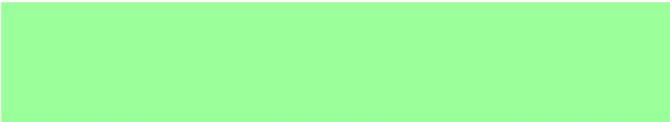


(b)(6)

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

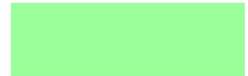


U.S. Citizenship  
and Immigration  
Services

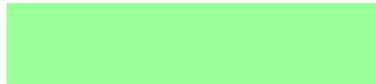


DATE: NOV 28 2014 OFFICE: TEXAS SERVICE CENTER

FILE:



IN RE: PETITIONER:  
BENEFICIARY:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition on June 11, 2014. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on July 3, 2014. The appeal will be dismissed.

According to the petition and the accompanying documents filed on October 29, 2013, the petitioner seeks classification as an alien of extraordinary ability in the arts, as a religious film director, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A).<sup>1</sup> The director determined that the petitioner has 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; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien, as initial evidence, can present 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)-(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, the petitioner files supporting documents, most of which the petitioner had previously submitted, and asserts that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), and (v). For the reasons discussed below, the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

## I. THE 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):

<sup>1</sup> The petitioner has not specified a field of endeavor. To the extent the petitioner asserts that his field of endeavor is religious filmmaking and film directing, we will not accept his attempt to narrow the field. Instead, based on the evidence in the record, the field of endeavor is filmmaking and film directing. See *Buletini v. INS*, 860 F. Supp. 1222, 1229-30 (E.D. Mich. 1994) (finding that the alien's field was medical science rather than nephrology).

(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.

United States 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. 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 initial evidence of a one-time achievement, that is a major, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 our decision to deny the petition, the court took issue with our evaluation of the evidence submitted to meet a given evidentiary criterion.<sup>2</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Kazarian*, 596 F.3d at 1121-22.

The court stated that our 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).” *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

<sup>2</sup> Specifically, the court stated that we 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 (vi).

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.

## II. ANALYSIS

### A. Evidentiary Criteria<sup>3</sup>

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the petitioner asserts that he meets this criterion because he won a 2012 award/prize from [REDACTED] for his film [REDACTED] and because the [REDACTED] selected his film [REDACTED] as one of the festival's semi-finalists. The petitioner has not established that he meets this criterion.

First, as noted by the director, the petitioner did not submit the [REDACTED] award itself and has not demonstrated that the award is either unavailable or does not exist. 8 C.F.R. § 103.2(b)(2). Regardless, he has not shown that his [REDACTED] award/prize is a qualifying award or prize under the criterion. According to a February 25, 2014 letter from [REDACTED] Chairman of [REDACTED] is a "non-profit organization established to work in the human rights and development sector in the [REDACTED] society" and it provides an annual award to "personnel as an encouragement, who dedicate their time with significant contribution towards the goal of the organization, all over the nation." The letter provides that the petitioner received the 2012 award/prize because his film [REDACTED] "presented [the practice of menstrual exile in Nepal] very sincerely and was able to bring big movement in the society." Mr. [REDACTED] January 18, 2012 letter provides that the petitioner received the 2012 award/prize because his movie can have an impact on advancing the rights of women in Nepal. Neither Mr. [REDACTED] letters nor any other evidence in the record establish that the award/prize was for excellence in the field of filmmaking or film directing, a field in which the petitioner claims extraordinary ability. Rather, the award/prize recognizes an awardee's work in the field of advancing human rights. Indeed, Mr. [REDACTED] letter provides that a book author won the award/prize in 2010 and a social worker won the award/prize in 2011. Moreover, the petitioner has not shown that the 2012 award/prize is either nationally or internationally recognized.

<sup>3</sup> The petitioner does not claim that he meets the regulatory categories of evidence not discussed in this decision.

Other than two letters from Mr. [REDACTED] the petitioner has not submitted any evidence showing the prestige or recognition of the award/prize in the field of filmmaking and film directing on a national or international level. In fact, Mr. [REDACTED] does not state in either of his two letters that the [REDACTED] award/prize is either nationally or internationally recognized in any field.

Second, the petitioner has not shown that [REDACTED] has given any award or prize to the petitioner, let alone a qualifying award or prize under the criterion. The petitioner has submitted a December 2012 email from [REDACTED] indicating that [REDACTED] selected the petitioner's film [REDACTED] as one of the festival's semi-finalists. The petitioner has presented no evidence showing that this selection constitutes either an award or prize. Indeed, the email states that the petitioner's film is eligible to win two awards and a grand prize, but makes no mention of the film having actually won any award or prize. Moreover, although the email states that [REDACTED] "is the single most important event of the year for Christian filmmakers," the email does not state or establish that [REDACTED] issues any nationally or internationally recognized awards or prizes. The evidence submitted to show the recognition of [REDACTED] is from [REDACTED] itself. Such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on the promotional assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the [REDACTED] or its awards and prizes in nationally circulated publications.

Accordingly, the petitioner has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

*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. 8 C.F.R. § 204.5(h)(3)(ii).*

On appeal, the petitioner asserts that he meets this criterion because he is a member of the [REDACTED]. The petitioner has not established that he meets this criterion.

First, the petitioner has not shown that the [REDACTED] is an association "in the field for which classification is sought," as required under the plain language of the criterion. According to the [REDACTED] constitution, the organization "is established to build good relation[s] between Nepali Christian[s] and other religion[s] and inspire for [the] great movement of nation[al] development together." The petitioner has submitted no evidence showing that the [REDACTED] is an association in the field of filmmaking or film directing, in which field the petitioner seeks to be classified as an alien of extraordinary ability.

