



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 14 2013** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[REDACTED]

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reopen and reconsider, which the director dismissed. The matter 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 (the Act), 8 U.S.C. § 1153(b)(1)(A) as a singer. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iv) and (vii) – (x). For the reasons discussed below, the AAO will uphold the director's decision.

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*, 580 F.3d 1030 (9th Cir. 2009) *aff'd in part* 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.*

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. Evidentiary Criteria²

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 congratulatory certificate from [REDACTED] Chairperson and Managing Director, [REDACTED] stating: "Hearty Congratulation for your success to obtain [REDACTED] 2006, organized on the auspicious occasion of fifth anniversary of [REDACTED] . . ." The English language translation accompanying the preceding congratulatory certificate did not include the required certification that the translator "is competent to translate from the foreign language into English" as specified in the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. *Id.* The petitioner also submitted a photograph of a [REDACTED] trophy, but the English language translation of the Nepali inscription on the trophy was not a full translation and was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, there is no documentary evidence showing that the petitioner's [REDACTED] is a nationally or internationally recognized award for excellence in the field of endeavor.

The petitioner submitted Letters of Felicitation from the [REDACTED]; the [REDACTED] in Ilam; the [REDACTED] in Saudi Arabia; the [REDACTED] in Ilam; the [REDACTED] in Ilam; the [REDACTED] in Kathmandu; the [REDACTED] Nepal; the [REDACTED] Kathmandu; and the [REDACTED]

Regarding the preceding Letters of Felicitation that were issued in the Nepali language, the English language translations accompanying the letters did not include the required certification that the translator "is competent to translate from the foreign language into English" as specified in the regulation at 8 C.F.R. § 103.2(b)(3). In regard to the letter of felicitation from the Federation of Nepal Indigenous Nationalities, the submitted English language translation misspells felicitation as "facilitation." Further, there is no documentary evidence showing that the Letters of Felicitation are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a letter of appreciation "for his Vocal performance in [REDACTED] Music album [REDACTED] and additional letters from the [REDACTED] of the Nepal Army, the Coordinator of [REDACTED] - 2009, the Amit

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

[redacted], the [redacted] the [redacted]
the [redacted] the [redacted]
(Japan), the [redacted] and the [redacted]

Regarding the preceding Letters of Appreciation that were issued in the Nepali language, the English language translations accompanying the letters did not include the required certification that the translator "is competent to translate from the foreign language into English" as specified in the regulation at 8 C.F.R. § 103.2(b)(3). Further, the petitioner failed to submit evidence demonstrating that the Letters of Appreciation are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted Certificates of Appreciation from the [redacted] the Producer of the album [redacted], [redacted], the [redacted], [redacted], [redacted], and the [redacted]

but there is no documentary evidence showing that the preceding Certificates of Appreciation equate to nationally or internationally recognized prizes or awards for excellence in the petitioner's field of endeavor.

The petitioner submitted a certificate thanking him for his "participation in [redacted] organized in Ilam Town." The English language translation accompanying the certificate did not include the required certification that the translator "is competent to translate from the foreign language into English" as specified in the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that the certificate equates to a nationally or internationally recognized prize or award for excellence in singing, rather than simply an acknowledgment of the petitioner's participation in the town's cultural program.

The petitioner submitted a Letter of Honor from the "[redacted]" in Kathmandu and a Certificate of Recognition from the [redacted] in California. There is no documentary evidence demonstrating that the preceding local honors are nationally or internationally recognized prizes or awards for excellence in singing.

The petitioner submitted certificates reflecting his *nominations* for the [redacted] in the category of [redacted], the [redacted] in the category of [redacted] and the [redacted] in the category of [redacted]. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of receipt of nationally or internationally recognized "prizes or awards," not receipt of a mere nomination. Earning a nomination does not equate to receipt of a prize or an award. In response to the director's request for evidence, the petitioner submitted a March 1, 2011 letter from [redacted] Station Manager, [redacted] Kathmandu, stating that the petitioner "is the recipient of [redacted] in the [redacted] for three consecutive years 2005, 2006 and 2007." The [redacted] certificates submitted by the petitioner, however, state only that he was "nominated" for the preceding awards. 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). The petitioner failed to submit primary evidence demonstrating that he actually received a [REDACTED] subsequent to his nominations. 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)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.* The March 1, 2011 letter from [REDACTED] does not comply with the preceding regulatory requirements and fails to demonstrate that the petitioner received the Tuborg Image Awards as claimed in the letter.

