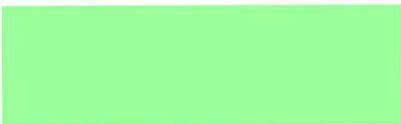




U.S. Citizenship
and Immigration
Services

(b)(6)

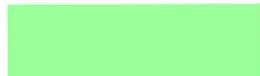


DATE:

AUG 02 2013

Office: TEXAS SERVICE CENTER

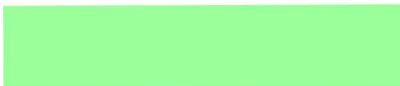
FILE:



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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting 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 initial filing statement characterized the petitioner’s proposed employment as “Director/Producer/Writer/Instructor.” 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.

The petitioner’s priority date established by the petition filing date is November 6, 2012. On November 14, 2012, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on January 7, 2013. On appeal, the petitioner, through counsel, submits a brief with new and additional documentary evidence. Counsel’s overall concern is that the director abused his “discretion by failing to articulate the specific deficiencies in the petition and why the evidence submitted was not sufficient at the time of issuing the Request for Evidence.” Insofar as the director raised deficiencies in the final decision not raised in the RFE, the AAO will consider new evidence submitted to overcome those deficiencies on appeal. Cf. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The AAO will address counsel’s more specific assertions below. For the reasons discussed below, the petitioner has not established his 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.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)).

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

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).

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.* Given that technical deficiencies with the translations undermine the probative value of much of the evidence, the AAO will also review the evidence irrespective of this concern in the context of a final merits determination.

II. ANALYSIS

A. Translations

The regulation at 8 C.F.R. § 103.2(b)(3) states: “Any 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.” While not addressed by the director in his decision, the petitioner submitted [REDACTED] translations that do not comport with the regulation. Instead these translations are either accompanied by a single blanket certification that does not identify any specific document being translated or a photocopy of the same certification used for multiple translations. Other translations are uncertified. Finally, some of the translations are summary translations rather than representing the whole foreign language document, or clearly omit sentences or passages from the foreign language document. Because these translations do not comply with 8 C.F.R. § 103.2(b)(3), they have significantly diminished probative value.

B. Evidentiary Criteria

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 is 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 the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provided evidence of his receipt of several awards between 1976 and 1992. The evidence relating to after 1992 consists of a [REDACTED], a [REDACTED], and secondary evidence of a [REDACTED] (for which it appears he was also [REDACTED] but not a copy of the award itself. According to the regulation at 8 C.F.R. § 103.2(b)(2), the petitioner may only rely on secondary evidence after establishing that primary evidence is either non-existent or unavailable. The petitioner did not establish that primary evidence of his 2010 career award is either non-existent or unavailable.

Counsel asserts that the director misunderstood the law as it relates to 8 C.F.R. § 204.5(h)(3)(i). Counsel relies on two district court cases: *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995) and *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994). Regarding the *Muni* case, counsel states that “courts have found that USCIS must take into account the meaning of the award prior to discounting their relevance.” Counsel also cited to the *Muni* case for the proposition that a petitioner need not document the requirements to qualify for the awards or the significance of the awards in order to establish that the awards were for excellence in the field. The respondent in the *Muni* case, however, was a member of the National Hockey League (NHL), the premier organization for this sport in the United States, whose team had played for and won the league championship in three consecutive years while he played for the team. Moreover, the court noted that the respondent’s awards were reported in the official NHL magazine and the largest hockey magazine. The petitioner has not demonstrated that he is part of such a premier organization, nor, with the exception of the [REDACTED], that notable media reported any of his awards.

Regarding the *Buletini* case, counsel references the court’s statement: “[T]he award need not have significance outside of one country. National recognition of the award is sufficient.” *Buletini*, 860 F. Supp. at 1231. The director did not contest that national recognition is sufficient and the AAO acknowledges that the petitioner need not document receipt of internationally recognized awards or prizes.

