

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:

MAY 21 2013

Office: TEXAS SERVICE CENTER

FILE:

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 as a Chinese opera performer, 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 March 3, 2010. On June 2, 2010, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued her decision on May 18, 2011. On appeal, the petitioner submits a brief with no additional 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, as noted by the director on page 3 of the denial, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. Counsel asserts on appeal that the director did not properly follow this approach. 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. Standard of Proof

Counsel's appellate brief indicated that instead of applying the preponderance of the evidence standard of proof, the director applied "a much more restrictive standard, and by doing so has erroneously rejected all of the evidence submitted." The most recent precedent decision related to the preponderance of the evidence standard of proof is *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) (citing to *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965)). This decision, and this standard, focuses on the factual nature of a claim; not whether a claim satisfies a regulatory requirement. *Id.* at 376. The preponderance of the evidence standard does not preclude USCIS from evaluating the evidence. The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* (citing to *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). If the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *Id.*

The *Chawathe* decision also stated:

[T]he "preponderance of the evidence" standard does not relieve the petitioner or applicant from satisfying the basic evidentiary requirements set by regulation. There are no regulations relating to a corporation's eligibility as an "American firm or corporation" under section 316(b) of the Act. Had the regulations required specific evidence, the applicant would have been required to submit that evidence. *Cf.* 8 C.F.R. § 204.5(h)(3) (2006) (requiring that specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability).

25 I&N Dec. at 375, n.7. Notably, the final determination of whether the evidence satisfies the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS). Upon review of the record, the AAO concludes that the evidence does not establish the petitioner's eligibility with relevant, probative, and credible evidence.

B. 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 her 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. 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.

C. Discrepancies

As stated above, the petitioner seeks classification as an alien of extraordinary ability as a [REDACTED] opera performer. The petitioner's November 11, 1997 passport, however, contained within the record of proceeding, lists the petitioner's profession as "Liter-art worker." In addition, the record contains a certificate purportedly documenting an April 17, 1999 award from the [REDACTED]. The seal of the center, however, is reversed at the top of the certificate. Notably, the seal on Executive Director [REDACTED] letter is not reversed. There is no explanation for why the seal, including the letters, is reversed on the certificate. In addition, the letter from [REDACTED] which is typed, is altered by hand to change the name in the letter to the petitioner's name. Three appearances of the name are not altered, one of which is the petitioner's name, but the other two appear as [REDACTED]. Finally, the letter from [REDACTED] allegedly the Director of [REDACTED] includes different fonts for each paragraph and the final paragraph is at a different angle from the remainder of the letter.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Moreover, section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

D. Evidentiary Criteria²

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 be 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.

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

The petitioner provided nine award certificates purportedly received between the years 1987 and 2000. As stated above, one of the awards, 1999 [REDACTED] award, contains a seal that is reversed, including the letters. The director determined that the petitioner failed to meet the requirements of this criterion based on a lack of evidence demonstrating that the awards were nationally or internationally recognized for excellence in the petitioner's field. On appeal, counsel contests the director's conclusion that even though some of the petitioner's awards contain the word "National" in the title, that the petitioner is still required to submit evidence of the national or international recognition related to each award. USCIS, however, will not infer the nature of an award from its title. It is the petitioner's burden to document every factor of a criterion he seeks to satisfy.

Regarding the national or international recognition for the awards, the only forms of evidence that the petitioner provided beyond the awards themselves are in the form of an article in the [REDACTED] dated July 1994, coverage in a book titled, "[REDACTED]" and letters from [REDACTED] President of the [REDACTED]. The article from the [REDACTED] references a competition in which the petitioner was participating, but the article failed to name any specific prize or award that the petitioner received. Additionally, the petitioner failed to provide any information relating to the circulation or the distribution data of this publication to establish that its reach is more than regional. In general, media coverage by a single local or regional newspaper is insufficient to reflect the award is nationally or internationally recognized. Thus, the [REDACTED] article does not establish that this award is nationally or internationally recognized for excellence in the petitioner's field.

The coverage in the book, "[REDACTED]" addresses three awards that the petitioner allegedly received as follows: the "Outstanding Performer Award in the [REDACTED]"; "The First Prize Award in the [REDACTED]" and the "Outstanding Performance Award in [REDACTED]". Although the titles of each of these awards or competitions are similar to those in the evidence submitted with the initial petition, none of the titles are identical. Specifically, the record contains the following three certificates: (1) [REDACTED]

[REDACTED]; (2) [REDACTED]; and (3) a [REDACTED]