The petitioner submitted a certificate from the [REDACTED] (2001) stating: "This certificate has been provided with thanks to [the petitioner] for his success to achieve first position by participating in solo song in this assembly." The English language translation accompanying the preceding certificate did not include the required certification that the translator "is competent to translate from the foreign language into English" as specified in the regulation at 8 C.F.R. § 103.2(b)(3). In response to the director's request for evidence, the petitioner submitted a March 4, 2011 letter from [REDACTED] Director, Program Division, [REDACTED] stating:

This is to certify that [the petitioner] secured First Position in [REDACTED] in the year 2001, organized by [REDACTED]

* * *

In search of new talents, every year [REDACTED] organizes [REDACTED] among the talented singers in Nepal. . . . Hundreds of singers from various regions participate in this competition The award is given to those participants who are selected first at the regional level competition and finally at the national level competition.

The petitioner also submitted information about [REDACTED] posted on its website, but the [REDACTED] is not specifically mentioned. Regardless, the self-serving nature of the information posted on [REDACTED] own website and provided by the station's Program Division Director fails to demonstrate that the petitioner's award certificate from [REDACTED] is a nationally or internationally recognized award for excellence in the field of endeavor. USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 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). Moreover, a song competition may be open to entries from throughout a

particular country, but this factor alone is not adequate to establish that a specific award from the competition is “nationally or internationally recognized.”

The petitioner submitted a May 15, 2010 letter from [REDACTED] Administration Chief, [REDACTED] stating that the petitioner was awarded [REDACTED]. The petitioner also submitted a photograph of his [REDACTED] trophy. In response to the director’s request for evidence, the petitioner submitted a March 2, 2011 letter from [REDACTED] stating: [REDACTED] organizes [REDACTED] annually. . . . [The petitioner] was awarded the [REDACTED]

[REDACTED] The petitioner also submitted a “Letter of Honor” from [REDACTED] congratulating him “for successfully securing the [REDACTED]

[REDACTED] In addition, the petitioner submitted two photographs of himself posted on the [REDACTED] website photo gallery. The petitioner’s response to the director’s request for evidence also included information about Nepali singers [REDACTED] and [REDACTED] but the submitted biographies do not state that the preceding singers received [REDACTED] awards. On motion to the director, the petitioner submitted a May 12, 2011 letter from [REDACTED] stating: “The artist whose song receive [sic] most requests for his/her song is nominated for the award. . . . The judges make final slate of winners. The recipients of the award are then honored, and the awards are handed over to them during the award ceremony, especially designed for the purpose.” The three letters from [REDACTED] are not sufficient to demonstrate that petitioner’s [REDACTED] award garnered significant recognition beyond the presenting organization. Further, the self-serving nature of the information provided in the three letters from [REDACTED] and of the material posted on the [REDACTED] website fails to demonstrate that the petitioner’s award is a nationally or internationally recognized award for excellence in the field of endeavor. As previously discussed, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680.

The petitioner submitted a June 2, 2010 letter from [REDACTED] Executive Director, [REDACTED], stating that the petitioner won [REDACTED] and [REDACTED] 2009.” The petitioner also submitted photographs of his [REDACTED] trophies, but the inscriptions on the trophies do not bear his name. In response to the director’s request for evidence, the petitioner submitted a December 19, 2009 article in [REDACTED] a December 19, 2009 article in [REDACTED] and an undated article in the [REDACTED]. While the submitted articles briefly mention that the petitioner was a recipient of the [REDACTED] there is no circulation data showing that the preceding English language newspapers had significant national readership throughout Nepal. The petitioner also submitted information about Nepali artists [REDACTED] and [REDACTED] but the submitted biographies do not state that the preceding individuals received [REDACTED]. In addition, the petitioner submitted a March 2, 2011 letter from [REDACTED] stating that the petitioner received an additional award for [REDACTED]. The AAO notes that the petitioner received his [REDACTED]

for [REDACTED] subsequent to the petition's August 16, 2010 filing date. Eligibility, however, must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the AAO will not consider awards received by the petitioner after August 16, 2010 as evidence to establish his eligibility. The March 2, 2011 letter from [REDACTED] further states:

[REDACTED] was established in April 1996 with the intention to help the music industry grow beyond what it was. Since then, [REDACTED], the parent organization and the event organizer of [REDACTED] has been greatly involving [sic] in encouraging and promoting Nepali artists and music. . . . The award ceremony celebrated its 14th birthday recently, with artists awarded in 19 categories, including the prestigious Life Time Achievement Award (awarded to a senior member of music industry for their contribution for the development of Nepali music), and performances by top Nepali artists. The songs and albums nominated in each category are based on the votes of the public and the winner is then evaluated by an independent panel of judges.

The petitioner also submitted general information about [REDACTED] posted on its website, but the [REDACTED] are not specifically mentioned. On motion to the director, the petitioner submitted a May 15, 2011 letter from [REDACTED] stating that "the songs and albums are first nominated in different categories. The listeners vote for the nomination. So, nomination of any artist in any category reflects popularity of the artist. A panel of independent judges is formed to evaluate and to select the winners from the pool of nominated artists." The three letters from Jeevean Shrestha are not sufficient to demonstrate that the petitioner's awards from [REDACTED] garnered significant recognition beyond the presenting organization. Further, the self-serving nature of the information provided in the three letters from [REDACTED] and in the material posted on the [REDACTED] website fails to demonstrate that the petitioner's awards are nationally or internationally recognized awards for excellence in the field of endeavor. As previously discussed, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680.

The petitioner submitted an undated [REDACTED] from the [REDACTED] [REDACTED]. The English language translation accompanying the preceding award did not include the required certification that the translator "is competent to translate from the foreign language into English" as specified in the regulation at 8 C.F.R. § 103.2(b)(3). On motion to the director, the petitioner submitted a March 9, 2011 letter from [REDACTED] Chairman, [REDACTED] stating that "the [REDACTED] organized a ceremony called [REDACTED] [REDACTED] [The petitioner] has been awarded the letter of praise during this special ceremony as a [REDACTED]." The letter from [REDACTED] is not sufficient to demonstrate that the petitioner's award garnered significant recognition beyond the presenting organization. There is no documentary evidence showing that the petitioner's [REDACTED]

[REDACTED] is a nationally or internationally recognized award for excellence in the music field.

With regard to the preceding letters, certificates, trophies, and other honors submitted by the petitioner for this regulatory criterion, he did not submit evidence demonstrating the national or international *recognition* of his particular awards. 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 his burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner's specific awards were recognized beyond the presenting organizations at a level commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, the petitioner has not established that he 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 petitioner submitted an October 30, 2009 Certificate of Membership stating that he "is a duly elected member of the [REDACTED] in accordance with the Constitution and By-Laws of this Association." The petitioner also submitted an April 5, 2010 letter from [REDACTED], Chairman, [REDACTED], stating that the petitioner is a founding member of the society. In response to the director's request for evidence and on motion to the director, the petitioner submitted additional letters from [REDACTED] providing information about the [REDACTED] and the petitioner's involvement with the society, but [REDACTED] does not specify the [REDACTED] membership requirements. There is no documentary evidence (such as bylaws or constitution articles) showing that the [REDACTED] and the [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted an April 17, 2009 letter from [REDACTED] Secretary, [REDACTED], stating that the petitioner has been an active member of [REDACTED] since 2000. In response to the director's request for evidence, the petitioner submitted a March 6, 2011 letter from [REDACTED] stating:

This is to certify that [the petitioner] is one of the outstanding members of the [REDACTED]

* * *

Criteria for Membership. The membership in the association is granted to:

- a. A person who is a professional artist in the field of music.
- b. A person should be nationally popular among the listeners.
- c. A person should demonstrate abilities to give visions and new direction towards the development of the association.

- d. A person should help the association to fund either through direct donation or by participation in the concerts or other activities organized by the association at the national level.