National and international recognition results, not from the individual who signed the prize or the award, but through the awareness of the accolade in the eyes of the field nationally or internationally. Even a national or international level entity may issue lesser awards that are not nationally or internationally recognized for excellence. For example, the President of the United States signs letters of appreciation for retiring civil service workers.⁵

For most of the awards, the petitioner relies on the award terminology and letters or material from the issuing organization. USCIS need not rely on the self-promotional claims of the issuing organizations. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 2009 WL 604888 (9th Cir. 2009) (USCIS need not rely on the self-promotional material of the publisher in determining whether or not the publication is a professional or major trade journal or other major media).

For example, the letter from Oscar Flores, President of the Fundacion Civil Premio Nacional, indicated that receipt of the Orinoco De Oro 1992 was “recognition of the National Prize.” That Mr. Flores, or the organization that he represents, viewed this award as a national award is not sufficient to establish this award is a nationally recognized prize or award in the field beyond the issuing entity.

⁵ See <https://g1arng.army.pentagon.mil/Programs/RPLOA/Pages/default.aspx>, accessed on April 30, 2013, a copy of which is incorporated into the record of proceeding. Similarly, the presidential physical fitness award is not a nationally or internationally recognized award for excellence in athletics. Rather, it represents students reaching the 85th percentile in certain physical activities. See <https://www.presidentschallenge.org/celebrate/physical-fitness.shtml>.

On appeal, counsel characterizes a letter from [REDACTED] President of the [REDACTED], as relevant to this criterion. With respect to the petitioner's [REDACTED], [REDACTED] letter states: "This is the most important award in Venezuela in an international level. Since the creation 50 years ago, more than two thousand important figures have been merited the most prestigious award . . . The criteria for the selection of the nominees of the prize winners is based on the association of reporters of the spectacle." [REDACTED] also discussed the petitioner's [REDACTED] stating: "[The organizations] recognize the best in different categories and offering promotional services and artistic representation. The criteria for the selection of the nominees is based on the association of reporters of the spectacle." In support of this letter, the petitioner submits self-promotional material from [REDACTED] website. The website indicates that the organization is responsible for both the [REDACTED] and [REDACTED] and that [REDACTED] is the creator of the [REDACTED] and the Executive President of the [REDACTED]. Once again, this self-promotional evidence does not establish any recognition of the awards beyond the issuing organization.

[REDACTED] asserts that the petitioner's awards "were granted to the best authors, designers and coordinators of different aspects of the theatrical activities, whose work met high quality in the merits and excellence, as decided by a judges panel [sic] filled with people of specialized knowledge arts and theater, resulting in the awardees being the best in the field." The translator failed to transcribe [REDACTED] closing sentence to his letter. Aside from the translating issues, [REDACTED] general assertions about unnamed awards are not sufficient to meet the petitioner's burden of proof within these proceedings.

The most significant evidence relates to the petitioner's [REDACTED] although the petitioner only submitted secondary evidence of the [REDACTED]. The translator failed to transcribe the title and the final sentence of the letter from [REDACTED] a recipient of the [REDACTED] and one of the judges who selected the petitioner to receive this [REDACTED] [REDACTED] is in a position to speak authoritatively about this award and stated that this award: "has been created to honor the best and most prominent professionals of [REDACTED] that have shown during the year an extraordinary work in their respective fields of work in theater." Significantly, the petitioner also submitted evidence that [REDACTED] reported the [REDACTED]. While probative, without translations that comply with 8 C.F.R. § 103.2(b)(3) and a copy the [REDACTED] itself, these awards cannot satisfy this criterion, which requires qualifying awards in the plural.

Based on the deficient translations and the lack of primary evidence for the [REDACTED] and [REDACTED] the petitioner has not satisfied this criterion's requirements.

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.

The director's RFE did not address whether the petitioner's evidence met this criterion's requirements. Within the RFE response, the petitioner reasserted that his membership in the [REDACTED]

[REDACTED] and the [REDACTED] serves to meet this criterion. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, the petitioner submits the same evidence before the director and asserts that the director failed to consider the evidence submitted in response to the RFE. The AAO will consider all related evidence.

