



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 26 2014** Office: NEBRASKA SERVICE CENTER

FILE:

I-290B

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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner, a traditional Chinese opera performer, seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim. In addition, the director determined that the petitioner had not established that she was among that small percentage at the very top of her field of endeavor.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The director found that the petitioner had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iv), and (vii), but that she had not sustained national or international acclaim at the very top of the field.

On appeal, the petitioner submits a brief. In the brief, the petitioner asserts that she meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) - (vii), that U.S. Citizenship and Immigration Services (USCIS) misread the relevant case law, that the director's final merits determination was in error, and that the director failed to properly consider the submitted evidence.

For the reasons discussed below, we will uphold the director's determination that the petitioner has not established her eligibility for the classification sought. We withdraw the director's findings that the petitioner's evidence meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) and (vii). Accordingly, the petitioner has failed to demonstrate that she satisfies the antecedent regulatory requirement of three types of evidence. The AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Furthermore, as will be explained in the final merits determination, the evidence of record fails to demonstrate that the petitioner has sustained national or international acclaim at the very top of the field.

I. Petitioner's failure to submit requested original documents

The regulation at 8 C.F.R. § 103.2(b)(5) provides, in part:

Request for an original document. USCIS may, at any time, request submission of an original document for review. The request will set a deadline for submission of the original

document. Failure to submit the requested original document by the deadline may result in denial or revocation of the underlying benefit request.

On May 29, 2014, we issued a notice to the petitioner requesting that she provide certified English language translations for her Chinese language documents and that she “[p]lease submit the originals of the following evidence”:

1. [REDACTED] (initial exhibit 4);
2. [REDACTED] (initial evidence exhibit 6);
3. [REDACTED] (initial evidence exhibit 7); and
4. [REDACTED] (initial evidence exhibit 12).

In accordance with the regulations at 8 C.F.R. § 103.2(b)(5) and (8), the petitioner was afforded twelve weeks in which to respond to the notice. The petitioner responded to the notice with properly certified English language translations for her Chinese language documents and with additional photocopies of her documents, but failed to submit the requested original documents for items 1 – 4 above. For this reason alone, the petition is denied. Moreover, the regulation at 8 C.F.R. § 103.2(b)(14) provides: “Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request.” Based on the petitioner’s failure to submit the requested originals (items 1 – 4) in response to the May 29, 2014 notice, this petition cannot be approved.

II. 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.

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, internationally 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 our decision to deny the petition, the court took issue with our 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 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 we 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 we concluded).” *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the “final merits determination” as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both 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,” 8 C.F.R. § 204.5(h)(2), and “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)(3). Only aliens whose achievements have garnered “sustained national or international acclaim” are eligible for an “extraordinary ability” visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

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.

¹ 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 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, counsel challenges the director's final merits determination. Counsel asserts:

The Ninth Circuit only required [USCIS] to count the number of types of evidence provided that it believed to meet the requirements of the regulation.

It did not authorize [USCIS] to make a second determination on the same evidence and negate it after it had at the same time determined that the same evidence had met the plain language of the regulation.

* * *

In our case the USCIS has acknowledged the alien has met 3 of the ten criteria. It should approve the petition. It is only an arithmetic question.

Counsel's assertions are not persuasive. The *Kazarian* court did, in fact, provide two examples of how evidence might be considered under a final merits determination. For example, the court accepted that the AAO's analysis of the strictly internal nature of the alien's judging experience "might be relevant to a final merits determination." *Kazarian*, 596 F.3d at 1122. In addition, the court accepted that whether an author's articles have garnered citations in the field "might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor." *Id.* at 1121. The *Kazarian* court acknowledged the USCIS' concerns regarding the quality and sufficiency of the evidence and expressly stated that they were legitimate concerns but should have been addressed separately after counting the evidence.