Second, the petitioner has not shown that the [REDACTED] requires outstanding achievement of its members, as judged by recognized national or international experts, as required under the plain language of the criterion. According to section 6 of the [REDACTED] constitution, someone may become a member of the organization if he or she is 18 years old and has the “quality and interest to perform and achieve the objectives of [the] organization.” This section of the constitution makes no mention of the [REDACTED] requiring “outstanding achievements” of its members, as required under the criterion. Under section 7 of the constitution, [REDACTED] “can provide . . . special membership to the personnel with extraordinary capacity in their field and passed by 2/3rd members of the [central working] committee.” Assuming *arguendo* that “extraordinary capacity” constitutes “outstanding achievements,” the petitioner has not shown that the “extraordinary capacity” is “judged by recognized national or international experts in their disciplines or fields.” Although the petitioner has provided a document relating to a November 23, 2010 [REDACTED] meeting, showing that the petitioner became an [REDACTED] special member, neither the document nor any other evidence in the record establishes that the individuals who voted to grant the petitioner his special membership were recognized national or international experts of any field.

Accordingly, the petitioner has not presented documentation of his 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 has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(ii).

*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. 8 C.F.R. § 204.5(h)(3)(iii).*

On appeal, the petitioner asserts that he meets this criterion because [REDACTED] [REDACTED] have published materials about him and his work, and because an unnamed entity has published his opera ‘ [REDACTED]’. The petitioner has not established that he meets this criterion.

First, the petitioner has not shown that [REDACTED] is a professional or major trade publication or other major media. According to a March 3, 2014 letter from [REDACTED] editor of [REDACTED] [REDACTED] “is one of the best selling and popular national magazines” and publishes 25,000 copies monthly. The petitioner has not provided sufficient evidence showing this publication, one with 25,000 monthly copies that covers ‘ [REDACTED]’ constitutes a professional or major trade publication or other major media. Moreover, the evidence submitted to show the nature and status of the publication is from the magazine publisher. Such self-promotional evidence has minimal evidentiary value. See *Braga*, No. CV 06-5105 SJO at 10 (concluding that we did not have to rely

<sup>4</sup> The letterhead contains the word “ [REDACTED]” while the text of the letter uses the spelling “ [REDACTED]”

on the promotional assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the self-promotional evidence with more independent evidence establishing the nature and status of [REDACTED]

Moreover, the petitioner has not shown that the [REDACTED] article "[REDACTED]" is about the petitioner. Instead, the article is about the petitioner's film. The article mentions the petitioner's name once, noting that he directed the film. The article then provides a synopsis of the film, without providing any additional information on or mentioning the petitioner. The petitioner has not shown that this article is about the petitioner, as required under the criterion. *See generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). The petitioner has also not provided information on the date or author of this material, as required under the criterion.

Second, the petitioner has not shown that [REDACTED] is a professional or major trade publication or other major media. According to a March 11, 2014 letter from [REDACTED] "is [a] Christian based popular magazine targeting youth" and it publishes "around 5500 copies every edition and distribute[s] it all over [Nepal] as well as India, Malaysia, Qatar, Dubai etc." The petitioner has not provided sufficient evidence showing this publication, with 5,500 copies per edition, constitutes a professional or major trade publication or other major media. Moreover, the evidence submitted to show the nature and status of the publication is from the magazine itself. As noted, such self-promotional evidence has minimal evidentiary value. *See Braga*, No. CV 06-5105 SJO at 10 (concluding that we did not have to rely on the promotional assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the self-promotional evidence with more independent evidence establishing the nature and status of [REDACTED]. Furthermore, the petitioner has not provided information on the date or author of the materials published on [REDACTED], as required under the plain language of the criterion.

Finally, on appeal, the petitioner asserts that an unnamed entity has published his opera "[REDACTED]" The petitioner has not provided information on the publisher. As such, he has not shown that a qualifying publication or other major media has published his opera. The petitioner has also not shown that a publication of his opera constitutes published material about the petitioner, relating to his work in the field for which classification is sought, as required by the plain language of the criterion.

Accordingly, the petitioner has not presented published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The director found that the petitioner meets this criterion. On appeal, the petitioner reasserts that he meets this criterion because he directed a number of movies. As supporting evidence the petitioner

has provided copies of the movies' promotional materials. The petitioner has not established that he meets this criterion; accordingly, the record does not support the director's favorable finding.

The evidence showing that the petitioner has been working in a field in which he claims extraordinary ability, film directing, is not sufficient to show that he has made any contributions of major significance in that field. To show that the petitioner has met this criterion, the petitioner must present evidence that his work has impacted the field of filmmaking and film directing as a whole, and that the impact is consistent with contributions of major significance in the field as a whole. The fact that the petitioner has directed a number of films, without evidence that his work in the films has also impacted the field, is insufficient to establish that the petitioner has met this criterion. Simply performing the inherent duties of one's occupation is not, without a wider influence in the field, a contribution of major significance in the field. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

In addition, the record includes a number of reference letters. Vague, solicited reference letters, however, that are from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field of filmmaking and film directing are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010).<sup>5</sup> The reference letters contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See 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. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756; Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

Accordingly, the petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

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<sup>5</sup> In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

### B. Summary

We have considered all the evidence in the record and conclude that the petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of presenting at least three types of evidence under 8 C.F.R. § 204.5(h)(3)(i)-(x).

### III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the 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 we conclude 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, we need not explain that conclusion in a final merits determination.<sup>6</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting at least three types of evidence. *Kazarian*, 596 F.3d at 1122.

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

**ORDER:** The appeal is dismissed.

<sup>6</sup> We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep’t of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain 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* INA §§ 103(a)(1), 204(b); 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).