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



U.S. Citizenship  
and Immigration  
Services

DATE: Office: NEBRASKA SERVICE CENTER FILE:

JUL 18 2013

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, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as an entertainment journalist. The director determined that the petitioner had not met the requisite criteria 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 director determined that the petitioner's evidence had met the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (v), (viii), and (x).

## 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. 723 101<sup>st</sup> 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*, 580 F.3d 1030 (9<sup>th</sup> Cir. 2009) *aff’d in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). Although the court upheld the AAO’s decision to deny the petition, the court took issue with the AAO’s evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

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

II. ANALYSIS

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

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

The petitioner submitted a letter from [REDACTED] Treasurer, [REDACTED] [REDACTED], Liverpool, England, stating: "This year [the petitioner's] 2 page article which featured in [REDACTED] newspaper was given an award in the Exclusive Feature of the Year category and in 2011 she was also given an honour in the Feature of the Year award for her story of [REDACTED] . . . ."

The petitioner submitted an internet printout from the [REDACTED] website for "THE [REDACTED] AWARDS 2012."<sup>3</sup> Under the category heading "Exclusive News/Sports Story of the Year," the webpage lists three entries and then the "winner":

[REDACTED]

[REDACTED]

The petitioner's name is not listed on the website as "winner" of the "Exclusive News/Sports Story of the Year" award. Instead, that award was won by "[REDACTED]" While [REDACTED] asserts that the petitioner was "given an award in the Exclusive Feature of the Year category" in 2012, the information submitted from the [REDACTED] website does not indicate that the petitioner won the award. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of

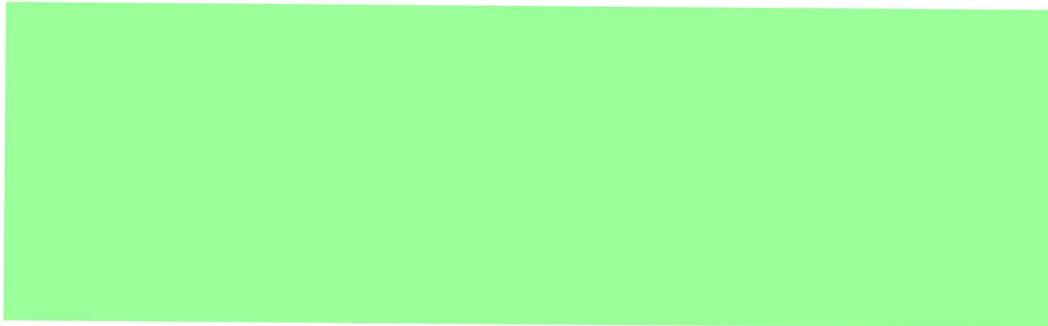
<sup>2</sup> On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

<sup>3</sup> It is noted that the [REDACTED] is a distinct entity from the [REDACTED]. Therefore, the [REDACTED] Awards and the British "Press Awards" issued by the [REDACTED] are not the same awards. "The 'Press Awards' celebrate the best in British national newspaper journalism published . . . either on paper or digitally. . . . The awards are supported by the [REDACTED] in association with the Journalists' Charity and the British Journalism Review. Sponsors include [REDACTED] which has supported the Society of Editors since 2001, Unison, Precise, Nikon, Gorkana, Google, Reuters and the Press Association." See [REDACTED] accessed on June 10, 2013, copy incorporated into the record of proceeding.

course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As indicated by the director, the petitioner “did not submit a copy of the award or award certificate” for her 2012 [REDACTED] award. Instead, the petitioner submitted a November 12, 2012 letter from [REDACTED] stating that [REDACTED] does “not present a certificate or plaque to the winners of each [REDACTED] award. All nominees . . . are presented with a check for the prize money associated with their award. . . . We published [the petitioner’s] name on our website and the prize money was sent to her.” The petitioner, however, failed to submit evidence of the prize money check sent to her or its amount. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of “the alien’s receipt” of “nationally or internationally recognized prizes or awards” for excellence in the field of endeavor, not receipt of what appears to be a nomination. As previously discussed, according to the information printed from the [REDACTED] website, there is no evidence showing that the petitioner, rather than [REDACTED] was the winner of the “Exclusive News/Sports Story of the Year” [REDACTED] award in 2012. Earning a nomination is not equivalent to receiving a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted internet printouts from the [REDACTED] website for “The Annual [REDACTED] Awards 2011.” Under the award category heading “Feature Story,” the webpages list two first place winners and then the petitioner as the third place winner:



The petitioner submitted a July 26, 2010 letter of support from [REDACTED] a journalism lecturer in [REDACTED] United Kingdom, stating: “[REDACTED] was founded in 1982 and draws membership from the leading press agencies in the UK as well as from the EU and the USA. It is a self-help body, which now has 53 members around the globe.” [REDACTED] provides general information about the [REDACTED] as an organization, but he does not comment specifically on the [REDACTED] awards program or its level of recognition.