The final merits discussion that appears in the *Kazarian* decision is a necessary corollary to the majority's discussion of how USCIS should consider evidence under the regulatory criteria. In other words, the court's conclusion that USCIS cannot raise certain concerns when counting the evidence is predicated on the understanding that USCIS can do so at a later stage. To apply only half of the court's procedure would effectively negate USCIS' ability to consider the quality of the evidence at any stage. The final merits determination step discussed in *Kazarian* is not only persuasive but necessary to understanding the court's decision as a whole. In *Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011), *aff'd*, 683 F.3d 1030 (9th Cir. 2012), the court reiterated that simply meeting at least three criteria is not sufficient; once the petitioner has met that threshold, "USCIS can then proceed to the ultimate inquiry," i.e., whether the petitioner has established sustained national or international acclaim. Accordingly, we find the petitioner's argument that since the director determined that she met three of the evidentiary criteria, *Kazarian* requires approval of her petition without merit.

Thus, despite the petitioner's argument that simply meeting three regulatory criteria is automatic grounds for approval, *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, we will apply the two-step analysis dictated by the *Kazarian* court.

III. 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 director determined that the petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of this criterion and the director's determination on this issue will be withdrawn. Again, the AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d at 741; *Soltane v. DOJ*, 381 F.3d at 145; *Dor v. INS*, 891 F.2d at 1002 n. 9.

The petitioner submitted a December 1991 certificate from the [REDACTED] stating that she was "Outstanding Young Performer" and a December 1991 award plaque from the [REDACTED] Competition stating that she was awarded "Outstanding Performance." In addition, the petitioner submitted a January 1992 article posted at <http://www> [REDACTED]

The article states that 41 individuals "received the young excellent performs [sic]" award. The petitioner, however, did not submit objective documentary evidence specifying the number of visitors to <http://www> [REDACTED] to demonstrate that the website's news is indicative of national recognition.

The petitioner submitted an August 18, 1999 "Certificate of Honors" stating that she "won the 'Excellent performance award' [REDACTED] in the first contest for [REDACTED] Award' in the sixth [REDACTED]. The petitioner also submitted a listing of numerous winners who received "Excellent Performance Awards" at th [REDACTED]. In addition, the petitioner submitted information about the [REDACTED] posted on the [REDACTED] website; there is no posting about the petitioner's award. The petitioner also submitted information about the [REDACTED] but no information about the petitioner's "Excellent performance award ([REDACTED])" is posted. Further, the petitioner did not submit objective documentary evidence specifying the number of visitors to the <http://> [REDACTED] website to demonstrate that its news is indicative of national recognition. Lastly, the petitioner submitted a July 21, 1999 article in [REDACTED] entitled "The [REDACTED]" but the article does not mention the petitioner's "Excellent performance award [REDACTED]"

The petitioner submitted a January 8, 2003 "Honorary Credential" stating that she received "an 'Outstanding Performance Award' for the play in the [REDACTED]

In addition, the petitioner

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

submitted what she states is an article posted on [REDACTED] mentioning that she won an “excellent performing award” at the [REDACTED]. The submitted article, however, does not include the uniform resource locator (URL) or internet address showing that it was printed from the [REDACTED] website. The lack of a URL diminishes the reliability of the petitioner’s evidence. The petitioner also submitted a [REDACTED] ([http://www.\[REDACTED\]](http://www.[REDACTED])) “daily visitings (person/million)” report indicating online visits for the [REDACTED] website of “25.8 person/million.” The petitioner, however, did not submit a full English language translation of the [REDACTED] report as required by 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.* Without a full English language translation and an explanation of the [REDACTED] data, the petitioner has not established that news posted or [REDACTED] is indicative of national recognition.

The petitioner submitted a July 19, 2004 certificate stating that she “won the ‘Golden Prize’ in [REDACTED] held by [the] China [REDACTED].” In addition, the petitioner also submitted an article in [REDACTED] magazine, (Issue Number 308, August 2004) commenting on the preceding contest and mentioning that she received “the gold award.” Despite our request for evidence, the petitioner failed to submit the original published material in [REDACTED]. Accordingly, we cannot assign any weight to the August 2004 article.

The petitioner submitted an October 2001 certificate stating that she “won the ‘2nd Prize’ in [REDACTED] held by the [REDACTED].” In addition, the petitioner submitted a November 2009 “Certificate of Honor” for being among “[t]he [REDACTED].” The petitioner, however, did not submit any supporting documentary evidence demonstrating that the preceding 2nd Prize and Certificate of Honor were nationally or internationally recognized prizes or awards for excellence in the field.

