude that the petitioner, as a character in the KA production, performed a leading or critical role for Cirque du Soleil's KA production, it could not find that this means that the petitioner performed a leading or critical role for Cirque du Soleil as a whole, which, according to "Cirque du Soleil at a Glance," has "5,000 employees, including more than 1,200 artists from close to 50 different countries" and "presents simultaneously twenty different shows around the world." Indeed, according to the *Wall Street Journal* article "Talent Scouts for Cirque du Soleil Walk a Tightrope," "[t]wenty-one of the approximately 1,000 Cirque du Soleil performers are former Olympians, two won gold medals in synchronized swimming. The majority have backgrounds in acrobatics or traditional circus arts."

Finally, even if the AAO were to find that the petitioner has performed a leading or critical role for Cirque du Soleil, it could not find that the petitioner has met this criterion. Based on the plain language of the criterion, the petitioner has to show that he has performed a leading or critical role for more than one organization or establishment that has a distinguished reputation. The petitioner has not made such a showing.

Accordingly, the AAO finds that the petitioner has not met this criterion, as he has not presented evidence showing that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. See 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

When counsel initially filed the visa petition, she contended that the petitioner meets this criterion, because in 2009, the petitioner received an annual salary of \$82,297, as an artist in Cirque du Soleil production of KA at the MGM Resort and Casino in Las Vegas, Nevada. In support of her assertion, counsel provided: (1) a December 2, 2009 letter from [REDACTED] Shows Division HR Administrative Assistant, verifying the petitioner's salary from 2004 through 2009, (2) a May 22, 2009 letter from [REDACTED] HR Administrative Assistant, verifying the petitioner's 2009 salary, (3) a February 10, 2010 [REDACTED] online printout, entitled "Occupation Profile," (4) a February 10, 2010 online printout, entitled "Online Wage Library – FLC Wage Search Results," and (5) an April 2, 2010 email from [REDACTED], stating that she cannot provide salary information of other performers.

The AAO finds that the petitioner has not established the salary or remuneration for services for someone who holds a position similar to the petitioner in the field of acrobatic performance. Specifically, both the February 10, 2010 CareerInfoNet.org printout and the FLC Wage printout relate to "[a]ll entertainers and performers, sports and related workers not listed separately." Neither document relates specifically to the petitioner, who is in the field of acrobatic performance. As such,

the AAO is without sufficient evidence to find that the petitioner's 2009 salary of \$82,297 constitutes evidence that he has commanded a high salary or other significantly high remuneration for services in relation to others in his field.

Moreover, the [REDACTED] printout gives information as to someone's hourly wage, noting that "[t]here is no annual wage data available for this occupation." The petitioner's evidence, however, shows only his 2009 annual salary. The petitioner has not provided evidence on how many hours he worked in 2009. As such, the AAO does not have sufficient evidence to determine the petitioner's hourly wage or to compare it to the information contained in the CareerInfoNet.org printout.

Furthermore, the online FLC Wage printout is limited to the Las Vegas and Paradise areas in Nevada. As such, even if the AAO were to find that FLC Wage printout relates to the petitioner's occupation in the field of acrobatic performance, the AAO would be without sufficient evidence to conclude what is an average salary of someone in the field without the geographical limitations. Finally, evidence of the average wage in an occupation does not demonstrate what a high wage is in that occupation. Merely documenting wages above the average wage in the occupation is insufficient evidence under the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence of a high salary in relation to others in the field.

Finally, the petitioner has provided an April 21, 2010 email from Royal Caribbean, stating that the petitioner had been chosen to be "an original cast member on board . . . the Oasis of the Seas," from September 17, 2010 to April 9, 2011, the email also shows that the petitioner was offered a monthly contract salary of \$3,400. The petitioner has not shown that this amount constitutes a high salary or other significantly high remuneration for services, in relation to others in his field.

Accordingly, the AAO finds that the petitioner has not met this criterion, as he has not presented evidence that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field of acrobatic performance. *See* 8 C.F.R. § 204.5(h)(3)(ix).

B. Final Merits Determination

Based on the evidence in the record, the AAO concludes that the petitioner has not submitted the requisite evidence under three evidentiary categories. Notwithstanding this finding, in accordance with the *Kazarian* opinion, the AAO will conduct 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 [he] is one of [a] small percentage who have risen to the very top of the field of endeavor," and (2) that he "has sustained national or international acclaim and that his [] achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. For the reasons discussed below, the AAO concludes that the petitioner has not made such a showing. Accordingly, the appeal must be dismissed.