The petitioner demonstrated that he is a member of more than one association in his field. He established membership in all of the above listed associations except for the [REDACTED]. As evidence of his membership in [REDACTED] the petitioner only provided what appears to be the registration of one of his plays with this association. This registration is insufficient to demonstrate that the petitioner is a member of [REDACTED].

Regarding the remaining associations, the petitioner failed to provide the membership requirements as listed in bylaws or similar official documents, or evidence demonstrating that the associations utilize recognized national or international experts in their disciplines or fields to render the determination of whether a prospective member's achievements are outstanding. Documenting the general reputation of a given association does not establish that the association requires outstanding achievements of its members, as the association's reputation may derive from its size, the number of symposiums it hosts or other factors.

Therefore, 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 be about the petitioner and the contents must relate to the petitioner's work in the field under which he 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 generally have a significant national or international 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 failed to meet the requirements of this criterion, noting the partial translations and the failure to submit evidence relating to circulation of the publications. On appeal, the petitioner only contests the director's determination relating to 11 articles and provided circulation and distribution statistics relating to four different publications.

On appeal, counsel focuses on the following publications: (1) [REDACTED] (2) [REDACTED] (3) [REDACTED]; and (4) [REDACTED].⁶ Of these publications, the petitioner only submitted evidence that demonstrates that [REDACTED] and [REDACTED] qualify as a major media.

The petitioner submitted multiple articles published in [REDACTED], none of which bear the author's name. Therefore, these articles cannot comply with the plain language requirements of this criterion as set forth at 8 C.F.R. § 204.5(h)(3)(iii). Additionally, with the exception of the translation the petitioner submitted on appeal, the translations are not compliant with 8 C.F.R. § 103.2(b)(3). None of the 11 articles on which counsel focuses on appeal that bear the name of the publication appeared in [REDACTED]. The translations of the articles appearing in that publication that the petitioner submitted previously are incomplete and deficient.

The articles published in [REDACTED] are either undated or appeared in November 1987. The record contains materials from [REDACTED]. The incomplete translation accompanied by a photocopied certification indicates that this publication "became the most recognized city capital newspaper and in many cases at a national level, during the 80s. . . . After change of shareholders [REDACTED] stopped circulation as press [sic] newspaper. . . . On May 2nd 2012, now under the conduction of [REDACTED] and the direction of [REDACTED] the [REDACTED] returns with its original master line of digital press critique in consideration with politics, economy, social and culture."⁷ This vague information contained within an incomplete translation does not establish that [REDACTED] was nationally circulated in November 1987.

The petitioner provided evidence of [REDACTED] circulation statistics, which are only between 10,000 and 12,000, but failed to document that it is distributed on at least a national level. Publications with only a regional reach generally are not considered to be major media and the petitioner has not established this publication is a professional or major trade journal as required by the regulation.

Consequently, 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 evidence of invitations to serve as a judge, but also evidence that the petitioner is able to produce evidence that he 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 or an allied field in which the petitioner seeks an immigrant classification within the

⁶ The record also contains articles from [REDACTED], but the petitioner did not establish that this publication is one and the same as [REDACTED] or enjoys a similar circulation.

⁷ The ellipses represent omitted text from the foreign language original in the translation.

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

The petitioner provided letters from several individuals in support of his claims relating to this criterion, as well as evidence relating to courses and seminars that he taught. The director determined that the petitioner met the requirements of this criterion. The record does not support this determination.

The petitioner submitted letters authored by the following individuals as evidence under this criterion:

- (1) [REDACTED], Executive Director of the [REDACTED];
- (2) [REDACTED], Subdirector [REDACTED];
- (3) [REDACTED], Director of [REDACTED]; (4) [REDACTED], [REDACTED]; (5) [REDACTED], President of the [REDACTED]; (6) [REDACTED], General Coordinator of Strategic Projects, [REDACTED]; (7) [REDACTED], of Alma Mater [REDACTED]; and (8) [REDACTED].⁸ The petitioner also submitted an article titled "[REDACTED]" in an unidentified publication.

