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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
LIN 07 150 53857

Office: NEBRASKA SERVICE CENTER

Date: JAN 06 2010

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner filed an appeal, which the Administrative Appeals Office (AAO) rejected as untimely and returned to the director for treatment as a motion to reconsider. The director considered the late appeal as a motion to reopen and reconsider and affirmed denial of the petition. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner 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 sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant

criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on April 30, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a visual artist. At the time of filing, the petitioner was working as an artist and a graphic designer for Xochitl Art & Design Corporation, a company operated by the petitioner and her spouse.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted an organizational directory showing that she is a member of the International Association of Hispanists (AIH). The petitioner also submitted information from the AIH's internet site stating that applicants seeking membership in the association must fulfill the following requirements:

The Association may incorporate as members people of the following professional and scientific quality: university professors, investigators, critics and scholars, previous request

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

to the Secretary General. The Secretary General requires the interested to complete an application request. Applications of new valid partners for the following triennium will be only accepted between the 1 of February of the year of the celebration and congress and its closing. The Spanish scholars who are not members only will be able to register to the congress in quality of listeners.

We cannot conclude that working as a university professor, investigator, critic or scholar equates to outstanding achievements. Further, there is no evidence showing that the petitioner was judged by recognized national or international experts in her field or an allied one in determining her admission to membership.

The petitioner submitted two internet printouts showing that she authored a book article which was posted on the bibliography database of the Modern Language Association (MLA). The petitioner has not established that authoring a book article that was included in the MLA's bibliography database equates to holding membership in the association. Aside from inclusion of her book article in the MLA's database, the record does not include a personal membership credential or some other form of official documentation from the MLA confirming the petitioner's membership. The petitioner also submitted general information about the MLA from its internet site, but there is no evidence (such as membership bylaws) showing the official admission requirements for the MLA. Further, there is no evidence demonstrating that the MLA constitutes an association "in the field for which classification is sought," the visual arts.

In an April 27, 2007 letter accompanying the petition, counsel states: "[The petitioner] has also been an artist member of both the Guggenheim Museum and the Museum of Modern Art in New York City." The record, however, does not include evidence showing that the petitioner is an artist member of the Guggenheim Museum. 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).

In response to the director's request for evidence, the petitioner submitted documentation showing that she purchased an "Artist Annual Pass" from the Museum of Modern Art (MOMA). A notification letter to the petitioner from the MOMA states:

Thank you for purchasing an Artist Annual Pass with The Museum of Modern Art.

This Artist Annual Pass allows unlimited free admission to the Museum galleries and films for the pass holder only. It is valid until the expiration date listed below and may be renewed for the annual fee of \$25 at the lobby information desk or the Film and Media desk.

The petitioner also submitted a document entitled "The Museum of Modern Art Artist Pass Policy" stating: "The Artist Pass is sold to artists who can prove they have had a piece exhibited within the past two years." As exhibition of one's work is inherent to the visual arts, we cannot conclude that

displaying one's work at a show, a gallery, a museum, or in print equates to outstanding achievements. Further, the petitioner has not established that "purchasing an Artist Annual Pass with The Museum of Modern Art" equates to holding "membership" in an association. Moreover, there is no evidence showing that the petitioner was judged by recognized national or international experts in her field or an allied one in determining her admission to membership. Nevertheless, the petitioner's Artist Annual Pass notification letter reflects a "Transaction Date" of 06/22/07 and an "Expiration Date" of 06/30/2008. There is no evidence showing that the petitioner held an Artist Annual Pass for the MOMA as of the petition's April 30, 2007 filing date. A petitioner, however, 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 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner's artist access pass purchased in June 2007 in this proceeding.

In this case, we concur with the director's findings that there is no evidence showing that the AIH, the MLA, the MOMA Artist Annual Pass program, and the Guggenheim Museum's artist member program require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. On appeal, counsel does not challenge the director's findings for this criterion or argue that the petitioner meets this criterion.

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

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted a June 28, 1977 article about her in *El Pais* entitled "The Work of [the petitioner] at the Valle University." The author of this article was not identified as required by the plain language of this criterion.

The petitioner submitted a June 15, 1978 article in *Uno Mas Uno* entitled "Round table? Atmosphere? Homage? The No Group, experimental workshop of plastic artists, will kidnap Gunther Gerzo." This article is not about the petitioner and only mentions her name in passing. The plain language of this

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

regulatory criterion, however, requires that the published material be “about the alien.” Further, the author of the article was not identified.