The petitioner also submitted an August 20, 2012 letter from [REDACTED] Los Angeles Correspondent, [REDACTED], stating:

The Annual [REDACTED] awards honor those individuals that have achieved the highest levels in the industry. The standard of entries into the [REDACTED] awards is extremely high as all of the entries have been published in a national newspaper or magazines. And to win a [REDACTED] award in two successive years is a huge accomplishment, given the incredibly high standard of reporters being honoured for these awards. [The petitioner's] receipt of this award is indicative of her accomplishments on a national level.

Once again, there is no documentary evidence showing that the petitioner, rather than [REDACTED] was the winner of the "Exclusive News/Sports Story of the Year" [REDACTED] award in 2012. Moreover, [REDACTED] assertions regarding the level of accomplishment demonstrated by the NAPA awards are not sufficient to establish that the petitioner's 2011 "3rd" place in the "Feature Story" category for [REDACTED] was a nationally or internationally recognized award for excellence in the field. In addition, the petitioner submitted a November 1, 2012 letter from [REDACTED] Feature Writer, [REDACTED] asserting that the [REDACTED] awards received by the petitioner "are the most prestigious categories at the annual awards program." The petitioner also submitted an October 31, 2012 letter from [REDACTED] Associate Political Editor, [REDACTED] asserting that the petitioner's 2012 [REDACTED] honor for her article entitled [REDACTED] is indicative of her achievement "at the highest levels in the industry." With regard to the assertions of [REDACTED] USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The petitioner submitted an April 20, 2010 article entitled [REDACTED] [REDACTED] posted at [REDACTED]. The article comments on the 2010 [REDACTED] awards, but there is no information about the 2011 or 2012 [REDACTED] awards, or about the petitioner's receipt of an award. The petitioner also submitted two additional articles posted at [REDACTED] entitled [REDACTED] (May 24, 2010) and [REDACTED] (March 10, 2009). While both articles briefly mention the [REDACTED] organization, they fail to provide any information about the 2011 or 2012 [REDACTED] awards. In addition, there is no documentary evidence showing the volume of online readership for [REDACTED]. Accordingly, it cannot be concluded that coverage in the online publication is indicative of national or international recognition.

The petitioner submitted documentation indicating that [REDACTED] representatives [REDACTED] and [REDACTED] Chairman of the [REDACTED] testified before the Levinson Inquiry into the culture, practices, and ethics of the British press. Nothing in their Levinson Inquiry testimony demonstrates that the petitioner's [REDACTED] honors are equivalent to nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a June 28, 2010 article printed from the [REDACTED] website entitled "Annual [REDACTED] Awards." The article comments on the 2010 [REDACTED] awards, but there is no information about the 2011 or 2012 [REDACTED] awards, or about the petitioner's receipt of an award. The petitioner also submitted three letters from [REDACTED] attesting to the prestigious nature of the [REDACTED] awards. The

self-serving nature of the information posted on the [REDACTED] website and originating from the treasurer of the [REDACTED] is not sufficient to demonstrate that the association's awards are nationally or internationally recognized. USCIS need not rely on self-promotional material. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (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).

Even if the petitioner were to establish that she herself, rather than [REDACTED] was the winner of the "Exclusive News/Sports Story of the Year" [REDACTED] award in 2012, which she has not, and that her 3<sup>rd</sup> place in 2011 is sufficient, the petitioner did not submit evidence demonstrating the national or international *recognition* of her particular [REDACTED] honors. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. There is no documentary evidence demonstrating that the petitioner's specific honors were recognized beyond the presenting organization at a level commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The issue, therefore, is considered to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's

original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field.” [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of *original* artistic or business-related contributions “of major significance in the field.” The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

The petitioner submitted various letters of support discussing her work.

states:

[The petitioner’s] experience in the field of entertainment journalism allowed her to foresee the future that technology would play in the distribution of media and content. The rise of smartphones and the 24 hour news cycle changed the field of entertainment journalism greatly. The consumer is now connected 24/7, with the expectation that they have access to the most current news immediately. Anticipating this trend, [the petitioner] implemented a Really Simple Syndication (RSS) text feed at [redacted]. This RSS feed allowed Splash’s clients and consumers to receive up to the minute updates regarding the most current news and media content.

In an industry where immediate access to information is everything, the ability to provide instant access to the most current content placed [redacted] at the forefront of the industry. I remember the implementation of [redacted] RSS text feed because it forced my company to implement a similar system in order to stay competitive. [The petitioner’s] forethought and development of this system had an impact throughout the industry, requiring [redacted] competitors to adopt similar content distribution services, or suffer significant loss.

[redacted] asserts that the petitioner “implemented a Really Simple Syndication (RSS) text feed at [redacted]” but there is no documentary evidence showing that the petitioner originated the RSS technology or that she was the first to propose its utilization in the news industry.

