



U.S. Citizenship
and Immigration
Services

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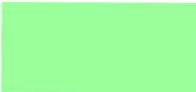
Date: **SEP 26 2014**

Office: NEBRASKA SERVICE CENTER

FILE: 

I-290B

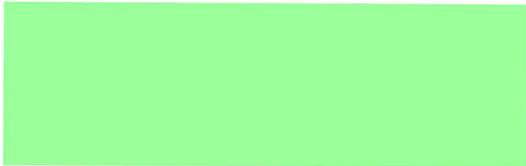
IN RE:

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,

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 and a local AM radio news anchor, 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.

On appeal, the petitioner submits a brief and additional evidence. 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 she has sustained national or international acclaim, 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), (iv), (vi), 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 U.S. Citizenship and Immigration Services (USCIS) 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 evidence exhibit 1);
2. [REDACTED] (initial evidence exhibits 16 and 35);
3. [REDACTED] (initial evidence exhibits 18 and 41); and
4. [REDACTED] (initial evidence exhibit 30).

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 to 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).

On appeal, the petitioner states: "In *Kazarian* the Ninth Circuit held that the alien has met only 2 of the criteria and that if he met 3 of the 10 criteria, the petition should be approved. In our case petitioner has met 4 of the criteria; therefore, the petition should be approved according to rule of *Kazarian*."

The petitioner's argument is not persuasive and misinterprets the court's findings. 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

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).

national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20. 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 July 19, 2004 certificate stating that she "won the 'Golden Prize' in [redacted] held by the [redacted]. In addition, the petitioner also submitted an article in [redacted] 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].

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.

Accordingly, we cannot assign any weight to the August 2004 article. Regardless, the petitioner did not submit evidence such as objective circulation figures showing that coverage in [REDACTED] is indicative of national recognition.

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 “ [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. The petitioner submitted no other documentation explaining the significance of the award or its national or international recognition as an award of excellence.

The petitioner submitted a December 1991 certificate from the [REDACTED] Competition stating that she was [REDACTED] and a December 1991 award plaque from the [REDACTED] Competition stating that she was awarded [REDACTED]. The petitioner also submitted material about the competition entitled [REDACTED] that was in a “Special Issue” event program prepared by the competition organizers. In addition, the petitioner submitted an event program entitled [REDACTED] Competition Opera Highlights” listing the acts and performers. The petitioner also submitted a December 9, 1991 [REDACTED] event program. Lastly, the petitioner submitted a January 1992 article posted at [http://\[REDACTED\]](http://[REDACTED]) entitled ‘ [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.\[REDACTED\]](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 [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://\[REDACTED\].com](http://[REDACTED].com) website to demonstrate that its news is indicative of national recognition. Lastly, the petitioner submitted a July 21, 1999 article in [REDACTED] entitled ‘ [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 [redacted] for the play in the [redacted] Event held by the [redacted].” In addition, the petitioner 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. On appeal, the petitioner submits a [redacted] “Traffic Report” for [redacted] indicating that the website’s “overall rank is 372,711 amongst all websites in the world.” The petitioner has not established that such a ranking demonstrates that news posted on [redacted] is indicative of national recognition.

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 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 disqualified her membership in the [redacted] without discussing the membership requirements.

As previously mentioned, the petitioner submitted her “[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 identifying her as member of the [REDACTED]. The submitted document, however, does not include the URL showing that it was printed from the [REDACTED] website. Again, the lack of a URL or internet address on the document diminishes the reliability of the petitioner's evidence.

The petitioner submitted a webpage that she alleges is [REDACTED]. The webpage has a URL of [http://www.\[REDACTED\]4th_Article-28.html](http://www.[REDACTED]4th_Article-28.html) and lists two other identifiers for the [REDACTED], but not that of the [REDACTED]. The petitioner has not established or asserted that the [REDACTED] and 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 [REDACTED] members' achievements are judged by recognized national or international experts in their disciplines or fields.

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 published material from "national and world level media."

The petitioner submitted a January 8, 2003 article about her that she alleges was posted on [REDACTED]. The submitted document, 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. On appeal, the petitioner submits a [REDACTED] "Traffic Report" for [REDACTED] indicating that the website's "overall rank is 372,711 amongst all websites in the world." The petitioner has not established that such a ranking demonstrates that [REDACTED] is a major trade publication or form of major media.

The petitioner submitted an article about her in [REDACTED] magazine ([REDACTED] November 1999) entitled [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. Regardless, the petitioner did not submit evidence such as objective circulation figures showing that [REDACTED] is a major trade publication or a form of major media.

The petitioner submitted an online article about her in [REDACTED] entitled “[The petitioner]: [REDACTED]” but there is no documentary evidence showing that the [REDACTED] website is a form of major media.

The petitioner submitted an article in [REDACTED] magazine, [REDACTED] August 2004) entitled “[The petitioner] – [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 on 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). Lastly, the petitioner did not submit objective circulation evidence showing that [REDACTED] is a major trade publication or a form of major media.