[REDACTED]. Even taking into account that 1882 is likely a translation typographical error regarding the year for the "[REDACTED]" the discrepancies between the award titles, especially for the 1987 award, is significant. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the petitioner has provided evidence containing conflicting, relevant claims, and has not provided documentary evidence to clarify which form of evidence contains the correct facts, the AAO will afford this evidence diminished evidentiary weight within the present proceedings. Even if the AAO presumed that the three awards identified in this book are the same awards that the petitioner submitted, the petitioner failed to provide evidence that the inclusion of his awards in this book constituted national or international recognition. No

information is contained within the record regarding this book's sales or distribution data which might demonstrate the reach of this book on a national level.

asserts that the petitioner received the Excellent Performance Award at the . However, regarding the national or international recognition of this award, only asserted that the competition was organized by and that each province and city television station assisted in organizing the event. The petitioner did not provide any evidence from the entity that organized the event or objective evidence documenting the breadth of television coverage related to this award. 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

discussion of the petitioner's Best Performer [Best Actor] Award at the , suffers the same shortcoming in that the record is deficient of the award's national or international recognition. Although asserted that the competition was organized by the and that the contestants derived "from every province, city and autonomous region" selection from a national pool of candidates does not necessarily impart national significance to an award. Additionally, the petitioner failed to provide corroborating evidence of assertions related to the entity that organized the competition. 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.

Furthermore, except for the two letters from none of the documentation submitted qualified as evidence as each is a foreign language document that is not accompanied by a sufficient translator's certification in accordance with 8 C.F.R. § 103.2(b)(3). As such, the petitioner has not demonstrated that he was the recipient of any awards through sufficient primary evidence.

Consequently, the petitioner has not submitted relevant, probative, and credible evidence that meets the plain language requirements of this 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 his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue 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) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under 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 primarily be about the petitioner and the contents must relate to the petitioner's work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided ten articles within the initial petition filing. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, counsel asserts that the director went beyond the antecedent procedural step in the first part of the analysis of determining if the petitioner has satisfied the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The AAO will review the evidence under the plain language requirements of the regulation.

A review of the record reveals that four articles are about the petitioner and relate to his work in the field. The remaining six articles are not primarily about the petitioner as he is merely referenced with other opera performers. Although the director's decision indicated that the petitioner was mentioned in the [REDACTED] and that this publication is the largest [REDACTED] newspaper in North America, the record does not contain evidence of the circulation or distribution for this newspaper. Moreover, regardless of how the newspaper compares with other [REDACTED] newspapers in North America, the newspaper is not printed in a predominant language in the United States.

The plain language of the regulation also requires that the petitioner include the title, date, and author of the material. None of evidence reflects the author of the material, and two articles are lacking the date the material was published.

Furthermore, none of the documentation relating to this criterion qualifies as evidence as each is a foreign language document that is not accompanied by a complete rather than summary translation or a sufficient translator's certification in accordance with 8 C.F.R. § 103.2(b)(3).

Accordingly, the petitioner has not submitted relevant, probative, and credible evidence that meets the plain language requirements of this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner explicitly claimed eligibility for this criterion within the initial petition filing and attested to his accomplishments in response to the RFE. The appellate brief asserts that the petitioner provided testimonial letters and national level competition awards, and asserts that he was a leading figure in his field in [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion, asserting in her decision that the petitioner provided no evidence for consideration under this criterion.

The petitioner provided several letters, some of which are from those who claim a high level of experience in the petitioner's field. [REDACTED] however, merely states that he has performed in [REDACTED] for almost twenty years but does not indicate the company with which he performs and his letter is not on [REDACTED] letterhead. As stated above, the letter from [REDACTED] allegedly the Director of [REDACTED], includes different fonts for each paragraph and the final paragraph is at a different angle from the remainder of the letter. In addition, as also stated above, the letter from [REDACTED] allegedly of the [REDACTED], is altered. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Most of the letters list the petitioner's alleged accomplishments, skills, and abilities. Talent and experience in one's field, however, are not necessarily indicative of original artistic contributions of major significance in the petitioner's field. There is no evidence, however, demonstrating that the petitioner has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other [REDACTED] performers working in the field, nor does it show that the field has significantly changed as a result of his work. Many of the submitted letters also claim that the petitioner was extraordinary in his field. However, none of the authors identify any contributions that the petitioner has made in his field that might satisfy this criterion's requirements. 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).

At least three of the letters indicate that the petitioner's performances have contributed to American culture or to American-Sino cultural exchanges. Such a vague affirmation that does not specifically identify an original contribution does not meet the petitioner's burden of proof. The petitioner's work must have had an impact in his field as a whole rather than on an organization or establishment. Additionally, the impact must have already been realized; speculation as to a potential impact in the future is insufficient. [REDACTED] Director of the [REDACTED], stated: "We believe that [REDACTED] contributions to the enrichment of diverse cultures in our society *will be significant*." (Emphasis added). A petitioner cannot successfully file a petition under this classification based on the expectation of future eligibility. Eligibility 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).