In addressing [redacted] letter, the director’s decision stated:

Although the letter states that the petitioner implemented the service, it provides neither a detailed description about the origin of the service, i.e., whether it was the petitioner or someone else who came up with the idea for the service, nor an account from the origination of the idea to the actual launch of the service.

As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires the petitioner’s contribution to be “original,” not an innovation that was first conceived by others and later implemented by the petitioner’s employer [redacted]

Similarly, [redacted] President, [redacted] states:

I am the former owner and founder of [REDACTED] I have over 30 years of experience in the field of entertainment journalism. I can discuss the impact of [the petitioner's] creation and implementation of the extremely innovative and influential news feed system introduced by [REDACTED] to our customers.

[The petitioner's] deep knowledge and experience in the field of entertainment journalism allowed her to foresee the role that new technology would play in the distribution of media content. The growing prevalence of smartphones created an environment where consumers seek immediately news updates. Anticipating this trend, [the petitioner] oversaw the development and roll at [sic] of a Really Simple Syndication (RSS) text feed at [REDACTED] and [REDACTED]. This RSS feed allowed [REDACTED] clients and consumers to receive up to the minute updates regarding the most current news and media content. When we sold [REDACTED] the RSS was a key asset that our buyers wanted to acquire.

The implementation of [REDACTED] RSS text feed forced our competitors to implement similar systems in order to stay competitive. [The petitioner's] forethought and development of this system had an impact throughout the industry, requiring [REDACTED] competitors to adopt similar distribution services.

[REDACTED] states that the petitioner "oversaw the development and roll at [sic] of a Really Simple Syndication (RSS) text feed at [REDACTED]" but there is no documentary evidence showing that the petitioner originated the technology or that her work was of major significance in the field. In addition, while [REDACTED] states that the "implementation of [REDACTED] RSS text feed forced our competitors to implement similar systems in order to stay competitive," his letter does not specifically identify the other news agencies that were directly impacted by the petitioner's work.

In a twelve-page attachment accompanying the petition, counsel initially stated:

[The petitioner] was instrumental in the launching of [REDACTED] 24/7 Text Feed RSS service. [The petitioner] developed the idea in November 2008, liaised with clients around the world about the design of the service and launched the service in February 2009.

\* \* \*

The RSS service that [the petitioner] implemented at [REDACTED] was an industry changing event.

Even assuming that the petitioner was the first person within [REDACTED] to come up with the idea and to create the agency's text feed service, the preceding letters fail to show that in November 2008, no other news agencies had already created or developed a similar service or were in the process of doing so. In short, there is insufficient evidence showing that [REDACTED] text feed service, even if it could be considered the petitioner's contribution at [REDACTED] constitutes an "original" contribution in the field. Indeed, in counsel's brief in support of the instant appeal, counsel states: "At no point did the Petitioner assert that she invented the Really Simple Syndication (RSS) technology. The original contribution asserted by the petitioner is that she was able to effectively implement this technology

in a field that was not utilizing the technology.” However, there is no evidence to support counsel’s claim that the field was not already utilizing RSS text feed technology when [REDACTED] launched it in February 2009.<sup>4</sup> Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

[REDACTED] Staff Reporter, [REDACTED] magazine, states:

[The petitioner’s] extraordinary understanding of media, content, and business allowed her to conceive and implement an industry changing tool, Really Simple Syndication (RSS). While she did not invent RSS, she was one of the first people to truly implement a widespread RSS system throughout the field of entertainment journalism. RSS is a system that allows subscribers to gain instant access to the most current information in a news feed format. Essentially, subscribers to a RSS feed have a constant stream of the most current news stories and other media content scrolling through their web browser or other media device. This provides consumers, customers, and clients with instant access and knowledge of the most recent news available.

Prior to [the petitioner’s] implementation of [REDACTED] celebrity text feed, very few entertainment media outlets used such technology, and none used it effectively. The system implemented by [the petitioner] changed the industry the moment it went live. Other companies were presented with the option to either implement a similar system, or fall immeasurably behind those that did. It has now become common throughout the entertainment news field for content distribution press agencies to provided similar services to their consumers.

[REDACTED] specifically states that that petitioner “did not invent RSS.” Further, the petitioner failed to submit documentary evidence to support [REDACTED] claim that the petitioner “was one of the first people to truly implement a widespread RSS system throughout the field of entertainment journalism.” As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In addition, [REDACTED] fails to specify the names of the other companies that implemented the RSS text feed technology as a direct result of the petitioner’s work.