Criteria for Members of the Review Panel. The members of the review panel who review the applications of the prospective members should:

- a. Be the executive member (past or present) of Nepal Academy.
- b. Be a senior artist who is recognized as national or international experts [sic] in the field of music.

The AAO cannot conclude that being “a professional artist in the field of music,” being “nationally popular among listeners,” demonstrating “abilities to give visions and new direction towards the development of the association,” and helping “through direct donation or by participation in the concerts or other activities organized by the association at the national level” equate to “outstanding achievements.” In addition, [REDACTED] statements are unsupported by primary evidence of the [REDACTED] bylaws or constitution specifying the above criteria. 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. On motion to the director, the petitioner submitted a May 15, 2011 letter from [REDACTED] repeating much of the information provided in his previous two letters. [REDACTED] further states: “[The petitioner] was given life membership of this association. Life membership is given to someone, who is extremely popular and nationally recognized professional artist, who has excelled in the field and risen to the very top of 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*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.). Further, none of the preceding letters from [REDACTED] includes an address, a telephone number, or any other information through which he can be contacted.

The petitioner submitted a March 2, 2010 letter from [REDACTED], President, [REDACTED] stating that the petitioner has been an active member of [REDACTED] since its establishment. In response to the director’s request for evidence, the petitioner submitted a March 3, 2011 letter from [REDACTED] stating:

This is to certify that [the petitioner] is an active and the most outstanding member of the [REDACTED] since the establishment of the organization.

* * *

Criteria for Membership. The membership is given to individuals who:

1. Can volunteer to contribute for the cause and upholding [sic] the mission of the organization.
2. Is the most popular artist (singer, painter, musician, athlete, actor/actress, comedian etc.) of the nation.
3. Is a [sic] organized and punctual.

4. Is a good presenter.

statements are unsupported by primary evidence the bylaws or constitution specifying the above criteria. Once again, 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. On motion to the director, the petitioner submitted a May 18, 2011 letter from repeating the information provided in his previous two letters and providing information about the petitioner's involvement with the . . . None of the preceding letters from in his capacity as President of the includes an address, a telephone number, or any other information through which he can be contacted. Further, the AAO cannot conclude that volunteering "to contribute for the cause and upholding [sic] the mission of the organization," being "organized and punctual," and being "a good presenter" equate to "outstanding achievements." Moreover, even if the AAO were to conclude that being "the most popular artist . . . of the nation" is an outstanding achievement, the documentation submitted by the petitioner does not indicate that members' achievements are judged by recognized national or international experts in the petitioner's field.

In light of the above, the petitioner has not established that he 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 AAO withdraws the director's finding that the petitioner meets this regulatory criterion. In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media.

The petitioner submitted an article in the entitled ' ' but the date and author of the article were not identified as required by the plain language of this regulatory criterion. Further, the article is about the ceremony in general and only briefly mentions the petitioner in one sentence. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien . . . relating to the alien's work in the field." Thus, an article that mentions the petitioner but is "about" someone or something else cannot qualify under the plain language of this regulation. See *Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at *1, *9 (S.D.N.Y. Nov. 14, 2012); also see generally *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer). In addition, there is no circulation evidence showing that the is a form of major media.

The petitioner submitted a December 19, 2009 article in entitled ' ' but the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the article is about the ceremony generally and does not focus on the

petitioner. Instead, the article only briefly mentions him among the numerous other award recipients. The petitioner also submitted a June 7, 2010 letter from [REDACTED] Section Officer, [REDACTED] listing nine newspapers and identifying [REDACTED] as a Category "A" Daily. The letter from [REDACTED] however, does not define the Category "A" designation. There is no circulation data showing that [REDACTED] qualify as major media.

The petitioner submitted an April 16, 2001 article in [REDACTED] entitled [REDACTED] but the English language translation accompanying the article did not include the required certification that the translator "is competent to translate from the foreign language into English" as specified in the regulation at 8 C.F.R. § 103.2(b)(3). Further, the author of the article was not identified as required by the plain language of this regulatory criterion. The June 7, 2010 letter from [REDACTED] identifies [REDACTED] as a Category "A" Daily, but once again, the Category "A" designation is not specifically defined. There is no circulation data showing that [REDACTED] is a form of major media.