The letters from the following authors were each accompanied by a blanket translation at the time the petitioner filed the petition, and on appeal are accompanied by a photocopied certification dated February 5, 2013: (1) [REDACTED]; (2) [REDACTED]; (3) [REDACTED]; (4) [REDACTED] and (5) [REDACTED]. Even if the translations were sufficient, the letters from the following authors merely indicate that the authors or their organizations invited the petitioner to serve as a judge rather than confirming that he actually served as required by the plain language of the regulation: (1) [REDACTED]; (2) [REDACTED]; (3) [REDACTED]; (4) [REDACTED]; (5) [REDACTED] and (6) [REDACTED].

In his November 10, 1997 letter, [REDACTED] indicated that the petitioner had served as a judge in the [REDACTED]. [REDACTED] letter, however, did not establish that the petitioner participated as a judge of "the work of others in the same or an allied field of specialization for which classification is sought" as required by the plain language requirements of the regulation. 8 C.F.R. § 204.5(h)(3)(iv). Additionally, both translations are deficient. The translation submitted at the time the petitioner filed the petition is accompanied by a blanket certification that does not list the translations it purports to certify and, thus, does not meet the regulatory requirements for foreign language documents. The translation submitted on appeal is accompanied by a photocopied certification dated February 15, 2013, which is also not acceptable as probative evidence.

The translations of [REDACTED] letter contain clear errors as they omit a large portion of the page's header and the handwritten place and date of "Caracas 22 de abril de 2010." The translator also erred in the date contained in the body of the letter, which is 2010 in the original, but is translated as 2012 on both translated versions. Moreover, the content of this letter is ambiguous. [REDACTED] states: "I direct

⁸ While [REDACTED] employer is not included in the translation, the original foreign language document is on [REDACTED] letterhead.

myself to you to present you two (2) literary writings [redacted] and [redacted] content of the prize municipal bases of literature of the year 2012 [sic] with your studies in mind.” While the translation also includes the word “Judge,” the word appears alone, without any context. Thus, this letter does not establish that the petitioner participated as a judge of the work of others in his field.

Both the initial translation for “[redacted]” submitted before the director and the translation submitted on appeal failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3). The article is three sentences, including a lengthy second sentence while the translations include only two short sentences. Furthermore, the content of each translation of the same article is different. The initial translation stated: “[redacted] in its diverse specialties. [redacted] was granted by [the petitioner].” The translation submitted on appeal states: “[redacted] in its diverse specialties. [redacted] was composed of [redacted] [the petitioner] and [redacted].” Within the initial translation, it appears that the petitioner “granted” [redacted] while within the second translation it appears that [redacted]. The petitioner failed to provide a full English translation of the article as the regulation at 8 C.F.R. § 103.2(b)(3) requires. As such, this evidence bears little if any evidentiary value. Based on these shortcomings, this evidence will not satisfy the plain language requirements of this criterion.

Initially, counsel also asserted the petitioner’s eligibility under this criterion based on courses and seminars that he taught. In support of this claim, the petitioner provided evidence of courses he taught and the letter from [redacted] but failed to document that this activity constituted judging the work of others in the same or an allied field per the regulation. Serving as a professor where part of one’s job duties includes evaluating students does not equate to participation as a judge of the work of others in the field. As stated above, the phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of evaluating students as their professor. As such, the petitioner has not established that his position as a university professor serves to meet this criterion.

Based on the discussion above, the AAO withdraws the director’s favorable determination as it relates to 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) in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his 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 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd 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.

The Board of Immigration Appeals (BIA) has stated 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 *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. 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 1030, 1036 (9th Cir. 2009) *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. at 795. 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 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" but rather is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in issue).

The petitioner initially claimed multiple contributions in his field. The director's RFE indicated that the petitioner did not provide any evidence in support of his claims under this criterion. After the petitioner responded to the RFE, the director determined that the petitioner failed to meet the requirements of this criterion primarily. On appeal, counsel focuses on the petitioner's creation of "[redacted]," and his play, "[redacted]"

Regarding [redacted] the letter from [redacted] President of [redacted], states: "[redacted] style [redacted] and story line has been not only considered innovative but also as one of the three biggest Venezuelan theater contributions to world-wide theatre." [redacted] states in reference to the petitioner's play: "The spectacles have caused extraordinary cultural fame and overpassed the records of representations and ticket sales in the theatrical field for these

countries and source of work of more than 100 actors and more than 50 technicians and designers, all of high professional quality.” A separate regulatory criterion exists regarding ticket sales, which will be considered under the commercial successes criterion at 8 C.F.R. § 204.5(h)(3)(x), and the petitioner did not provide evidence demonstrating that his ticket sales constitutes an original contribution of major significance in his field.