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<sup>4</sup> For instance, according to an October 30, 2008 article posted on the website of the World Association of Newspapers and News Publishers, the United Kingdom’s *The Guardian* was the first newspaper to successfully launch full text RSS feeds. The October 30, 2008 article states: “*The Guardian* has just moved from partial to full-text RSS feeds. According to the [Google Blog](#), they are they first major newspaper in the world to do so. [Publishing 2.0](#) believes that *The Guardian* is the ‘first media company to actually take RSS seriously’ by making it something people want to use. The feeds will include the full content from each article with embedded related links. . . . Other mainstream media companies publish their RSS feeds as a brief title or caption from the article, which forces readers to go to the site to read the rest.” See <http://www.editorsweblog.org/2008/10/30/uk-guardian-first-newspaper-to-launch-full-text-rss-feeds>, accessed on June 14, 2013, copy incorporated into the record of proceeding.

Group Head of Content and Sales at states:

[The petitioner] used her extraordinary understanding of media, content, and business to play a lead role in the development and management of the industry changing tool, Really Simple Syndication (RSS). While she did not invent RSS, she was one of the first people to truly implement a widespread RSS system in the field of entertainment journalism. RSS allows subscribers to gain instant access to the most current information in a news feed format. Subscribers to a RSS feed receive a stream of the most current news stories and media content through their web browser or mobile phone. This provides consumers and media companies alike instant access and knowledge of the most recent news.

The RSS system overseen by [the petitioner] changed the industry the moment it went live. Other companies were presented with the option to either implement a similar system, or fall behind those that did. In fact, my company implemented such a news feed system in order to stay competitive in this cut-throat field. It has now become common throughout the entertainment news field for content distribution press agencies to provided similar services to their consumers.

The paragraphs quoted above in the letters from contain identical sentences and language, suggesting the language in the letters is not the authors' own. Cf. *Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). Because the two letters appear to have been drafted by someone other than the purported authors, the letters possess little credibility or probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

an accountant at talent agency, states:

I was formerly an accountant at . . . .

\* \* \*

Under [the petitioner's] direction, text feed service created an innovative business model that revolutionized the way news agencies distribute their content. This past decade has seen the rise of internet news and the decline of traditional print media but [the petitioner] and found a way to bridge the gap and stay relevant. The traditional newspaper business model for generating revenue was through advertisement sales. With this declining, [the petitioner] and pioneered a new way for news agencies to generate millions of dollars in revenue annually.

[The petitioner] introduced a new business model to that accessed an untapped market, the mobile client. was able to utilize this market effectively, allowing the text

feed service to generate significant additional revenue while other news agencies are either struggling to survive or have collapsed under their own financial insolvency. Competitors have been forced to adopt similar services to the text news feed service in order to remain competitive. In fact, one competitor chose to purchase [REDACTED] and its RSS system.

[REDACTED] former accountant [REDACTED] asserts that the petitioner directed the creation of “an innovative business model that revolutionized the way news agencies distribute their content,” but his letter does not specifically identify the other news agencies that were directly impacted by the petitioner’s work. The submitted evidence does not establish that the petitioner’s work was of major significance in the field. Vague, solicited letters from local colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036. In 2010, the *Kazarian* court reiterated that the conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122. Moreover, even assuming some agencies did launch their text feed service because they saw from [REDACTED] the benefits of having such a service, it cannot be concluded that this practice of adopting a competitor’s practices renders [REDACTED] implementation of text feed RSS service an original contribution of major significance in the field of news reporting. In short, there is insufficient documentary evidence showing that the petitioner’s specific work relating to [REDACTED] text feed RSS service constitutes an original contribution of major significance in the field.

[REDACTED] International Sales and Marketing Manager, [REDACTED] states:

[REDACTED] syndicates [REDACTED] text feed in more than 55 countries worldwide.

We approached [REDACTED] in connection with selling their product because we believed that this revolutionary distribution technology had the potential to make money worldwide, and we were right.

Currently we have sold the product to prestigious organizations in international locations and we are working on multiple global deals with international corporations.

[REDACTED] text feed service has provided an innovative business model that has revolutionized the way news agencies distribute their content to their clients. This past decade has seen the rise of internet news and the decline of traditional print media. With the continuing decline of the traditional print media industry, [REDACTED] has found a way to bridge the gap and stay relevant.

\* \* \*

[The petitioner] introduced a new business model to [REDACTED] that has accessed an untapped market, the mobile client. [REDACTED] has been able to utilize this market effectively, allowing the text feed service to generate millions in additional revenue while other news agencies are either struggling to survive or have collapsed under their own financial insolvency.

While [REDACTED] states that his company “syndicates [REDACTED] text feed in more than 55 countries worldwide” and has “sold the product” to various organizations, there is no evidence demonstrating that the petitioner’s work was both original and of major significance in the field. Rather, [REDACTED] comments demonstrate only that [REDACTED] has found a market for its RSS text feed technology. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner’s contributions be “of major significance in the field” rather than limited to one’s employer, the distributors of its service, and its customer base. It cannot be concluded that every news agency who engages media service companies to distribute their news feeds has automatically demonstrated an original contribution of major significance in the field.