The petitioner submitted an October 25, 1978 article in *Cromos* magazine entitled “IV Atenas Exhibit of the Museum of Modern Art that discusses the work of the petitioner, [REDACTED] and [REDACTED] [REDACTED]

The petitioner submitted excerpts from the publication entitled *The Athens Exhibitions in the Collection of the Museum of Modern Art in Bogota*. This publication only mentions the petitioner’s name in passing on page 9 and includes an image of her work “Lex” on page 42. The petitioner has not established that this book, or any significant portion of it, is about her.

The petitioner submitted a November 27, 1978 article in *Uno Mas Uno* entitled “Jazz, slides, black lights and bewilderment of the public at the happening Ritual Interval.” This article briefly mentions the petitioner and quotes her, but it is primarily about the Ritual Interval art show.³

The petitioner submitted exhibition catalogues and programs containing material written about her art work by [REDACTED]. The plain language of this regulatory criterion requires “[p]ublished material about the alien in professional or major trade publications or other major media” including “the title, date, and author of the material.” The event material written by [REDACTED] for the petitioner’s art exhibitions does not meet the preceding requirements.

The petitioner submitted page 38 from a 1980 issue of *Revista* magazine showing an electrocardiograph created by the petitioner. There is no mention of the petitioner in the accompanying article. The image of the petitioner’s work on page 38 does not meet the requirements of this criterion.

The petitioner submitted an August 12, 1987 article in *El Porvenir* entitled “There is no reason to be afraid of innovation.” This article quotes the petitioner on the subject of video art, but it is not about her.

On August 10, 2007, the director requested documentary evidence of the circulation of the preceding publications, but the petitioner did not submit the requested documentation. With regard to the preceding publications, there is no evidence showing that they qualify as professional or major trade publications or some other form of major media. Moreover, we cannot ignore the absence of published material about the petitioner in the two decades preceding the petition’s filing date. The preceding articles from the 1970s and 1980s are not sufficient to demonstrate that the petitioner’s acclaim as a visual artist has been sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

In response to the director’s requests for evidence dated May 7, 2007 and August 10, 2007, counsel discusses articles written by the petitioner for [REDACTED]

³ See generally *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

[REDACTED] This material was authored by the petitioner rather than written about her and therefore does not meet the plain language of this regulatory criterion. For example, the petitioner was a contributor to *Blink Lifestyle Magazine* in 2005 and 2007. The petitioner's response included promotional material from *Blink Lifestyle Magazine's* media kit stating that the magazine "prints 20,000 magazines (100 pages) per month" and has 5,000 subscriptions, but the limited distribution of the publication and the self-serving nature of its promotional material do not establish that magazine is a form of major media in Mexico, the United States, or Canada. Nevertheless, the regulations contain a separate criterion regarding the petitioner's "authorship of scholarly articles in the field." 8 C.F.R. § 204.5(h)(3)(vi). The material written and contributed by the petitioner to [REDACTED] will be addressed there.

On appeal, counsel argues that catalogues from the petitioner's various art exhibitions constitute "'comparable evidence' of professional publications." The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." In this instance, the petitioner has not established that the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) is not applicable to visual artists. In fact, the articles submitted by the petitioner from the 1970s and 1980s directly refute such a claim. The regulatory language at 8 C.F.R. § 204.5(h)(4) precludes the consideration of comparable evidence in this case, as there is no evidence 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). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Nevertheless, the regulations contain a separate criterion regarding "display of the alien's work in the field at artistic exhibitions." 8 C.F.R. § 204.5(h)(3)(vi). The catalogues from the petitioner's art exhibitions will be addressed there.

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

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

The petitioner submitted various letters of support and documentation pertaining to her art exhibitions.

[REDACTED], states that the petitioner has contributed her artistic and conceptual expertise to his magazine, including her article "Midnight Summer Homeless." He further states:

[The petitioner] has been a pioneer in this field since the early 1970s, when video was first coming into existence as an artistic medium. In addition, [the petitioner] has always used video art as a medium for exploring esoteric ideas of linguistics and imagery. As a Latin American woman engaged with a radical artistic medium, [the petitioner] distinguished herself as a fearless and skillful artist who utilizes cutting edge materials and ideas.

I first encountered [the petitioner's] artistry through her acclaimed exhibitions at the Museum of Modern Art in Colombia. Her work demonstrated a distinctive experimental approach to the contemporary variations and combinations of this art form today. [The petitioner's] exhibits, "In-Pulso," "Musica-Imiada," and "Los Dientes Del Dragon," are all demonstrative of her extraordinary talent as a Video and Conceptual Artist.