Regarding the letter from [REDACTED] the translator omitted [REDACTED] title displayed on the foreign language document as “[REDACTED]” translated at translate.google.com as [REDACTED]. [REDACTED] states: “The theatrical play ‘[REDACTED]’ . . . of [the petitioner], within the [REDACTED] [which was] created by him . . . became one of the biggest contributions of Latin American theatre to worldwide Theatre.”

Some of the published material is also relevant to this criterion as support for the above letters. The article titled, “[REDACTED]” published in [REDACTED] provides concepts of the milieu [REDACTED] has created and that “through this concept, the evolution between the stage and audience area comes together thru [sic] the characters, situations and general area as it forms into one in a clean transition.”

The record also contains an [REDACTED] article titled, “[REDACTED]” dated October 6, 2011, that references “[REDACTED]” This foreign language article is accompanied by a photocopied translator’s certification that is not sufficient to meet the requirements for translated evidence. Furthermore, the translator failed to document the name of the article’s author on the translation into English. Therefore, the translation is not a *full* English language translation, which is a requirement of as required by the regulation at 8 C.F.R. § 103.2(b)(3).

On appeal, the petitioner also offers an article from [REDACTED] dated January 2009 titled, “[REDACTED]” The translation of this article is accompanied by a photocopied certification. This article states: “[REDACTED] was a [REDACTED] experiment that began this mode at least in America, because there are no previous references therein.” The author also states: “According to [REDACTED] is [sic] one of the three contributions from Latin American theater to the performing arts world.”

Finally, the appellate submission includes a letter from [REDACTED] The translation of this letter is accompanied by a photocopy of a translator’s certification. The translator also failed to transcribe the professor’s title that is contained in the original. The letter is an invitation for the petitioner to moderate a conference on [REDACTED] based on his “dominion and experience in this topic, as well as, being the creator of this modality in Venezuela.”

Given the translation deficiencies, the petitioner has not submitted probative evidence establishing that he meets this criterion. Notwithstanding the deficient translations, the petitioner’s innovation with hyperrealism constitutes one contribution. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of “contributions of major significance” 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). 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*, 2008 WL 9398947 (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).

Accordingly, the petitioner failed to establish that he has satisfied the requirements of this criterion.

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner initially submitted an editorial contract for a play, a contract for a book entitled “ [REDACTED] ” evidence of his authorship of two books about [REDACTED] and an internet listing for his book entitled “ [REDACTED] .” In response to the director’s RFE, which advised that the petitioner had not submitted any evidence under this criterion, the petitioner resubmitted the initial evidence. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, the petitioner relies on his authorship of four books. The petitioner further asserts that his participation moderating conferences and workshops, and implementing curricula serves to satisfy this criterion.

Regarding the book entitled “ [REDACTED] ” the petitioner provided a contract naming him as this book’s author. The foreign language contract is accompanied by a photocopy of a translator’s certification, which is not in accordance with the regulation for foreign language documents. The petitioner documented a second book, “ [REDACTED] ” is with an article written about this book, prior to the book’s publication. The petitioner failed to provide primary evidence of either book, a copy of the cover and sufficient pages of the book to document its nature. The regulation at 8 C.F.R. § 103.2(b)(2) requires primary evidence or evidence that primary evidence is non-existent or unavailable. As evidence of the third book, “ [REDACTED] ” the petitioner submitted a picture of the book’s cover. As the sole evidence on record relating to these books includes a contract, an article and a picture of the book cover, the petitioner has failed to provide any evidence to establish that these books are scholarly in nature.