The petitioner submitted a November 4, 2009 article in [REDACTED] entitled [REDACTED] but the English language translation accompanying the article did not include the required certification that the translator "is competent to translate from the foreign language into English" as specified in the regulation at 8 C.F.R. § 103.2(b)(3). In addition, the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, there is no documentary evidence showing that [REDACTED] qualifies as a form of major media.

The petitioner submitted articles in [REDACTED] entitled [REDACTED] (September 8, 2009) and [REDACTED] (November 13, 2009), but the English language translations accompanying the two articles did not include the required certification that the translator "is competent to translate from the foreign language into English" as specified in the regulation at 8 C.F.R. § 103.2(b)(3). Further, the author of the November 13, 2009 article was not identified as required by the plain language of this regulatory criterion. In addition, there is no documentary evidence showing that [REDACTED] is a form of major media.

The petitioner submitted a December 19, 2009 article in [REDACTED] entitled [REDACTED]. The article is about the [REDACTED] ceremony in general and does not focus on the petitioner. Instead, the article only briefly mentions him among the numerous other award recipients. Further, there is no circulation evidence showing that [REDACTED] qualifies as a form of major media.

The petitioner submitted a March 21, 2004 article about himself in [REDACTED] but there is no documentary evidence showing that the newspaper qualifies as a form of major media.

The petitioner submitted a 2009 article in [REDACTED] entitled [REDACTED] but the English language translation accompanying the article did not include the required certification that the translator "is competent to translate from the foreign language into

English” as specified in the regulation at 8 C.F.R. § 103.2(b)(3). Further, the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, there is no documentary evidence showing that *Glamour Plus* is a form of major media.

The petitioner submitted promotional material for [REDACTED] concert programs held in October 2003. The plain language of this regulatory criterion requires “published material about the alien . . . in professional or major trade publications or other major media” including “the title, date and author of the material.” The [REDACTED]’ promotional material does not meet the preceding requirements.

In light of the above, the petitioner has not established that he meets this regulatory 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 AAO affirms the director’s finding that the petitioner’s evidence meets this regulatory criterion.

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

On appeal, counsel states: “We believe that [the petitioner’s] albums, previously submitted with the petition, are still popular and selling well in Nepal, and among Nepali speaking people living in different parts of the world. This is obviously a strong proof of display of his artistic work.” Neither the petitioner nor counsel has explained how music performances equate to visual art exhibitions or showcases. The petitioner’s work as a singer is audible in nature and is enjoyed for its sound, not its visual aspects. Therefore, his music performances do not satisfy the regulatory requirements under 8 C.F.R. § 204.5(h)(3)(vii). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires “[e]vidence of the display of the alien’s work in the field at artistic exhibitions or showcases.” The petitioner is a singer. When he records an album or performs in concert, he is not displaying his music in the same sense that a painter or sculptor displays his or her work in a gallery or museum. The petitioner is performing vocally as a singer, he is not displaying his work. In addition, to the extent that the petitioner is a vocal artist, it is inherent to his occupation to make recordings of his music. The AAO notes that the ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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