We note that arranging for the display of one's work at museums and exhibitions is inherent to the visual arts. It does not follow that every visual artist who successfully exhibits his or her work has inherently made a contribution of major significance to the field as a whole.

states:

I have approached [the petitioner] on a number of occasions to exhibit her work at my shows. She is an important figure in the sophisticated field of video art. Based on her expertise and fame as one of the most famous video artists in Latin America, I invited her to participate in my exhibition at CUNY [City University of New York], titled "Behind the Camera: Women in the Director's Chair" as a lecturer. This exhibition was a special program to discuss the role of women as creative artists and directors.

Having been in the field since its inception, [the petitioner] is today a renowned Latin American video artist. Because of her extraordinary and unique talent, I have also asked her to collaborate with Videoteca Del Sur as a video art consultant.

* * *

[The petitioner's] work is maintained in the Videoteca Del Sur archives as exemplar of Latin American talent and achievement. One of [the petitioner's] most prominent works, "Video-book," was installed at Videoteca Del Sur in 1996, and is currently a part of our permanent collection. In addition, Videoteca Del Sur has recently decided to include her more recent work, "7 ½ New York to Newport" to its permanent archives.

While the record includes documentation showing that the petitioner's "Video-book" was exhibited by Videoteca Del Sur and that "7 ½ New York to Newport" was screened along with more than two dozen other entries at "The On the Road Video Festival" at the 119 Gallery in Lowell, Massachusetts, there is no evidence showing that this work equates to artistic contributions of major significance in the field.

states:

[The petitioner] has long been an integral member of the community of video artists, both here in the United States and abroad. Before she moved to the United States, [the petitioner] was already an established artist and leader of the video art movement in Mexico. [The petitioner] created installations and experimental performances incorporating video arts

throughout Mexico City. At the time, there were few Latin American women artists in the emerging field of video art. [The petitioner] was considered by many to be a pioneer and an inspiration. In particular, her piece "In Pulso," which was exhibited at museums in Mexico as well as at the Museum of Modern Art in New York, NY, was an extraordinary example of how artists could use new technologies to create humanistic artworks.

Most recently, I had the opportunity to include her work in an exhibition I curated titled the "On the Road Video Festival," that was held at the 119 Gallery in Lowell, Massachusetts last October. From approximately 40 submissions, I selected her video art piece titled, "7 ½ New York to Newport," for the exhibition.

* * *

Recently, [the petitioner's] piece "7 ½" was chosen as one of the best artworks of the festival. As a result, the video was shown in April in a "best of" screening at "Bus Boys and Poets" in Washington, D.C.

According to promotional material submitted by the petitioner from the "On the Road Video Festival" honoring [REDACTED] 23 videos were selected to be presented at Bus Boys and Poets as a part of the April 14, 2007 screening. While "7 ½ New York to Newport" has been displayed at the aforementioned venues, there is no evidence showing that the petitioner's video has had a significant national or international impact on the visual arts community. As discussed previously, the regulations contain a separate criterion regarding "display of the alien's work in the field at artistic exhibitions." 8 C.F.R. § 204.5(h)(3)(vi). The petitioner's video exhibitions will be addressed there.

[REDACTED] of Spanish and Director of Intermediate Spanish II, Yale University, states:

In 2001, I was the Secretary of the Local Organizing Committee of the XIV International Conference of the AIH, which was held at The CUNY Graduate Center in New York, NY.

* * *

[The petitioner] was one of the very few artist presenters at the AIH conference in 2001, and one of two or three panelists who gave a presentation that incorporated visual content in addition to an oral presentation. To become a presenter at AIH, one must approach the organizing committee of the Congress, and provide a summary of the work to be presented at the conference.

* * *

[The petitioner's] work provides a rare insight into the visual representation of linguistic and cultural narratives common to the scholarly work of many AIH members.

The petitioner submitted documentation showing that her conference paper was presented at the AIH event in 2001 and that it appeared on page 365 of *Actas Del XIV Congreso De La Asociacion Internacional De Hispanistas*, but there is no evidence showing that her presented work equates to an original artistic contribution of major significance in the field.