The petitioner submitted an article about her in [REDACTED] entitled “[The petitioner] – A [REDACTED]” but the date of the material was not provided as required by this regulatory criterion. In addition, there is no documentary evidence showing that [REDACTED] is a form of major media.

The petitioner submitted a photograph that she asserts shows her “being interviewed by [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’s appellate submission includes information stating that [REDACTED] has a network of 19 channels and is accessible to more than one billion viewers,” the petitioner did not submit the printed transcript for the television program or evidence identifying the specific [REDACTED] show and channel on which her interview was broadcast.

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 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 the following:

- 1.
- 2.
- 3.
- 4.



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 committees and institute, there is no documentary evidence of her actual participation as a judge. For instance, there is no documentary evidence showing the specific work judged by the petitioner and the names of those whose work she evaluated. Submitting certificates stating that the petitioner was appointed as a judge without evidence demonstrating that she actually served as a judge is insufficient to establish eligibility for this criterion.

In light of the above, the petitioner has not 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 that the letters from the petitioner’s peers and colleagues failed to demonstrate that her work was of major significance in the field. 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 asserts that her “evidence not only included supporting letters, it included documented evidence – a news report from a journalist in 2003.” The petitioner states that her “original contribution to traditional pingju opera is her performing acrobatic fighting in pingju opera for the [redacted].”

The petitioner submitted letters of support from [REDACTED] scholar who states that he is a member of the [REDACTED]

[REDACTED] None of the preceding individuals, however, comment that the petitioner's "original contribution to traditional pingju opera is her performing acrobatic fighting in pingju opera for the first time in" the opera's history or point to specific examples of how her work was of major significance to traditional Chinese opera. In addition, the submitted letters do not include an address, a telephone number, or any other information through which the individuals can be contacted. The lack of proper contact information as a means for verifying the information in the reference letters diminishes their reliability. Furthermore, the submitted letters fail 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 program hosts in the field, or otherwise equates to 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 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. The director concluded that the petitioner had failed to establish that her "work has influenced, or been recognized by, others in [her] field to such a degree that it could be considered contributions of major significance."

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 v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 2013) (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").

In the appellate brief, the petitioner does not point to any specific letters that identify her original artistic contributions or that explain how her work was of major significance to the field. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009).

The petitioner further states:

Beneficiary's original contribution to traditional Chinese pingju opera was identified by Journalist [REDACTED] in a news report [REDACTED] published on [REDACTED] et in January 2003 in a description of beneficiary's accomplishment at the [REDACTED]

The fact is that evidence not only included supporting letters from peers but also included the news report published on chinaopera.net, a public interest internet website dedicated to promoting traditional Chinese operas. This news report should qualify as a piece of documented evidence.

As previously mentioned, the petitioner submitted a January 8, 2003 article 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. 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 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 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. Comparable Evidence

In the appeal brief, the petitioner points to her November 2009 "Certificate of Honor" for being among "[t]he [redacted] media coverage that reported about her, and her appointment as an "invited art director" of the [redacted] as comparable evidence of her extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." Thus, it is the petitioner's burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to her occupation and how the evidence submitted is "comparable" to the specific objective evidence required at 8 C.F.R. § 204.5(h)(3)(i) – (x). In this instance, the November 2009 "Certificate of Honor" is relevant to the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the media coverage of the petitioner is relevant to the published material about the alien criterion at 8 C.F.R. § 204.5(h)(3)(iii), and her appointment as an "invited art director" of the [redacted] is relevant to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). Moreover, the preceding evidence has already been considered under those three regulatory criteria and was found insufficient to meet them. Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). For instance, the petitioner has specifically claimed eligibility under the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) – (viii). In addition, the categories of evidence at 8 C.F.R. § 204.5(h)(3)(ix) and (x) also readily apply to performing artists.

C. 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 of the evidentiary criteria, 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), (vi), and (vii), she 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 did not submit evidence demonstrating the national or international recognition of her awards. In addition, regarding the petitioner's awards from the [REDACTED] the awards were limited contestants of a specific age group rather than all performers in a specific category. 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" simply because they are playing in the major leagues. *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." 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 has risen to the very top of her field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iv), we find that there is no documentary evidence of the petitioner's actual participation as a judge of the work of others. Moreover, the nature of the petitioner's judging experience is a relevant consideration as to whether the submitted evidence is indicative of her recognition beyond those close to her. See *Kazarian*, 596 F.3d at 1122. The petitioner failed to submit documentary evidence documenting the reputation of the events that she was appointed to judge. Without evidence demonstrating her participation and showing the level of notoriety or stature associated with the events, we cannot conclude that the petitioner's appointments were commensurate with sustained national or international acclaim at the very top of the field.

Regarding the documentation submitted for the category of evidence 8 C.F.R. § 204.5(h)(3)(vi), despite our request for evidence, the petitioner failed to submit the original of the *Facing the New Era* book that allegedly included her three articles. In addition, the petitioner did not submit documentary evidence demonstrating that [REDACTED] is a professional or major trade publication or form of major media. Furthermore, there is no evidence demonstrating that the petitioner's articles have

attracted a level of interest in her field commensurate with 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)(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.

In regard to the remaining categories of evidence at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), 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. 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.