With regard to the prizes or awards for excellence criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), as discussed above, the AAO concludes that the petitioner has not provided sufficient evidence to show that he was the 2001 French champion on floor exercise, because the documentary evidence has not been properly translated under the regulation at 8 C.F.R. § 103.2(b)(3), and because the petitioner has not provided primary evidence of his award, which would be a copy of the award or medal or a photograph of the trophy. *See* 8 C.F.R. § 103.2(b)(2).

Moreover, assuming *arguendo* that the petitioner did finish in the first place on floor exercise in the 2001 French Championship, the AAO could not find that the placement in a competition that took place over ten years ago is indicative of the petitioner's sustained national or international acclaim. Similarly, the evidence shows that the petitioner finished in the first place in only one national competition. This too is not indicative of sustained national or international acclaim. Finally, the petitioner has not shown that his competition result in a 2001 French national championship establishes sustained national or international acclaim in the field of acrobatic performance, which is the basis of the petition.

With regard to the memberships in associations criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), as discussed above, the AAO concludes that the petitioner has not shown that he is a member of any association that requires outstanding achievements. Specifically, the petitioner has not shown that being hired by [REDACTED] a circus performing business enterprise that has enjoyed some level of success, makes him a "member" of an association that requires outstanding achievements, as judged by recognized national or international experts in their disciplines or fields.

With regard to the published material about the petitioner criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), as discussed, the AAO finds that the petitioner has not met this criterion, because he has failed to establish that any published material is about the petitioner, relating to his work in the field of acrobatic performance, and that it is published in a professional or major trade publication or other major media. The lack of such evidence does not support the petitioner's claim of sustained national or international acclaim in the field of acrobatic performance.

With regard to the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v), as discussed above, the AAO concludes that the petitioner has not met this criterion, because he has not shown that his trampoline system is either original or constitutes a contribution of major significance in the field of acrobatic performance. First, despite counsel's assertion, the petitioner has provided no documentary evidence from the U.S. Patent and Trademark Office, showing that his idea has been patented. Second, there is no evidence in the record showing that any acrobatic performer, other than perhaps the petitioner, has used or intends to use the trampoline system, or has expressed the belief that the trampoline system constitutes a contribution of major significance in the field of acrobatic performance. The evidence, therefore, does not show that the petitioner enjoys sustained national or international acclaim.

With regard to the display at artistic exhibitions or showcases criterion under 8 C.F.R. § 204.5(h)(3)(vii), as discussed above, the AAO finds that the petitioner has not met this criterion,

because the petitioner has not shown that his performances in Cirque du Soleil constitute displays at artistic exhibits or showcases. It is inherent to the field of performing arts to perform, not every performance is indicative of the performer's individual national or international acclaim. The color promotional material on Cirque du Soleil's KA production shows that the petitioner was one of nearly seventy cast members. The evidence further shows that the petitioner was one of approximately 1,000 Cirque du Soleil performers. USCIS will not infer sustained national or international acclaim by association; the petitioner must demonstrate his individual acclaim. The evidence, therefore, does not show that the petitioner is one of a small percentage who have risen to the very top of the field of endeavor.

With regard to the leading or critical role criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii), as discussed above, the AAO finds that the petitioner has not met this criterion through her employment for a single Cirque du Soleil production. The supplementary information at 56 Fed. Reg. 60899 (Nov. 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Similarly, there is no blanket rule for all performers with a well-known circus. The evidence relating to this criterion, a single character role with one of several Cirque du Soleil productions, is not indicative of or consistent with sustained national or international acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.

With regard to the high salary or other significantly high remuneration for services criterion under 8 C.F.R. § 204.5(h)(3)(ix), as discussed above, the AAO finds that the petitioner has not met this criterion. Although when the petitioner was employed by Cirque du Soleil, his salary reached \$82,297 in 2009, the most recent evidence on the petitioner's salary shows that he was offered the substantially lower monthly contract salary of \$3,400, to work as "an original cast member on board . . . the Oasis of the Seas," from September 17, 2010 to April 9, 2011. The evidence, therefore, is not indicative of the petitioner's sustained national or international acclaim.

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 have risen to the very top of her field of endeavor.

A review of the evidence in the aggregate, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within a small percentage at the very top of his field of acrobatic performance. The evidence is not persuasive that the petitioner's achievements set him significantly

above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act; 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.