The final book claimed on appeal is “ [REDACTED] ” While the petitioner submitted evidence of the book on appeal, and provided a translation of the foreign language portions of this evidence in response to the RFE, this translation is not accompanied by any translator’s certification. Therefore, this translation will carry significantly diminished evidentiary weight in these proceedings. As the uncertified translation has no probative value, the petitioner did not provide any probative evidence to demonstrate that this book is scholarly in nature.

With respect to all four books, the petitioner also failed to provide evidence to establish that the book constitutes a professional or major trade publication or other major media.

Finally, the petitioner also relies on conferences and workshops he moderated at learning institutions and curricula he implemented at learning institutions. The petitioner however, failed to submit evidence that his participation in these conferences appeared as published articles in the proceedings of the conferences or describe how either of these claims otherwise constitute published scholarly articles in professional or major trade publications or other major media. As such, this evidence does not meet the plain language requirements of the regulation.

As such, the petitioner has not submitted evidence that satisfies this criterion's requirements.

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

The director determined that the petitioner met the requirements of this criterion. As the director relied on deficient translations, the record does not support the director's determination.

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

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 an organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation.

The petitioner has claimed his eligibility based on his employment at the following organizations:

[REDACTED]

[REDACTED] and, for the first time on appeal, [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion.

The evidence the petitioner submitted relating to [REDACTED] consisted of a December 9, 2003, letter from [REDACTED] a February 8, 1985, news article that appeared in [REDACTED] and [REDACTED] website printouts. The letter from [REDACTED] thanked the petitioner for his work as part of the crew but does not explain how the petitioner performed in a leading or a critical role with this organization. In addition, the translation into English is not a complete full translation as required under 8 C.F.R. § 103.2(b)(3) as the foreign language version contains the year 2004 within the message, yet the translation does not include this number. The 1985 article titled, [REDACTED] indicates that the petitioner was the director of theater and television and would take charge of new soap operas and Venevision's miniseries. Merely documenting the petitioner's job title is insufficient. The

submitted evidence fails to describe how the petitioner contributed to [REDACTED] as a whole and does not explain how his role fit within the overall hierarchy of the company.

The evidence the petitioner submitted relating to [REDACTED] consisted of a June 11, 2007, letter from [REDACTED], [REDACTED] an April 16, 2006, news article that appeared in [REDACTED] foreign language printouts from [REDACTED] that are not accompanied by certified translations into English; and evidence originating from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.¹⁰ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). The letter and the news article demonstrate that the petitioner worked as a director for [REDACTED]. While the petitioner established his job title, the submitted evidence fails to describe how the petitioner contributed to [REDACTED] as a whole or how his position fits within the overall hierarchy. The documentation in a foreign language originating from [REDACTED] is of no evidentiary value as the petitioner failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3), which requires the petitioner to ensure that any foreign language document was “accompanied by a full English language translation.”

The evidence before the director relating to [REDACTED] included documentation about the organization. The petitioner failed to document his positions held within this organization. On appeal, the petitioner provides a portion of a contract signed on January 1, 1981, by both the petitioner and [REDACTED] President of [REDACTED]. The contract demonstrates the petitioner worked for this organization, but continues to fall short of documenting any positions the petitioner occupied within [REDACTED]. The petitioner also provides a foreign language article on appeal that appeared in [REDACTED] on February 8, 1980. The translation of this article, “[REDACTED]” is only a summary translation, which does not comply with the regulation at 8 C.F.R. § 103.2(b)(3). Additionally, the translation is accompanied by a photocopy of a translator’s certification, which also fails to comply with 8 C.F.R. § 103.2(b)(3).

The evidence pertaining to [REDACTED] included letters demonstrating that the petitioner served as an instructor and as a professor for the university. While the evidence establishes his job title, the submitted evidence fails to describe the duties the petitioner performed for the organization in his various roles or establish how his position fit within the

¹⁰ Online content from *Wikipedia* is subject to the following general disclaimer, “WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 30, 2013, a copy of which is incorporated into the record of proceeding.

overall hierarchy of the organization. The petitioner also failed to provide any evidence demonstrating the university enjoys a distinguished reputation.