8 C.F.R. § 204.5(h)(3)(vii). Accordingly, the petitioner has not established that he meets 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 initially submitted a May 16, 2000 letter from [REDACTED] Principal, [REDACTED] stating that the petitioner has worked at the school as a music teacher from April 1998 until the date of the letter. The petitioner also submitted a December 26, 2009 letter from the Principal of [REDACTED] stating that the petitioner worked at the school as a vocal teacher from 2005 – 2009. In addition, the petitioner submitted an August 13, 2010 letter from [REDACTED] Principal, [REDACTED] stating that the petitioner has worked at the school as a music teacher from 2006 until the date of the letter. 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. None of the principals' letters state that the petitioner performed in a leading or critical role for their schools. The principals' letters fail to provide information regarding the leading or critical nature of the petitioner's duties and responsibilities, or information indicating the importance of the petitioner's role relative to that of the other school teachers. Accordingly, the petitioner has failed to demonstrate that his role for the above schools was leading or critical. Further, there is no documentary evidence showing that the preceding schools have a distinguished reputation. 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's initial evidence also included an undated letter from [REDACTED] General Secretary, [REDACTED] stating: "It is certified that [the petitioner] is involving [sic] the institution [REDACTED]. He is working in established period being sub president. it [sic] is proved." The limited information provided in the letter from [REDACTED] is not sufficient to demonstrate that the petitioner performed in a leading or critical role for the preceding institution. [REDACTED] letter fails to provide information regarding the leading or critical nature of the petitioner's duties and responsibilities as "sub president," or information indicating the importance of the petitioner's role relative to that of the other individuals working for the institution. Accordingly, the petitioner has failed to demonstrate that his role for [REDACTED] was leading or critical. Further, there is no documentary evidence showing that [REDACTED] has a distinguished reputation. 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 response to the director's request for evidence, the petitioner submitted a December 27, 2009 letter from [REDACTED] Senior Music Director and Chief of the [REDACTED] stating that the petitioner "performed in [REDACTED] many times and has also contributed long time by his performance in national and abroad countries [sic]." The petitioner also submitted information about the [REDACTED] from its website. With regard to the information from the [REDACTED] own website, USCIS need not rely on self-

promotional material. *See Braga v. Poulos*, at 680. There is no objective documentary evidence demonstrating that the [redacted] has a distinguished reputation. Further, while [redacted] states that the petitioner performed at the [redacted] [redacted] does not state that the petitioner's role was leading or critical for the institution. The letter from [redacted] fails to provide specific information about the nature of the petitioner's role for the [redacted] or information indicating the importance of the petitioner's role relative to that of the other individuals working for the institution. Accordingly, the petitioner has failed to demonstrate that his role for the [redacted] was leading or critical.

The petitioner submitted a March 6, 2011 letter from [redacted] stating:

This is to certify that [the petitioner] is one of the outstanding members of the [redacted]. He is also given the lifetime membership by the association for his dedication and contributions for the development of the association.

[redacted] is one of the oldest and the most reputed association of Nepali artists: lyricists, composers, singers and musicians.

On motion to the director, the petitioner submitted a May 15, 2011 letter from [redacted] repeating the information in his previous letter and asserting that the petitioner "has made significant contributions to promote and to pursue the underlying goal of this association." As previously discussed, the letters from [redacted] do not include an address, a telephone number, or any other information through which he can be contacted. [redacted] asserts that the [redacted] "is one of the oldest and the most reputed association of Nepali artists," but as previously discussed, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680. There is no objective documentary evidence showing that the [redacted] has a distinguished reputation. Again, 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. [redacted] further states that the petitioner "is one of the outstanding members of the [redacted] and was given "lifetime membership by the association," but [redacted] fails to specify how the petitioner's duties and responsibilities were leading or critical to the association. 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). For instance, the petitioner failed to submit an organizational chart or similar documentary evidence to demonstrate where his role fit within the overall hierarchy of the [redacted]. The letter from [redacted] fails to explain how the petitioner's role was leading relative to that of the other lifetime members, let alone the top officers who run the association. Further, the submitted evidence does not establish that the petitioner was responsible for the [redacted] success or standing to a degree consistent with the meaning of "critical role." Accordingly, the petitioner has failed to demonstrate that his role for the [redacted] was leading or critical.

The petitioner submitted an undated letter from [redacted] stating: "This is to certify that [the petitioner] is one of the founding members of [redacted] established in the year 2009. . . . His qualities and contributions are very fundamental to the development of the

organization.” On motion to the director, the petitioner submitted a May 17, 2011 letter from [REDACTED] that states:

[The petitioner] regularly participates and contributes in our regular activities. As a founding member, he is also one of the original contributors in establishing this society.... He fully participates in the main activities, exchanges and offers creative ideas to pursue main goals and objectives of this society.

He has played extremely valuable and leading role for this society. He has made very critical contributions to this society.