While the petitioner also claims eligibility for this criterion through his "national level competition awards" and through himself as a "leading figure in major [REDACTED]" the petitioner failed to describe how these two elements amount to contributions in his field as a whole. The regulations contain a separate criterion regarding nationally or internationally recognized prizes or awards for excellence. 8 C.F.R. § 204.5(h)(3)(i). Similarly, the regulations contain a separate criterion regarding leading or critical roles pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The AAO will not presume that evidence relating to or even meeting the awards criterion or the leading or critical role criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render the regulatory requirement that a petitioner meet at least three separate criteria meaningless. The awards criterion has already been addressed above, and the leading or critical role criterion will be addressed below. The record lacks evidence that this evidence demonstrates an impact in the field such that it is also probative evidence of original contributions of major significance.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form

the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 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 from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165. Thus, the content of the writers' 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 of original contributions of major significance.

Furthermore, none of the documentation relating to this criterion qualifies as probative evidence as each is a foreign language document that is not accompanied by a sufficient translator's certification in accordance with 8 C.F.R. § 103.2(b)(3).

In view of the foregoing, the petitioner has not submitted relevant, probative, and credible evidence that meets the plain language requirements of this criterion.

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."³ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

³ See <http://www.merriam-webster.com/dictionary/distinguished>, [accessed on July 24, 2012, a copy of which is incorporated into the record of proceeding.]

The petitioner provided concert programs for shows in which the petitioner performed and a letter from [REDACTED] President of the [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion.

Counsel asserts within the appellate brief that the director:

[A]rbitrarily created a novel legal standard for this criterion, by stating that expert testimony has less weight than “objective evidence.” Expert testimony in legal matters has as much weight as documentary evidence, and should be treated as such. Thus the Center Director has erred by not giving any weight to the expert testimony submitted. Furthermore, by calling other kinds of evidence “objective,” the Center Director is implying that the testimonial letters of experts in the field are somehow not objective, that is, that they are biased in favor of the beneficiary. Such a statement constitutes error, since it presumes that the testimonial letters are biased, without pointing to any evidence of such bias. In fact, almost all of the letters submitted are by “independent” witnesses, contrary to the Center Director’s statement that the letters were from “individuals who have directly worked with you.”

The regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of experience “shall” be in the form of letter(s) from current or former employer(s). The AAO shall consider those letters that meet this requirement.

Throughout the proceeding, counsel has only claimed that the petitioner has performed a critical rather than leading role for qualifying organizations or establishments. Within the initial filing brief, counsel identified numerous concert programs including references to the petitioner and the letter from [REDACTED], President of the [REDACTED]. While the concert programs demonstrate that the petitioner performed in a role sufficient to warrant printing his name and/or his photograph in the program, his inclusion in the program does not establish that he performed in a critical role for any of the opera troupes. These programs also do not reflect the reputation of any of the entities to demonstrate that the opera troupes enjoyed a distinguished reputation, which is an explicit requirement within the regulation.

The letter from [REDACTED] indicated that the petitioner was a leading [REDACTED] from 1991 – 1998. [REDACTED] also indicated that the operas in which the petitioner starred received “audience praise.” [REDACTED] listed two individual awards the petitioner received during the years the petitioner was employed at [REDACTED]. [REDACTED] also asserted that the petitioner was the highest paid performer in his [REDACTED]. The petitioner, however, provided no evidence establishing the distinguished reputation of the [REDACTED]. Counsel’s initial filing brief provided an historical review related to this [REDACTED] however, 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). The unsupported assertions of counsel in a brief are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984).

Finally, the regulation requires evidence of a leading or critical role for organizations or establishments in the plural, consistent with the statutory requirement for extensive documentation. Section 203(b)(1)(A)(i) of the Act. Thus, even if the AAO found that the petitioner's role for the [REDACTED] was qualifying, it is only one organization or establishment.

Furthermore, much of the documentation relating to this criterion does not qualify as probative evidence as each is a foreign language document that is not accompanied by a sufficient translator's certification in accordance with 8 C.F.R. § 103.2(b)(3).

As such, the petitioner has not submitted relevant, probative, and credible evidence that meets the plain language requirements of this criterion.

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

This criterion anticipates a petitioner will establish eligibility through the volume of sales or box office receipts as a measure of the petitioner's commercial success in the performing arts.

The petitioner provided photocopies of two DVDs in which the petitioner appeared on the DVD materials and allegedly in the DVD's video. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, counsel contests the director's findings related to this criterion. Regardless, the plain language of the regulation requires eligibility to be established through one of two means; either box office receipts or sales. As the petitioner provided neither of these, he has not established that he has satisfied this criterion's requirements.

E. 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 has 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.⁴ 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. 764, 766 (BIA 1988) (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.

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).