Although the petitioner submitted information about the preceding competitions and letters of support briefly mentioning her awards, she did not submit documentary evidence demonstrating the national or international recognition of her 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 her burden to establish every element of this criterion. There is no documentary evidence demonstrating that the petitioner’s specific awards were recognized beyond the presenting organizations or her references at a level commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In response to the director’s notice of intent to deny (NOID), the petitioner submitted a May 15, 2011 “Certificate of Congressional Recognition” that she received from Dr. [REDACTED] Member of [REDACTED] at the [REDACTED] Ceremony. The petitioner, however, received her certificate subsequent to the filing of the Form I-140, Immigrant Petition for Alien Worker, on April 11, 2011. The petitioner must establish eligibility 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, adopting *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, we cannot consider the May 15, 2011 “Certificate of Congressional Recognition” as evidence to establish the petitioner’s eligibility at the time of filing.

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

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

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. In the appeal brief, the petitioner asserts that the director’s determination regarding her membership in the [redacted] was “arbitrary” and “an abuse of discretion.”

As previously mentioned, the petitioner submitted her “Membership Certificate of [redacted] [sic] [redacted].” The submitted credential misspells “Theatre” on both its cover and in the section with the petitioner’s personal information, thus diminishing the reliability of the document. 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, 591-92 (BIA 1988). Despite our request for evidence, the petitioner failed to submit the original of her [redacted] membership certificate. Accordingly, we cannot assign any weight to this evidence.

The petitioner also submitted a September 2010 verification letter from the [redacted] with an accompanying translation stating that she “jointed [sic] the [redacted] on September 2001.” The submitted letter does not include an address, a telephone number, or any other information through which the [redacted] can be contacted. The lack of proper contact information as a means for verifying the information in the letter diminishes its reliability. In addition, the petitioner submitted a document that she claims is “a page from the [redacted] website showing [her] achievements.” The submitted document, however, has a URL of [http://\[redacted\]](http://[redacted]) which is not for the [redacted] website.

The petitioner submitted a webpage that she alleges is “The Article of Incorporation of [redacted].” The webpage has a URL of [http://w\[redacted\]4th_Article-28.html](http://w[redacted]4th_Article-28.html) and lists two other identifiers for the [redacted]. The petitioner has not established or asserted that the [redacted] are one in the same. In addition, the website for the [redacted]. The submitted English language translation for Article 8 of the Articles of Incorporation states that theater workers “who are at the relatively high level with definite accomplishments . . . may become a member after approval from the standing committee of this association.” Even if the petitioner established that the submitted requirements were for the [redacted] which she has not, we cannot conclude that performing at a “relatively high level with definite accomplishments” rises to the level

of “outstanding achievements.” In addition, the submitted evidence does not show that members’ achievements are judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted two letters from [REDACTED] who identifies himself as a member of the board of directors of the [REDACTED]. Neither letter bears an address for the [REDACTED]. The March 6, 2011 letter from Mr. [REDACTED] does not mention the petitioner or state that she is a member of the [REDACTED]. Instead, Mr. [REDACTED] comments on the [REDACTED] membership requirements stating: “Only those whose achievements have reached the national level can [] become a member of the [REDACTED]. An artist who applies to become a member of the [REDACTED] must have recommendations from the provincial association and supported by two current [REDACTED] members.”

In his September 23, 2011 letter, Mr. [REDACTED] states:

The procedures of joining our association including State level recommendation, invitations by two members of our association, and then judged by our Admission Committee for acceptance. Only those who have obtained national and above level awards, and who are symbols and representatives in his/her performing field are being finally selected to join. In addition to the above procedures, our association puts the most emphasis on member’s national and international accomplishments in his/her field of endeavor.

The March 6, 2011 and September 23, 2011 letters from Mr. [REDACTED] are not consistent in their description of the [REDACTED] membership requirements. 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. at 591-92. In addition, the letters from Mr. [REDACTED] do not establish that [REDACTED] members’ achievements are judged by recognized national or international experts in their disciplines or fields.