A September 4, 2007 letter from [REDACTED] a professor at the Universidad Nacional in Bogota, Colombia, states:

I was first introduced to [the petitioner's] work in 1978, when I was a student in Bogota. Her brilliant *In Pulso* project, which I saw at the Museo de Arte Moderno in Bogota was the first exhibition of Colombian video art. I was inspired by her work. . . . Years later, when I traveled to New York in 2000, I requested a meeting with [the petitioner]. At the time, I was beginning to develop my research on the history of the art form in Colombia and was excited to be meeting with one of the pioneers of Colombian video art.

I am now writing a paper that chronicles the development of video art in Colombia, from its inception to more recent works. The first draft of my research can be viewed, in Spanish, online at www.bitio.net/vac. In my paper, I note that [the petitioner] . . . was, along with [REDACTED] known video artist. I also note that her work was developed primarily outside of Colombia, in Mexico. Nevertheless, it made a huge impact in the Colombian art world. Over the years following her first exhibition [the petitioner's] work was shown at the First Festival of Art of the Vanguard in Barranquilla, as well as the Museum of Modern Art in Cali and in several retrospectives of Colombian video art.

The prominent Mexican art critic [REDACTED] also thought that [the petitioner's] work was significant He contributed numerous essays to the conceptual innovations that were at the root of [the petitioner's] video art work.

What makes [the petitioner's] early work so important and interesting is that it anticipates the major developments in art and technology that followed. Her use of video technology to record performance, including her own interactions with other technology, were revolutionary. Previously, artists used stationary means to depict their art, such as photography and painting, and removed themselves from the art's content, such that they were an invisible presence. With new video recording technology, artists were able to capture themselves interacting with their surroundings as in conceptual performance art, or could depict a transformation using video technology to create a wholly new piece of art that stood separately from the original exhibition. [The petitioner's] work captured these ideas for the first time in modern Colombian art.

* * *

[The petitioner] explored ideas of communication by elemental means through her use of the electrocardiography technology to create drawings from her heartbeat. She exhibited both the resulting drawings and a video of the drawings being created by her on the machine. This

work was profoundly exciting and beautiful. It was such an inspiration to me that I have studied video art ever since. Hers is an artistic contribution of major significance.

We note that the letter from [REDACTED] does not bear university letterhead or include an address, telephone number, or any other information through which he may be contacted. [REDACTED] states that although the petitioner's "work was developed primarily outside of Colombia, in Mexico, . . . it made a huge impact in the Colombian art world." However, we do not find it particularly unusual that the petitioner, a native of Colombia, would exhibit her art work in her native country. Moreover, with regard to the commentaries written by [REDACTED], who directly sponsored the petitioner's art exhibitions and wrote promotional material for them, we cannot conclude that his commentaries demonstrate the greater field's independent reaction to her art work. [REDACTED] further states that the petitioner "was one of the first artists to exhibit video art in Colombia." While being among the first exhibitors of video art in Colombia demonstrates that the petitioner's work was original, the record lacks evidence supporting [REDACTED] assertion that the petitioner's use of video technology was "revolutionary" and an "artistic contribution of major significance."

In addressing the petitioner's evidence for this criterion, the director's decision stated that the documentation submitted by the petitioner did not establish that her work could be considered contributions of major significance to the field of video art, outside of the witness letters from individuals selected by the petitioner. We concur with the director's finding. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. In this case, the record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted her field. For example, the record does not indicate the extent of the petitioner's influence on other visual artists nationally or internationally, nor is there specific documentary evidence in the record demonstrating that her field has significantly changed as a result of her work. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has earned the respect and admiration of her personal contacts, there is no evidence demonstrating that her artwork is recognized beyond her acquaintances such that it equates to original contributions of major significance in the field.

We cannot conclude that the reference letters and documentation pertaining to the petitioner's exhibitions are sufficient to meet this criterion. The preceding letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord

with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a visual artist who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's artwork has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

The petitioner submitted the following:

1. A November 1980 article she wrote in *Visual Arts* (pages 40-41), a trimestral magazine of the Museum of Modern Art of Mexico;
2. An essay she authored in *Mexico 1993 Encuentro Otras Graficas* (pages 85-88), an anthology of art theory and criticism edited by Juan Acha;
3. A 2001 conference paper she authored in *Actas Del XIV Congreso De La Asociacion Internacional De Hispanistas*;
4. A September 15, 2000 article she wrote in *Hoy*, a Spanish language newspaper published in New York, entitled "In Search of the Mexican Dream;"
5. An October 28, 2001 article in *Hoy* she wrote entitled "A day in the life of . . . the Center of Latin-American Studies;"
6. An article she contributed to *Blink Lifestyle Magazine* in 2005; and
7. An article she contributed to *Blink Lifestyle Magazine* that was published in June 2007.