[REDACTED] Owner, [REDACTED] states:

This letter is written in support of [REDACTED] text feed service as an original and innovative business model that has advanced the international news media industry.

\* \* \*

[REDACTED] syndicates [REDACTED] text feed exclusively in Australia and New Zealand to a number of high profile clients. We approached [REDACTED] in connection with selling this unique product because we believed that this revolutionary service would be a great asset to the many clients we deal with on a daily basis.

We have sold this product to several companies including [REDACTED] Australia’s largest online content publisher with a staggering 10.3 million people visiting the site each month. On average, each person visiting ninemsn views 180 pages and spends over 2 hours and 50 minutes on the network each month – making it Australia’s leading online destination for entertainment and celebrity. Anyone logging onto [REDACTED] would view the content [REDACTED] has provided.

\* \* \*

[The petitioner’s] idea for the Text Feed subscription service has tapped into a previously under-utilised system of generating income from existing stories and stock images. Her business model has helped [REDACTED] increase their revenue from the first day it was introduced. Since then sales have been growing steadily each month, with more and more clients subscribing to the Feed, in a time when other news agencies and even newspapers are struggling to generate revenue.

[REDACTED] describes [REDACTED] text feed service “as an original and innovative business model that has advanced the international news media industry,” but she does not state that the petitioner was the first person in the news reporting field to have thought of, created or developed a text feed service, nor did she explain how an increase in revenue and steady growth for both [REDACTED] and her company render the text feed RSS service a contribution of major significance in the entire field of news reporting.

Furthermore, as indicated by the use of the plural in the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner must show that she has made more than one original contribution of major significance in the field of news reporting. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, it can be inferred that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at \*1, \*12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*1, \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). As such, even if the petitioner were to establish that [REDACTED] text feed RSS service constituted the petitioner’s original contribution of major significance in the field of news reporting, which she has not, the submitted evidence fails to show that the petitioner has made more than one original contribution of major significance in the field as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

In addition to petitioner’s implementation of an RSS text feed service at [REDACTED] counsel asserts that the appearance of the petitioner’s news articles on the front page of [REDACTED] is “an original and significant contribution to the field as a whole.”

[REDACTED] Associate Political Editor, [REDACTED] states:

During her time with [REDACTED] one of the top five circulated publications in the world, [the petitioner’s] articles were regularly featured on the front page. The front page of any publication is reserved for the most important and significant news story in the publication. The fact that [the petitioner’s] articles regularly appeared on the front page is an indication of the significant national interest in the stories she was providing.

[REDACTED] states that the petitioner’s articles appeared on the front page of [REDACTED] but he does not point to any specific news stories written by the petitioner or explain how they were of major significance in the field of news reporting. Not every front page newspaper story equates to an original contribution of major significance in the field. In *Kazarian v. USCIS*, 580 F.3d at 1036, the court held that publications are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance” and in 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122. Thus, there is no presumption that every published article is an original contribution of major significance; rather, the petitioner must document the actual impact of her article. The petitioner has failed to establish, for example, the impact or influence of her articles beyond [REDACTED] readership so as to establish that her work was of major significance in the field.

[REDACTED] former editor of [REDACTED] states:

As a reporter with [REDACTED] one of the top 5 circulating newspapers in the world, [the petitioner] reported directly to the Editor and was featured on the front page multiple times. Some of her front page articles include [REDACTED]

[REDACTED] identifies the petitioner's front page articles entitled [REDACTED] and [REDACTED]" but he does not explain how the news stories were contributions of major significance in the journalism field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than limited to a single newspaper and its readership.

[REDACTED] Managing Director, [REDACTED] states:

I first met [the petitioner] while I was the Editor at [REDACTED]. She joined [REDACTED] in order to bolster our news team as well as provide a variety of showbiz stories and entertainment news. Immediately after she started working for [REDACTED] [the petitioner's] exceptional acumen as a reporter became evident. Her extraordinary journalistic ability resulted in her stories gracing the front page of [REDACTED] a newspaper with a circulation of over 3 million, on multiple occasions. The selection of her stories for the front page of such a highly circulated newspaper is akin to winning an award. Competition is fierce and only those with the most extraordinary talent are awarded this honor. The appearance of [the petitioner's] stories on the front page was the rule rather than the exception. Her extraordinary ability as a journalist allowed her to consistently produce quality work suitable for front page coverage.

[REDACTED] comments on the petitioner's "extraordinary journalistic ability," "extraordinary talent," and "extraordinary ability as a journalist," but merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at \*1, \*5 (S.D.N.Y.). Assuming the petitioner's journalistic ability is unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998). [REDACTED] letter fails to provide specific examples of how the petitioner's news articles have significantly impacted the journalism field or otherwise rise to the level of original contributions of major significance in the field.