Although Mr. [REDACTED] September 23, 2011 letter asserts that the [REDACTED] accepted the petitioner as a member, the misspelling of her “Membership Certificate of [REDACTED]” and her failure to submit the original certificate despite our request cast doubts on the reliability of all the evidence submitted for this regulatory criterion. The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Furthermore, the plain language of the regulation requires “membership in associations” in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. *Cf. Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 2008 WL 9398947, *1, *6 (D.D.C. Mar. 2008); *Snapnames.com Inc.*

v. Chertoff, No. CV06-65, 2006 WL 3491005, at *1, *10 (D. Or. Nov. 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner had established that her membership meets the elements of this regulatory criterion, which she has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner’s membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts.

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

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. In the appeal brief, the petitioner asserts that she “submitted evidence that many newspapers, magazines have reported [the petitioner].”

The petitioner submitted a January 8, 2003 article about her that she states was posted on and entitled . The submitted document, however, does not include the URL showing that it was printed from the website. Again, the lack of a URL on the document diminishes the reliability of the petitioner’s evidence. The petitioner also submitted a “daily visitings (person/million)” report indicating online visits for the website of “25.8 person/million.” The petitioner, however, did not submit a full English language translation of the report as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without a full English language translation and an explanation of the data, the petitioner has not established that net is a major trade publication or a form of major media.

The petitioner submitted an article about her in magazine (Issue Number 510, November 1999) entitled “ . Despite our request for evidence, the petitioner failed to submit the original material from the magazine. Accordingly, we cannot assign any weight to this evidence. Regardless, the petitioner did not submit evidence such as objective circulation figures showing that is a major trade publication or a form of major media.

The petitioner submitted articles in , but only two articles entitled ’ and were accompanied by certified English language translations. The date of the latter article, however, was not provided and that material does not relate to the petitioner’s work as a performer. Without certified English language translations for the remaining articles, the petitioner has not established that the other articles in and

[REDACTED] were about her and related to her work as a performer. *See id.* Regardless, there is no circulation evidence showing that [REDACTED] are major media.

The petitioner submitted an article in [REDACTED] magazine, (Issue Number 308, August 2004) entitled [REDACTED]

[REDACTED] Despite our request for evidence, the petitioner failed to submit the original material from the magazine. Accordingly, we cannot assign any weight to this evidence. In addition, the article is mostly about the commentator's views of the [REDACTED] and not about the petitioner. The plain language of the regulation requires "published material about the alien." Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). The petitioner also submitted a webpage listing the "numbers of publication" of [REDACTED] but she did not submit a full English language translation of the webpage as required by the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, the petitioner did not submit circulation evidence showing the distribution of [REDACTED] relative to other Chinese entertainment publications to demonstrate that the magazine is a major trade publication or a form of major media.

The petitioner submitted photographs that she asserts show her "being interviewed by Mr. [REDACTED] anchor for the column of [REDACTED] in June 2003." The plain language of this regulatory criterion requires "published material about the alien . . . relating to the alien's work in the field" including "the title, date and author of the material." A television program interview featuring the petitioner does not meet these requirements. In addition, although the petitioner submitted information from [REDACTED] stating that the [REDACTED] network has "11 stations and a national audience of 1.3 billion" and a letter from [REDACTED] stating that the interview aired on [REDACTED] 11, the petitioner did not submit a complete printed transcript for the television program or evidence of the viewership figures for the specific program on [REDACTED] on which the interview was broadcast.

The petitioner submitted an August 27, 2010 article about her in [REDACTED] entitled "[The petitioner] – [REDACTED]"

[REDACTED] In response to the director's NOID, the petitioner submitted an August 26, 2010 letter from the President and Editor-in-Chief of [REDACTED] asserting that his newspaper "is a popular publication with a wide circulation that covers the entire United States." USCIS, however, need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd*, 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). There is no objective circulation evidence showing that *Sino-U.S. Weekly* is a form of major media in the United States or any other country.

The petitioner's response to the director's NOID included a September 30, 2011 article about her in [REDACTED] (Los Angeles, Southern California Edition) entitled [REDACTED]

The article, however, was published subsequent to the filing of the Form I-140 petition on April 11, 2011. Again, the petitioner must establish her eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we cannot consider the material published in September 2011 as evidence to establish the petitioner's eligibility at the time of filing.