Items 4 and 5 do not constitute scholarly articles in the visual arts field. With regard to item 7, this article was published subsequent to the petition's filing date. As previously discussed, a 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, the AAO will not consider the June 2007 in *Blink Lifestyle Magazine* article in this proceeding. Regarding the 2005 article in *Blink Lifestyle Magazine*, the reference letter from [REDACTED] states that the magazine "is published in Mexico, the United States, and Canada." The petitioner's response to the director's request for evidence included promotional material from *Blink Lifestyle Magazine*'s media kit stating that the magazine "prints 20,000 magazines (100 pages) per month" and has 5,000 subscriptions, but the limited distribution of the publication and the self-serving nature of its promotional material do not establish that magazine is a form of major media in Mexico, the United States, or Canada. Regarding items 1 through 7, the record does not include evidence (such as objective circulation information from an independent source) showing the distribution of the publications relative to other national media to demonstrate that the submitted articles were published in professional or major trade publications or some other form of major media. Accordingly, the petitioner has not established that she meets this criterion.

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

The petitioner submitted correspondence, exhibition brochures, event programs, published material, and other documentation showing that her work has been displayed at places such as the Museum of Modern Art in Colombia (1978), the Museum of Modern Art in New York (1981), and the Museum of Modern Art in Mexico (1980s), and the Museum of Contemporary Art and Design in Costa Rica (2003). The record adequately demonstrates the significance of these artistic venues. However, the petitioner's display of her work at these museums is not sufficient to demonstrate that her national or international acclaim as a visual artist has been sustained subsequent to 2003. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

Aside from her participation in an exhibition at the Museum of Contemporary Art and Design in Costa Rica in 2003, the petitioner has not established that her other exhibitions of the 1990s and 2000s equate to the exclusive showcases of an artist's work that are contemplated by this regulation for visual artists. For example, the petitioner has not established that having her work displayed at the 119 Gallery in Lowell, Massachusetts, Bus Boys and Poets in Washington, D.C., the Galeria del Teatro Angelina Peralta in Mazatlan, Mexico, the AIH conference, and in Videoteca Del Sur's collection is consistent with or indicative of sustained national or international acclaim at the very top of her field. The self-serving promotional material for these organizations and the information in the reference letters submitted by the petitioner are not sufficient to demonstrate a level of distinction that sets her more recent visual art displays apart from those of most others in her field. On appeal, the petitioner submits evidence of artistic engagements involving the petitioner that post-date the filing of this petition. As previously discussed, a 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, the AAO will not consider artistic engagements that occurred subsequent to April 30, 2007 in this proceeding. While the petitioner's museum displays of 1978, the 1980s, and the one in 2003 appear to meet this criterion, they are not sufficient to demonstrate her sustained national or international acclaim as a visual artist during the years immediately preceding the filing date of this petition.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The petitioner initially claimed to have performed in a leading or critical role for the AIH and the Universidad del Claustro de Sor Juana in Mexico. The petitioner submitted evidence of her AIH membership, documentation reflecting her participation in AIH's 2001 conference, and a letter stating that she assisted Universidad del Claustro de Sor Juana's faculty in developing "a new long distance Master's Degree Educational pilot program" in Colonial Culture and Literature. The

director found that the petitioner's evidence did not establish that her role was leading or critical to the AIH or the university. We concur with the director's finding. There is no evidence showing that the petitioner was responsible for the AIH or the university's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. On appeal, counsel does not challenge the director's findings for this criterion or argue that the petitioner meets this criterion. Rather, counsel states that the petitioner "no longer claims eligibility based upon having performed in a leading or critical role for AIH or Universidad del Claustro de Sor Juana in satisfaction of 8 C.F.R. § 204.5(h)(3)(viii)." Accordingly, the petitioner has not established that she meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

In response to the director's request for evidence, the petitioner submitted U.S. income tax returns reflecting that she received officer compensation from Xochitl Art & Design Corporation of \$25,000 in 2005 and \$24,400 in 2006. The plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to those of others in her field. Accordingly, the petitioner has not established that she meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Moreover, the petitioner has not submitted evidence showing that her acclaim as a visual artist has been sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Specifically, the record does not include evidence of nationally or internationally acclaimed achievements and recognition in the years immediately preceding the filing date of this petition.

Review of the record 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 or 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority

has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.