The opinions of the petitioner's references are not without weight and have been considered by both the director and the AAO. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters 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 795-796; *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”). Thus, the content of the references’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an entertainment journalist who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner’s original work has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, it cannot be concluded that she meets this regulatory 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 evidence of her authorship of multiple newspaper articles and two published biographies. The director’s October 11, 2012 request for evidence stated that the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi) had “not been met because it had not shown that [the petitioner’s] articles are scholarly in nature.” The director requested further evidence demonstrating the petitioner’s published works were “scholarly” in nature. The petitioner did not assert a claim of eligibility under 8 C.F.R. § 204.5(h)(3)(vi) in response to the director’s request for evidence. Instead, counsel stated: “We concede that the articles authored by [the petitioner do not qualify as scholarly articles.” Subsequently, the director did not discuss the criterion in his decision and the petitioner made no further claim on appeal. The issue, therefore, is considered to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

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

The petitioner submitted an October 29, 2012 letter from [REDACTED] Chief Executive Officer (CEO), [REDACTED] stating:

I am writing to confirm [the petitioner’s] supervisory position as the Head of News and Features with the [REDACTED]

\* \* \*

[The petitioner] was the Head of News and Features and Text Feed Editor, for [REDACTED] from 1998 to January 31, 2012. In this position, she was responsible for overseeing both the news and feature desks across the company and liaising with reporters in all [REDACTED] offices around the world. [The petitioner] was responsible for making creative decisions about what stories to pursue and in what ways those stories should be presented. She also supervised over 60 reporters, correspondents, photographers and editors throughout [REDACTED] international media network.

The preceding information from the CEO of [REDACTED] indicates that the petitioner has performed in a leading role for [REDACTED]. In addition, the petitioner submitted documentary evidence demonstrating that

█ has a distinguished reputation. However, as indicated by the use of the plural in the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner must show that she has performed in a leading or critical role for “organizations or establishments” that have a distinguished reputation. As previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for more than one distinguished organization or establishment. The petitioner has not made such a showing.

Counsel also asserts that the petitioner performed in a leading or critical role as a reporter for █. The record adequately demonstrates that █ is a newspaper with a distinguished reputation. The remaining issue to be determined is whether the petitioner’s role as a reporter for █ was leading or critical.

The petitioner submitted an October 31, 2012 letter from █ Associate Political Editor, █ stating:

Our paths first crossed when we worked together as reporters in London, United Kingdom, in the early 1990s. I am currently Associate Political Editor of █ a national newspaper with the highest circulation in the UK.

\* \* \*

During her time with █ one of the top five circulated publications in the world, her articles were regularly featured on the front page. The front page of any publication is reserved for the most important and significant news story in the publication. The fact that [the petitioner’s] articles regularly appeared on the front page is an indication of the significant national interest in the stories she was providing.

\* \* \*

Having worked with [the petitioner] at █ newspaper I can testify her professional approach to every story ensures she puts the interviewee at ease and makes them comfortable talking to her, even on the most sensitive stories. [The petitioner] also has the invaluable ability to turn a story around in a short period of time – from confirming the story to writing it – a skill needed when working for the national press where the competition is fierce and deadlines are tight.

In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien is responsible for the success or standing of the organization. Although counsel asserts in his brief in support of the instant appeal that the petitioner has performed in a leading or critical role for █ the petitioner was one of █ unspecified number of reporters, and her duties were similar to those of a reporter for a publication, who might have achieved some journalistic success. The June 4, 2010 letter from █ the petitioner’s editor at █ states that the petitioner’s “extraordinary journalistic ability resulted in her stories gracing the front page of █ a newspaper with a circulation of over 3 million, on multiple occasions. The selection of her stories for the front page of such a highly

circulated newspaper is akin to winning an award.” According to [REDACTED] June 21, 2010 letter, the petitioner had been a reporter with the [REDACTED] and she reported “directly to the Editor and was featured on the front page multiple times.”

The petitioner, however, has not provided information such as the number of reporters whose articles have appeared on the front page of [REDACTED] nor has she provided information on the frequencies of these reporters’ articles appearing on the front page of [REDACTED]. In addition, the petitioner did not submit, for instance, an organizational chart or other evidence documenting where her position fell within the general hierarchy of [REDACTED] staff. Moreover, the petitioner has not established the significance of her contributions to [REDACTED] beyond its obvious need to employ competent reporters who contribute print-worthy stories. The submitted evidence fails to adequately differentiate the petitioner from the newspaper’s other reporters, editors, and managerial staff, so as to demonstrate her leading role, and fails establish that she was responsible for [REDACTED] success or standing to a degree consistent with the meaning of “critical role.”