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

The petitioner initially submitted the following:

1. A May 18, 2007 certificate stating: "This is to certify that you have been appointment [sic] by the [redacted] to be a member of the judging committee for the [redacted]; and
2. A January 2001 "Certificate of Appointment" from the [redacted] stating: "This is to appoint [the petitioner] to be an invited art director of our institute."

The plain language of this regulatory criterion requires evidence of the petitioner's "participation . . . as a judge of the work of others." Although the petitioner may have been appointed to the preceding judging committee and institute, there is no documentary evidence of her actual participation as a judge. Submitting certificates stating that the petitioner was appointed as a judge or an art director without evidence demonstrating her actual participation is insufficient to establish eligibility for this criterion.

The remaining evidence, however, supports the director's finding that the petitioner meets this regulatory criterion. The petitioners' initial evidence also included the following:

1. A June 8, 2007 Certificate of Appointment stating: "This is to certify that you have been appointment [sic] by the [redacted] to be a member of the panel of judging committee for the Sixth [redacted]; and
2. A June 2007 letter from the [redacted] stating: "We are greatly honoured to invite you to act as a member of the panel of judging committee for the Sixth [redacted]"

The preceding appointment certificate and invitation letter were not sufficient to demonstrate that the petitioner actually participated as a judge after being appointed and invited to serve on the committee.

However, in response to the director's NOID, the petitioner submitted a September 19, 2011 letter from the [REDACTED] confirming that the petitioner participated as a judge for the Sixth " [REDACTED] ; [REDACTED] in 2007. Accordingly, the petitioner has established that she meets this regulatory criterion.

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

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. The director stated:

Counsel states that the petitioner met this criterion based mostly on the opinion of one reporter, and during one performance, and that the petitioner has . . . made an original contribution of major significance to the field. Recognition or success within the field does not demonstrate eligibility under this criterion as recognition and success are not contingent upon originality or significant impacts on the field. Counsel does not identify how combining "acrobatic fighting" with Pingju opera made an original contribution of major significance beyond her local recognition or success and we find no corroborating evidence in the record to support counsel's assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

* * *

Finally, letters of support alone are not sufficient to meet this criterion. . . . Letters solicited . . . in support of an immigration petition are of less weight than the preexisting, independent evidence one would expect to find where an individual has made original contributions of major significance.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original artistic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

On appeal, the petitioner points to the January 8, 2003 "media report" that she alleges was posted on [REDACTED] and entitled [REDACTED]. The article stated:

For many years Pingju opera was limited to the form of singing play. Now [the petitioner] performed [REDACTED] with acrobatic fighting contents on the stage of capital for the

first time. It truly surprised experts and opera fans, rewrote the history of Pingju that was lack of acrobatic fighting, and made a great sensation in Beijing.

The submitted article, however, does not include the URL showing that it was printed from the [REDACTED] website. Again, the lack of a URL on the document diminishes the reliability of the petitioner's evidence. Furthermore, although the author, [REDACTED] stated that the petitioner's performance "rewrote the history of Pingju" and "made a great sensation in Beijing," the favorable online review of one critic is not sufficient to demonstrate that the petitioner's work rises to the level of a contribution of major significance in the field.

In addition, the petitioner states that she "provided expert opinions in the form of recommendation letters regarding [the petitioner's] original contribution."

In his September 23, 2011 letter, Mr. [REDACTED] stated:

[REDACTED]

Although Mr. [REDACTED] asserts that the petitioner was [REDACTED] and that her movements "have become classical examples for the young performers to learn and study," he does not specifically identify any performing arts schools that are teaching her artistic techniques. There is no documentary evidence showing that her movements such as [REDACTED]

[REDACTED] have affected the field of in a major way, have drawn record audiences for an extended period of time, or have otherwise risen to the level of original contributions of major significance in the field. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 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, Mr. [REDACTED] comments that the petitioner is "one of the few very top artists in Pingju field," but merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.).

[REDACTED] a traditional Chinese opera performer, choreographer, and writer who does not identify his address, stated:

According to my professional background and my understanding of the Chinese traditional opera, [the petitioner] is one of the top performers at the professional level of the Chinese traditional opera art. She's achieved splendid results in her art field. Her appearances in the plays are pretty and refreshing, and she's well versed in both polite letters and martial arts.