There is no documentary evidence showing that the [REDACTED] has a distinguished reputation. 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. Further, while [REDACTED] states that petitioner was a founding member and a regular participant in the [REDACTED] activities, the brief letters from [REDACTED] are not sufficient to demonstrate that the petitioner’s role for the [REDACTED] was leading or critical to the organization as a whole. [REDACTED] letters fail to provide information regarding the petitioner’s specific organizational duties and responsibilities as a member, or information indicating the importance of the petitioner’s role relative to that of the other members of the [REDACTED]

As previously discussed, 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. at 1136. The petitioner failed to submit an organizational chart or similar documentary evidence to demonstrate where his membership position in the [REDACTED] fit within the overall hierarchy of the association. The documentation submitted by the petitioner does not differentiate him from other members of the association so as to demonstrate his leading role and fails to establish that he was responsible for the [REDACTED] success or standing to a degree consistent with the meaning of “critical role.”

The petitioner submitted a March 3, 2011 letter from [REDACTED] stating: “This is to certify that [the petitioner] is an active and the most outstanding member of the [REDACTED] since the establishment of the organization. His contribution to the organization is critical and very praiseworthy.” On motion to the director, the petitioner submitted a May 18, 2011 letter from [REDACTED] stating:

[The petitioner] takes keen interest in fundraising and welfare activities. He repeatedly volunteers, helps organize and participates in such fundraising concerts. He also gets seriously and sincerely involved in carrying out welfare activities. His dedication and commitment inspires and motivates other and has enhanced the image of the [REDACTED]

* * *

He has played leading and critical role for this organization.

_____ asserts that the petitioner played a “leading and critical role” for the _____ but as previously discussed, 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. at 1108; *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729 at *5. Further, the AAO again notes that the letters from _____ in his capacity as President of the _____ do not include an address, a telephone number, or any other information through which he can be contacted. While _____ comments that the petitioner is “the most outstanding member” of the _____ and a dedicated participant in its fundraising activities, the petitioner’s evidence fails to demonstrate how his involvement differentiated him from the organization’s other active volunteers and staff members, let alone the _____ president and top officers. For example, there is no organizational chart or other evidence documenting where the petitioner’s position fell within the general hierarchy of the _____. In addition, the evidence submitted by the petitioner does not establish that he was responsible for the _____ success or standing to a degree consistent with the meaning of “critical role.” Accordingly, the petitioner has failed to demonstrate that his role for the _____ was leading or critical. Lastly, there is no documentary evidence showing that the _____ has a distinguished reputation. 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 light of the above, the petitioner has not established that he meets 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 9, 2010 letter from _____ Managing Director, _____, stating that the petitioner performs there on Friday nights and receives “the sum of NRS 50,000.00 (Fifty Thousand Nepalese Ruppees) per program.” The petitioner, however, offers no basis for comparison demonstrating that his compensation was significantly high in relation to others in the field. The petitioner must present evidence of objective earnings data showing that he has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also 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 he 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.

The petitioner submitted a July 9, 2010 letter from _____ Managing Director, _____, stating that the petitioner performs there on Friday nights and

receives "the sum of NRS 50,000.00 (Fifty Thousand Nepalese Rupees) per program." The petitioner also submitted a June 21, 2010 letter from [redacted] Managing Director, [redacted] stating that the petitioner "has been paid NRS 40,000.00 (Forty Thousand Nepalese Ruppess [sic])" for providing vocals on the song [redacted]. The plain language of this regulatory criterion requires evidence of commercial successes in the form of "receipts" or "sales." According to *Merriam-Webster*, a commercial success is defined as "viewed with regard to profit" and "designed for a large market."³ The petitioner failed to submit documentation of "sales" or "receipts" demonstrating that the preceding music performances were indicative of his commercial successes in the performing arts.

The petitioner submitted a March 2, 2011 letter from [redacted] Managing Director, [redacted] stating that the petitioner's album [redacted] sold 160,000 audio cassettes and 40,000 compact discs and that his album [redacted] sold 22,000 compact discs. The petitioner also submitted a May 13, 2011 letter from [redacted] stating:

We produced and distributed [the petitioner's] solo album labeled, [redacted] in 2008 and [redacted] (music tracks only) in 2009.

* * *

1. We sold 160,000 audio cassettes, 40,000 CDs of [redacted]. This was the most successful produced and distributed by Times Music and several songs are very popular even today.
2. We sold 22,000 CDs of [redacted]. We confirmed through our letter that the sale of Karaoke albums outperformed other such tracks.