Although the petitioner submitted evidence relating to the various positions he held at the [REDACTED] and with [REDACTED] he failed to provide any evidence relating to the reputation of these organizations as required by the plain language of the criterion.

On appeal, the petitioner submits new evidence related to [REDACTED]. The petitioner provided two articles that are both accompanied by summary translations that do not meet the requirements of translated evidence pursuant to 8 C.F.R. § 103.2(b)(3). Additionally, although both deficient translations assert that the petitioner directed one show for [REDACTED] the evidence fails to demonstrate that the petitioner performed in a leading or in a critical role for the organization as a whole.

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

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a “high salary or other significantly high remuneration for services, in relation to others in the field.” Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.¹¹ The petitioner must present evidence of objective earnings data showing that he has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. at 444-45 (comparing salary of NHL defensive player to salary of other NHL defensemen).

The record contains a contract for a soap opera, for which the petitioner submitted a complete translation on appeal, states that the petitioner will receive \$10,000 for the creation of a pilot, \$50,000

¹¹ While the AAO acknowledges that a district court’s decision is not binding precedent, the AAO notes that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, “[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.”

for the storyline and \$5,000 per episode that he completes. According to the foreign language document, the producers are affiliated with [REDACTED]. The contract also stipulates that one episode is 45 minutes in duration; however, the company did not place limits on how many hours the petitioner was afforded to complete each episode. The contract also did not place a time limit on the completion of all 120 episodes agreed upon within the document.

The petitioner provided two sources of remuneration in the field with which to compare the contract. The first is from a private corporation named [REDACTED], and relates to television directors, not screenwriters. This organization provided a report in which the salaries or wages were calculated based on annual, monthly, weekly, and hourly remuneration figures. The contract the petitioner provided does not indicate whether his salary is calculated on an annual, monthly, weekly, or hourly basis. As such, the petitioner has not provided sufficient evidence for comparison with the per script remuneration of screenwriters.

The petitioner also provided a website printout from the Foreign Labor Certification (FLC) Data Center's Online Wage Library for producers, directors, program directors, talent directors and technical directors, but not screenwriters. Once again, these hourly wages for producers and directors do not provide a meaningful comparison to the petitioner's documented compensation per script as a screenwriter.

Accordingly, the petitioner has not submitted documentation that meets the plain language requirements of this criterion.

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

The petitioner provided multiple forms of evidence in support of his claims under this criterion. The director determined that the petitioner failed to meet the requirements of this criterion. As indicated above, the petitioner must provide evidence of commercial success, not through awards or accolades, but through box office receipts or through sales. The regulation contains a separate criterion to account for prizes or awards at 8 C.F.R. § 204.5(h)(3)(i). The petitioner failed to provide any evidence of "box office receipts or record, cassette, compact disk, or video sales" as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x).

One of the previously discussed letters from [REDACTED] states: "The spectacles [relating to his play "[REDACTED]] have caused extraordinary cultural fame and overpassed the records of representations and ticket sales in the theatrical field for these countries and source of work of more than 100 actors and more than 50 technicians and designers, all of high professional quality." The 2009 article in the [REDACTED] indicates that when "[REDACTED]" first opened in 1982, it "remained in billboards, with resounding impact in the public for four months in a row. It is one of the biggest hits of the Venezuelan Theater." The translation of this article is accompanied by a photocopied certification. The letter and article provide only general information rather than the actual ticket sales data of the petitioner's show.

Based on the failure to provide specific box office data and the deficient translations, the petitioner has not submitted sufficient evidence to satisfy this criterion.

C. Summary

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

D. Final Merits Determination

Although the petitioner failed to satisfy at least three of the evidentiary criteria and a final merits determination is not required, the AAO will perform a final merits determination in order to address substantive deficiencies beyond the technical problems with the translations. 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 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. For the reasons discussed below, the petitioner has not made such a showing. Accordingly, the appeal must be dismissed.