She was a rare talented performer in Chinese opera circle especially for her great basic skills of martial arts. She's won national prizes many times.

Mr. [REDACTED] comments that the petitioner is a top performer, that she has achieved splendid results, that she has performed admirably, and that she possesses rare talent and "great basic skills." It is not enough, however, to be a talented performer and to have others attest to that talent. An individual must have demonstrably impacted her field in order to meet this regulatory criterion. There is no documentary evidence showing that the petitioner's performances have affected traditional Chinese opera styles, have substantially influenced the work of other performers, or have otherwise risen to the level of contributions of major significance in the field. In addition, Mr. [REDACTED] mentions that the petitioner has "won national prizes many times." The petitioner's prizes were previously addressed under the category of evidence at 8 C.F.R. § 204.5(h)(3)(i). Evidence relating to or even meeting the prizes and awards criterion is not presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for prizes and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

[REDACTED] President of the [REDACTED] California, stated:

[The petitioner] was the first one to perform acrobatic fighting in Pingju Opera. Thereafter Pingju can express ancient warfare stories on stage.

This is her original contribution of major significance to the Art of Pingju. Before this, Pingju's performance consisted of only singing and speaking. [The petitioner] has perfectly combined singing and acrobatic fighting in her performance. Her work has been unusually influential in Pingju field.

Ms. [REDACTED] asserts the petitioner "was the first one to perform acrobatic fighting in Pingju Opera" and that "her work has been unusually influential in Pingju field." Ms. [REDACTED] however, does not provide specific examples of how the petitioner's work has affected performances outside of her theatrical troupe or otherwise constitutes contributions of major significance in the field. 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).

[REDACTED] Director, [REDACTED] stated:

Because of her original performance, [the petitioner] had brought a fresh breath of air into Pingju stage. Because of her, there are Pingju that carries out war fair [sic]. [The petitioner's] [REDACTED] has become a classical Pingju composition in China. [The petitioner's] original addition has made historical contribution to Chinese Pingju.

Mr. [REDACTED] asserts that [REDACTED] has become a classical Pingju composition in China" and that the petitioner "has made historical contribution to Chinese Pingju." Mr. [REDACTED] however, fails to provide specific examples of how the petitioner's original work has affected her field in a major way, has substantially influenced the work of other performing artists, or otherwise constitutes original

contributions of major significance in the field. Vague, solicited letters from colleagues that do not specifically identify original 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 at 1115. In its 2010 decision, the court reiterated that our conclusion that that petitioner did not meet the contributions criterion was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

Letters that fail to identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. at 17; *see also Visinscaia*, 2013 WL 6571822, at *6 (upholding USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988) (holding that an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought and “is not required to accept or may give less weight” to evidence that is “in any way questionable”). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *Id. 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”). Without additional, specific evidence showing that the petitioner’s work has been unusually influential, has substantially affected the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that she meets this regulatory criterion.

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

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. The petitioner submitted three articles that she alleges were published in the book [REDACTED]. Despite our request for evidence, the petitioner failed to submit the original of the [REDACTED] book. Accordingly, we cannot assign any weight to this evidence. Regardless, the petitioner did not submit documentary evidence demonstrating that [REDACTED] is a professional or major trade publication or form of major media. Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

The petitioner asserted that her traditional Chinese opera performances meet this criterion. The director determined that the petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of this criterion and the director’s determination on this issue will be withdrawn. Again, the AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d at 741; *Soltane v. DOJ*, 381 F.3d at 145; *Dor v. INS*, 891 F.2d at 1002 n. 9.