* * *

Comparable albums released and sold same year 2008 as follows:

Name of Artist	Title of Album	Units of CDs Sold	Units of Cassette Sold
1. [The petitioner]	[redacted]	40,000	160,000
2. Aim Baral	HEERA	32,000	120,000
3. Amar Tandukar	LUKLA SYANGBOCHE	20,000	65,000
4. Guru Bhatiya	DIYO BINAKO	20,000	52,000

The petitioner submitted a March 4, 2011 letter from [redacted] Managing Director, [redacted] stating: "We had an opportunity to produce one of his solo songs titled [redacted] from album titled [redacted] in the year 2008. . . . As far as our records, 50,000 units of audio cassettes, 70,000 CDs and 3000 DVDs are sold" The petitioner also submitted a subsequent letter from [redacted] stating:

³ See <http://www.merriam-webster.com/dictionary/commercial>, accessed on March 4, 2013, copy incorporated into the record of proceeding.

The [REDACTED] was a collection of modern songs and gazals by various artists and [the petitioner] was one of the artists whose song and audio visual titled [REDACTED] was the number one hit song among the collections. We sold 50,000 audio cassettes, 70,000 CDs, and 3000 DVDs.

These numbers are very good in the context of Nepali music industry and the album was very successful.

* * *

We would like to draw your attention to the following comparable sales, which will provide you sales figures of comparable albums:

Name of Album	Singer	CDs Sold	Cassettes Sold
1. [REDACTED]	[The petitioner]	70,000	50,000
2. Biyog	Swaroop Raj Acharya	40,000	60,000
3. [REDACTED]	[The petitioner]	43,000	40,000
4. Internetai Ma	Satyakala Rai	35,000	40,000

The petitioner submitted a March 4, 2011 letter from [REDACTED] Chief Administrative Officer, [REDACTED], stating that "total sales units were 110,000.00 (Audio Cassettes only)" for the petitioner's album [REDACTED]. The petitioner also submitted a May 16, 2011 letter from [REDACTED] stating:

We confirmed in our previous letter dated March 4, 2011 that we produced and marketed [the petitioner's] solo album [REDACTED] in the year 2000. In the said letter, we also confirmed that we sold 110,000 cassettes of [REDACTED].

Through this letter we would like to bring to your attention that typically, new albums (cassettes) sell around 50,000.

* * *

In addition, following sales record of the albums released by new artists will substantiate our representations:

1. Khen Raj Gurung (JIWAN PART-2, AUDIO CASSETTE SOLD 150,000 UNITS)
2. [The petitioner] [REDACTED] AUDIO CASSETTE SOLD 110,000 UNITS)
3. Bhishan Mukarung (BANDHAN, CASSETTE SOLD 45,000 UNITS)
4. Shyam Sundar (MALAI MAAF GARA, CASSETTE SOLD 45,000 UNITS)
5. Mohan Bhusal (NA LEKHA CHITTHI, CASSETTE SOLD 40,000 UNITS)

The self-serving statements from the managing directors and the chief administrative officer of the preceding music companies that produced the petitioner's recordings are not sufficient to

demonstrate his commercial success relative to other recording artists in the industry. As previously discussed, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680. Furthermore, 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). In addition, 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 letters in support of 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 evidence of "sales" or "receipts" that one would expect of a singer who has demonstrated commercial successes in the performing arts.

In this instance, the petitioner has failed to submit primary evidence of sales or receipts in the form of contemporaneous financial statements or invoices. The record also lacks objective documentation such as residual payments, album charts, or media articles demonstrating significant sales of the petitioner's music recordings. Instead, the petitioner offers only letters from the music companies that produced his recordings making assertions regarding the number of units sold and his purported commercial successes. 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. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.* The above letters from the managing directors and the chief administrative officer of the companies that produced the petitioner's recordings do not comply with the preceding regulatory requirements. The documentation submitted by the petitioner fails to demonstrate his commercial successes in the performing arts.

In light of the above, the petitioner has not established that he 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.⁴ 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 (9th Cir. 2003); *see also Soltane v. DOJ*, at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁴ 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).