Virtually all of the petitioner’s awards for specific works date from the 1970s through the early 1990s. Within this span, the petitioner only demonstrated the receipt of one nationally or internationally recognized award, the [REDACTED], and submitted secondary evidence of a second [REDACTED]

As evidence of awards in the last two decades, the petitioner documented a municipal award and the receipt of a decoration of order of unknown significance. The petitioner also submitted secondary evidence of the receipt of one career award. The petitioner submitted no evidence that this award, assuming he received it, recognized any recent achievements. The receipt of one nationally recognized award more than two decades prior to the petition’s priority date is not representative of sustained acclaim. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been sustained. *See* section 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).

Regarding the documentation submitted under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), there is no evidence showing that the petitioner’s associations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field. Such lesser memberships are not indicative of or consistent with a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of his field.

With regard to the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), numerous articles are not dated and of those that do bear a publication date, the majority are from the 1990s or earlier. The petitioner provided four articles from a qualifying publication with only one article being published

after the 1990s. This is an insufficient showing of sustained 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 petitioner's judging experience, merely evaluating the work of undergraduates falls substantially short of demonstrating the petitioner's judging experience is among those in the top of his field. Other instances of being selected to serve as a judge, or serving as a judge without specifying what type of event he was judging is not representative of one who has sustained national or international acclaim at the very top of his field.

With regard to the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), as discussed above, although the petitioner demonstrated one contribution, he has not met the plain language requirements of this criterion, which requires contributions, in the plural. *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. The level at which the petitioner's contributions have impacted his field, as a whole, is the determining factor as to whether the petitioner is among that small percentage who has risen to the very top of the field of endeavor and has sustained national or international acclaim at such an elevated level. *See* 8 C.F.R. § 204.5(h)(2). The petitioner's innovation with [REDACTED] occurred more than three decades prior to the petition's filing date, which fails to demonstrate a record of sustained acclaim. Although the petitioner's plays are notable, and one play has been revived within the last decade, this is not sufficient to show that the petitioner has sustained any acclaim he might have previously enjoyed. 8 C.F.R. § 204.5(h)(2).

With regard to the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), the petitioner has not established that his authorship of four books and moderating workshops at learning institutions are evidence of authorship of scholarly articles. More significantly with respect to the final merits determination, the petitioner has not documented how well these books have sold. Therefore, these examples are also not demonstrative of a publication record that is consistent with sustained national or international acclaim or status among the small percentage at the top of the petitioner's field.

The petitioner submitted evidence of the display of his work pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Had the petitioner submitted compliant translations of this evidence, it would not document his sustained acclaim or status as one of the small percentage at the top of his field. It is inherent to the field of playwriting to have one's plays performed. The ability to make a living in one's field, even a competitive field, is not evidence that one is among the small percentage at the top of his field. Moreover, the petitioner provided little evidence of the display of recent work other than a revival of an old play at theaters of undocumented reputation. Thus, the evidence of display fails to demonstrate his sustained acclaim. The petitioner's contract to write for a television soap opera for an unidentified network is not evidence that he is among the small percentage at the top of his field.

Regarding the documentation submitted for the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner failed to establish that the duties he performed for various organizations and the record lacks evidence relating to the nexus between his performance and the organization's success. Thus, the evidence is not sufficient to demonstrate that the petitioner has

achieved a level of expertise indicating that he is among that small percentage who have risen to the very top of the field.

Regarding the petitioner's salary or remuneration being high compared to others in his field, he submitted evidence for a different occupation than the one outlined in his contract. Thus, the petitioner has not established that the remuneration outlined in the contract is representative of one "of that small percentage who have risen to the very top of the field of endeavor."

In reference to the petitioner's commercial success under the regulation at 8 C.F.R. § 204.5(h)(3)(x), while it is notable that [REDACTED] asserted that one of the petitioner's plays caused extraordinary cultural fame and overpassed the records of ticket sales, it is not a substitute for more specific box office data which is the measure of such claimed success. Regardless, this evidence appears to relate to the original run of "[REDACTED]," not the recent revival. Thus, this evidence is not probative of sustained acclaim at the time the petitioner filed the petition.

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.

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 the small percentage at the very top of his field of endeavor. 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.