The petitioner’s field is in the performing arts, not the visual arts. 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 theatrical performer. When she is performing on stage or in a competition, she is not displaying her work in the same sense that a painter or sculptor displays his or her work in a gallery or museum. The petitioner is performing her work, she is not displaying her work. 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, the petitioner 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 she 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 submitted a January 2001 “Certificate of Appointment” from the [REDACTED] stating: “This is to appoint [the petitioner] to be an invited art director of our institute.” The appointment certificate, however, does not specify the petitioner’s duties and responsibilities as an “invited art director.” In general, a leading role is demonstrated by evidence of where the petitioner fits within the hierarchy of an organization or establishment, while a critical role is demonstrated by evidence of the petitioner’s contributions to the organization or establishment. The petitioner did not provide an organizational chart or other similar evidence to establish where her role as an “invited art director” fit within the overall hierarchy of the [REDACTED]. The submitted evidence fails to differentiate the petitioner from the other employees and staff so as to demonstrate her leading role, and does not establish that she contributed to the [REDACTED] in a way that was significant to the institute’s success or standing. Furthermore, there is no documentary evidence showing that the [REDACTED] has earned a distinguished reputation. Accordingly, the petitioner has not established that she meets this regulatory criterion.

Summary

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

B. Final Merits Determination

As the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence, a final merits determination is unnecessary. However, because the director found that the petitioner had met at least three categories of evidence, we will conduct a final merits determination that considers 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,” 8 C.F.R. § 204.5(h)(2); 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20.

Although the director determined that the petitioner had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iv), and (vii), he concluded that the submitted documentation failed to demonstrate the petitioner's sustained national or international acclaim at the very top of the field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(i), we find that the petitioner failed to submit documentary evidence demonstrating the national or international recognition of her awards. In addition, regarding the petitioner's awards from the [REDACTED] the awards were limited to younger contestants rather than older, more experienced performers. Thus, they cannot establish that the petitioner is one of the very few at the top of her field. *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow that the petitioner's receipt of youth awards which exclude veteran performers in the field from consideration should necessarily qualify her for approval of an extraordinary ability employment-based immigrant visa petition. While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." In the appellate brief, the petitioner points to the May 15, 2011 "Certificate of Congressional Recognition" that she received from Congresswoman [REDACTED]. Again, the petitioner received her certificate subsequent to the filing of the Form I-140 petition on April 11, 2011. The petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we cannot consider the May 15, 2011 "Certificate of Congressional Recognition" as evidence to establish the petitioner's eligibility at the time of filing. The petitioner has not established that the awards she received are indicative of or consistent with sustained national acclaim, or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iv), the petitioner submitted a September 19, 2011 letter from the [REDACTED] stating: "The 'Expert Award' is the highest award in the Chinese

television and radio broadcasting field. The award is a national level competition and has immense influence in Chinese Society, and is widely known nationally and internationally.” The petitioner, however, did not submit any documentary evidence (such as national media coverage of the [REDACTED] in 2007) to support the claims. 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)). 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). Without further evidence demonstrating the level of notoriety or stature associated with the 2007 [REDACTED],” we cannot conclude that the petitioner’s participation was commensurate with sustained national or international acclaim at the very top of the field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(vii), as previously discussed, the petitioner is a performing artist rather than a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases.

With regard to the remaining categories of evidence at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), (vi), and (viii), the deficiencies in the documentation submitted for those categories have already been addressed. The petitioner has not established that she meets the plain language requirements of those categories, or that the evidence she submitted is indicative of, or consistent with, sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of the field. Although the petitioner claims membership in an association, she has not submitted reliable evidence of her membership. In addition, she has not established that the organization is one that requires outstanding achievements of its members as judged by recognized national or international experts, nor has she established that she belongs to more than one association. Furthermore, all of the published material she submitted was deficient in at least one of the regulatory requirements such as not including a date, not being about the petitioner, or not having been published in major trade publications or other major media. Regarding her artistic performances, the petitioner has not established that they were original contributions of major significance in the field. With respect to the petitioner’s authorship, she has not shown that her articles were in a professional or major trade publication or form of major media. Lastly, the petitioner has not shown that she has performed in a leading or critical role for organizations or establishments with a distinguished reputation.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner need not demonstrate that there is no one more accomplished than herself to qualify for the classification sought; however, the petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim as a traditional Chinese opera performer and program host, or being among that small percentage at the very top of the field of endeavor. Moreover, there is no evidence showing that the petitioner has garnered sustained national acclaim as a performer or program host since her arrival in the United States in April 2010. The submitted evidence is not indicative of a

“career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

IV. Conclusion

The documentation submitted in support of a claim of extraordinary ability must demonstrate that the individual 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.

Review of the record, however, does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.