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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 2 1 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:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 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 February 15, 2012. On June 9, 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 October 22, 2012. On appeal, the petitioner submits a statement with new documentary evidence. For the reasons discussed below, the AAO upholds the director's ultimate determination that 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 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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[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).

II. ANALYSIS

A. Translated Evidence

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 translations that do not comport with the regulation. Instead, the translations are accompanied by a single, blanket certification that does not identify any specific document or documents to which it pertains. The petitioner also submitted translations that are not accompanied by any translator's certification. Because these translations do not comply with 8 C.F.R. § 103.2(b)(3), they have no probative value. Even if the translations satisfied the regulation, the director correctly concluded that the petitioner's evidence does not establish eligibility.

B. Evidentiary Criteria[2]

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.

In his decision, the director discussed the five awards claimed by the petitioner and determined that the petitioner failed to meet the requirements of this criterion. On appeal, the petitioner contests the director's determination relating to only two of those awards. As the petitioner appears to have abandoned his claims regarding the remaining awards, only those awards addressed by the petitioner on appeal will be discussed.

The first award, the claimed [redacted] is supported with a letter from the issuing entity's founder, [redacted], a website printout from [redacted]

[2] On appeal, the petitioner does not claim to meet and/or submit evidence relating to the regulatory categories of evidence not discussed in this decision. Therefore, the AAO does not make any determination regarding whether the petitioner meets the remaining categories of evidence.

and an unsigned letter dated August 14, 2012, on letterhead. Regarding the letter from although written by an individual in a position with knowledge of the award, the letter (as well as the unsigned letter) is not primary evidence that the award is recognized nationally or internationally beyond the awarding entity. Such recognition can be demonstrated, for instance, through national or international media coverage. A national or international organization may issue lesser awards that merely receive local or regional recognition, which do not meet the plain language requirements of this criterion. Although the petitioner has submitted a printout from the petitioner failed to establish the significance of the publication and therefore that a reference on its website is indicative of national or international recognition.

On appeal, the petitioner states: "This award is being awarded nationally and since 1997 to nationally or internationally renowned literary figures of literature field. Therefore, this award is [a] nationally recognized award for excellence in the field." 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*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, 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 final determination of whether evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. at 795.

The second award the petitioner discusses on appeal is the The petitioner claimed this award in response to the director's RFE and provided evidence that is in a foreign language. This foreign language document is accompanied by the deficient blanket translation discussed above. In addition, the director noted a discrepancy regarding the date the petitioner actually received this award. The petitioner asserts that no discrepancy exists and claims that he was given the award in 2008 and subsequently received the certificate for this award in 2011. The petitioner submits no primary documentation to support his claim and to establish his receipt of this award in 2008. 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)). 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).

Even if the issue regarding the discrepant dates had been resolved, which it has not, the regulation requires that each prize or award be nationally or internationally recognized for excellence in the field of endeavor. The petitioner has failed to provide evidence of the national or international recognition of this award.

Based on the foregoing, 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 for 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). 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. Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language.

The petitioner provided several articles at the time he filed the petition, three of which were published in and the others on Internet sites such as Each of the foreign language articles is accompanied by the aforementioned blanket translation, and as such, are of no evidentiary value. The petitioner also submitted English language articles, but failed to support these articles with evidence such as circulation or distribution statistics relating to the publishing entities so as to establish they are major publications or media. In response to the RFE, the petitioner submitted a letter from indicating the petitioner is a well-known writer and that he has written several articles for The director determined that although the articles were about the petitioner and his work, the record lacked sufficient evidence to demonstrate the material appeared in professional or major trade publications or other major media.

The petitioner submits evidence on appeal relating to but not to any of the Internet sites. The letter from the Chief Editor of states that this paper is the "one and only newspaper that is widely circulated in US." The petitioner offers no primary documentary evidence to support the claims contained in this letter. USCIS need not accept self-serving assertions of circulation data. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 F. App'x 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

Therefore, 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.

The director determined that the petitioner met the requirements of this criterion. The AAO affirms the director's favorable determination as it relates to this criterion.

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

This criterion contains multiple evidentiary elements the petitioner must satisfy through the submission of evidence. The first is that the petitioner is an author of scholarly articles (in the plural) in his field in which he intends to engage once admitted to the United States as a lawful permanent resident. Scholarly articles generally report on original research or experimentation, involve scholarly investigations, contain substantial footnotes or bibliographies, and are peer reviewed. Additionally, while not required, scholarly articles are oftentimes intended for and written for learned persons in the field who possess a profound knowledge of the field. The second element is that the scholarly articles appear in one of the following: a professional publication, a major trade publication, or in a form of major media. The petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The petitioner provided three books of poems. The director determined the record contained insufficient evidence and served an RFE asserting: (1) the petitioner's work was not scholarly; (2) he did not establish which regulatory required publication type his works constituted; and (3) it appeared that the petitioner had published the books himself. The petitioner responded to the RFE mainly focusing on whether his work was scholarly. The petitioner also submitted a conclusory statement that his evidence met the requirement that the articles appear in professional or major trade publications or other major media. It is not clear from the RFE response statement under which publication type or major media that the petitioner asserted the evidence should be classified. The director determined that the petitioner failed to meet the requirements of this criterion.

On appeal, the petitioner provides new evidence in the form of a December 10, 2012, letter from Proprietor of which is the publisher of the petitioner's book of poems. The letter's author claims that is one of the most popular book publishing companies in and explains that the government restricts the number of books published to 1,000. The petitioner offers no primary documentary evidence to support the claims made in this letter. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos,* No. CV 06 5105 SJO.

Consequently, the petitioner has failed to establish that he meets the plain language requirements of this criterion.

C. Continuing to work in the area of expertise in the United States

The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. *Id.* The petitioner initially submitted a letter

indicating his decision "to initiate some media venture like publication of a print media and possible online broadcast radio" and submits lists of potential sponsors, advertisers and subscribers.

The director determined that the petitioner's letter regarding "his plan to launch a national level newspaper in the United States" and to begin a radio program was insufficient and the petitioner failed to demonstrate "that [his] plan is likely to come to fruition." The director noted that the petitioner's work experience was in areas other than the literary journalism.

Although the director's concerns regarding the petitioner's work in the United States are understandable, this work history is not incompatible with the finding that the petitioner has been and will continue to work in his area of expertise. The record contains numerous letters and documents that reflect the petitioner has continued to work in his field. The petitioner's statement regarding his plans and the additional documents and letters in the record from those with whom the petitioner has worked and will continue to work satisfy the regulatory requirements. Accordingly, the AAO withdraws the director's adverse determination as it relates to this statutory and regulatory provision.

D. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types 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 have risen to the very top of the field of endeavor.

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

final merits determination.[3] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soriano*, 19 I&N Dec. at 766 (citing *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)). Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

[3] 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).