Once again, although the petitioner submitted documentation showing that the reputation of [REDACTED] and her role with that agency meet the elements of this regulatory criterion, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for more than one distinguished organization or establishment. Accordingly, without evidence demonstrating that the petitioner performed in a leading or critical role for [REDACTED] the petitioner has not established that she meets the plain language requirements of this regulatory 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 petitioner submitted a July 17, 2010 letter from [REDACTED] Owner and President, [REDACTED] stating that the petitioner “receives a yearly salary of \$135,000” in her capacity as “the Head of News and Features and Text Feed Editor.” The petitioner, however, failed to submit documentary evidence (such as payroll records or a Form W-2, Wage and Tax Statement, from [REDACTED] to support [REDACTED] assertion and to demonstrate the actual salary earned by the petitioner. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner also submitted an April 2012 “Employment Agreement Between [REDACTED] and [the petitioner]” stating that “[REDACTED] the employer agrees to sponsor [the petitioner] to work in the United States as a representative for [REDACTED] projects in the United States” and that the petitioner “will be compensated in the amount of \$130,000 per year.” Once again, the petitioner did not submit documentary evidence of her actual salaried earnings or remuneration.

When counsel initially filed the visa petition, he asserted that the petitioner meets this criterion based on her annual salary of \$135,000 as the Head of News and Features and Text Feed Editor for [REDACTED] which is more than \$50,000 above the yearly prevailing wage of Level 4 (fully competent) editors in the Los Angeles area. The petitioner submitted September 20, 2012 “Online Wage Library – FLC Wage Search Results” indicating that the prevailing wage for fully competent Editors in the “Los

Los Angeles - Long Beach - Glendale, CA Metropolitan Division” was \$76,627 per year.<sup>5</sup> The petitioner, however, must submit evidence showing that she has earned a *high* salary or other *significantly high* remuneration relative to others in the field, not simply a salary that is above the amount paid to the majority of fully competent workers in Los Angeles - Long Beach - Glendale, CA Metropolitan Division. The accompanying description of “Editors” from the Online Wage Library states: “Plan, coordinate, or edit content of material for publication. May review proposals and drafts for possible publication. Includes technical editors.” The petitioner’s reliance on the wage amount paid to the majority of fully competent “Editors” in one region of California is not an appropriate basis for comparison in demonstrating that the petitioner’s earnings as “the Head of News and Features and Text Feed Editor” at Splash or as the “representative for [redacted] projects in the United States” constitute a “*high* salary or other *significantly high* remuneration for services, in relation to others in the field.” [Emphasis added.]

In response to the director’s request for evidence, the petitioner submitted information from the U.S. Bureau of Labor Statistics indicating that the top ten percent of “Editors” in the United States earn more than \$98,430 annually. The accompanying description of “Editors” states: “Plan, coordinate, or edit content of material for publication. May review proposals and drafts for possible publication. Includes technical editors.” The petitioner also submitted information from the “ERI Economic Research Institute” indicating that the top ten percent of “Editor Copy” workers in the United States earn more than \$76,264 annually. In addition, the petitioner submitted information from the “ERI Economic Research Institute” indicating that the top ten percent of “Editor Copy” workers in Los Angeles earn more than \$91,769 annually, in New York earn more than \$83,869 annually, in Chicago earn more than \$83,043 annually, in Atlanta earn more than \$78,636 annually, in Dallas earn more than \$81,377 annually, and in Washington, D.C. earn more than \$89,139 annually. The accompanying “Overview” of “Editor Copy” from the ERI Economic Research Institute states: “Edits, checks, and prepares written material for publication, performing a variety of duties.”

Once again, the AAO notes that the petitioner worked as “the Head of News and Features and Text Feed Editor” at [redacted]. The petitioner has not submitted as a basis for comparison what constitutes a high salary or significantly high remuneration for services for someone who holds a position similar to the petitioner in the field of news reporting or entertainment journalism. While performing the duties of an editor or a copy editor may have comprised part of the petitioner’s duties at [redacted] it did not constitute all of her responsibilities as “the Head of News and Features and Text Feed Editor.” For example, according to the July 17, 2010 letter from [redacted]

As the Head of News and Features and Text Feed Editor, [the petitioner] is responsible for overseeing both the news and feature desks across the company and liaising with the reporters in all [redacted] offices around the world. She also writes news and features articles on a regularly basis and is responsible for the running of [redacted] Really Simple Syndication (RSS) celebrity text feed.

In addition, the October 29, 2012 letter from [redacted] states:

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<sup>5</sup> A “prevailing wage” is defined as “trade and public work wages paid to the majority of workers in a specific area.” See <http://www.businessdictionary.com/definition/prevailing-wage.html>, accessed on June 19, 2013, copy incorporated into the record of proceeding.

[The petitioner] was the Head of News and Features and Text Feed Editor, for [REDACTED] from 1998 to January 31, 2012. In this position, she was responsible for overseeing both the news and feature desks across the company and liaising with reporters in all [REDACTED] offices around the world. [The petitioner] was responsible for making creative decisions about what stories to pursue and in what ways those stories should be presented. She also supervised over 60 reporters, correspondents, photographers and editors throughout [REDACTED] international media network.

According to [REDACTED] the petitioner was “responsible for overseeing both the news and feature desks,” she was “responsible for the running of [REDACTED] Really Simple Syndication (RSS) celebrity text feed,” and she “supervised over 60 reporters, correspondents, photographers and editors throughout [REDACTED] international media network.” The petitioner’s job description, as provided by [REDACTED] does not match that of an editor or copy editor as defined in the information submitted from the Online Wage Library, the U.S. Bureau of Labor Statistics, and the ERI Economic Research Institute. In addition, there is no evidence showing that the petitioner’s job description as a representative for [REDACTED] projects in the United States matches the preceding information for editor or copy editor. As such, the petitioner has not established that she has commanded a high salary or other significantly high remuneration for services in relation to others in the field. The petitioner must present evidence of objective earnings data showing that she 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 Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *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. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

On appeal, counsel asserts that “[e]vidence of the petitioner’s commercial success in the field was submitted in support of the petition.” The regulatory criterion at 8 C.F.R. § 204.5(h)(3)(x) focuses on the volume of sales and box office receipts as a measure of the petitioner’s “commercial successes in the performing arts.” The petitioner’s field, however, is not in the performing arts. None of the evidence submitted by the petitioner demonstrates that she has achieved “commercial successes in the performing arts.”

Counsel further states:

While 8 C.F.R. § 204.5(h)(3)(x) addresses a petitioner’s commercial success in the performing arts, such a category does not readily apply to a journalist.

The Petitioner's commercial success in the field has been evidenced by the commercial success of the RSS text feed service the Petitioner implemented at [REDACTED]

The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim "shall" include evidence of a one-time achievement or evidence of at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. The regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." It is clear from the use of the word "shall" in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to her occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i) – (x). In the present matter, there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the ten categories of evidence specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, the petitioner has submitted evidence that pertains to multiple categories as indicated in this decision.

Even if the petitioner demonstrated that she was eligible for the provisions of the regulation at 8 C.F.R. § 204.5(h)(4), which she has not, the petitioner has failed to establish that submitting letters of support prepared specifically for her petition and attesting to varying revenue amounts ranging from "\$25,000 per month" to "millions upon millions of dollars" for [REDACTED] RSS text feed service is *comparable* to the regulation at 8 C.F.R. § 204.5(h)(3)(x) that requires "[e]vidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales."

The petitioner submitted a November 1, 2012 letter from [REDACTED] stating:

I was formerly an accountant at [REDACTED] and I can confirm not only the commercial success of the RSS feed under [the petitioner's] direction, but also the key and critical role she played in this innovative journalism tool and services. [REDACTED] RSS feed led to additional revenue streams for [REDACTED] reaching just over \$25,000 per month. This was an amazing return on investment for the company.

\* \* \*

The traditional newspaper business model for generating revenue was through advertisement sales. With this declining, [REDACTED] pioneered a new way for news agencies to generate millions of dollars in revenue annually.

The petitioner also submitted a November 7, 2012 letter from [REDACTED] stating: “When we sold [REDACTED] the RSS was a key asset that our buyers wanted to acquire.” With regard to the sale of [REDACTED], the agency’s former owner, fails to specify the share received by the petitioner, if any, for her work on the RSS text feed service.

In addition, the petitioner submitted a September 2, 2010 letter from [REDACTED] stating:

[The petitioner] introduced a new business model to [REDACTED] that has accessed an untapped market, the mobile client. [REDACTED] has been able to utilize this market effectively, allowing the text feed service to generate millions in additional revenue while other news agencies are either struggling to survive or have collapsed under their own financial insolvency.

The petitioner also submitted a September 6, 2010 letter from [REDACTED] stating:

With the continuing decline of the traditional print media industry and the introduction of pay-only websites, [REDACTED] has found a way to bridge the gap and stay relevant by pioneering a new way for news agencies to generate millions upon millions of dollars in revenue annually through a monthly subscription service available to clients around the world.

[The petitioner’s] idea for the Text Feed subscription service has tapped into a previously under-utilised system of generating income from existing stories and stock images. Her business model has helped [REDACTED] – increase their revenue from the first day it was introduced. Since then sales have been growing steadily each month, with more and more clients subscribing to the Feed, in a time when other news agencies and even newspapers are struggling to generate revenue.

Rather than submitting objective evidence that is comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(x), the petitioner submitted letters of support attesting to her undocumented share of [REDACTED] revenue allegedly resulting from her work on the RSS text feed service. 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). The record lacks objective documentary evidence (such as sales reports or audited financial statements) showing the specific revenue amounts directly attributable to the petitioner versus the other [REDACTED] staff, ownership, and management. As the quality of the submitted documentation is not of the same caliber of objective evidence required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x), the AAO cannot conclude that the petitioner’s evidence is comparable.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

## B. Summary

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

## 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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>6</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.

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<sup>6</sup> The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).