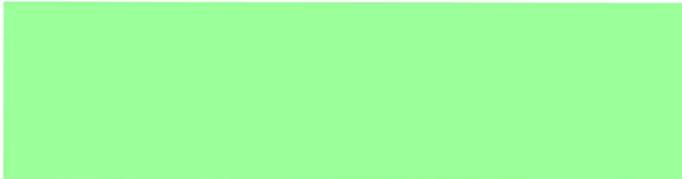


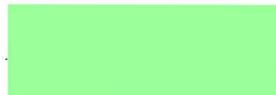
(b)(6)



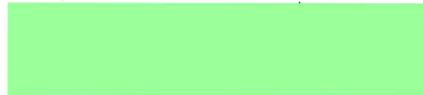
U.S. Citizenship
and Immigration
Services



DATE: **FEB 28 2013** Office: NEBRASKA SERVICE CENTER

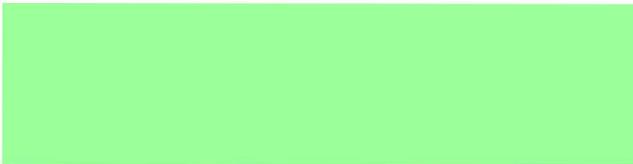


IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (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 as a writer. The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim. The director also determined that the petitioner had failed to demonstrate that he is among that small percentage who has risen to the very top of the field of endeavor.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The director determined that the petitioner's evidence had met the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), and (iv), but that the petitioner had failed to demonstrate sustained national or international acclaim at the very top of the field.

On appeal, counsel asserts that the petitioner meets eight of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). Counsel further states the petitioner "has risen to the very top of his field and that he possesses sustained national or international acclaim and recognition of achievements." The AAO acknowledges that the standard of proof is preponderance of the evidence, as noted by counsel on appeal. The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. *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)(2) and (3). In this matter, the documentation submitted by the petitioner fails to demonstrate by a preponderance of the evidence that he has achieved sustained national or international acclaim and that he is one of the small percentage who has risen to the very top of the field of endeavor.

For the reasons discussed below, the AAO will uphold the director's determination that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, while the AAO affirms the director's finding that the petitioner has submitted qualifying evidence that meets the plain language of the judge of the work of others criterion pursuant to 8 C.F.R. § 204.5(h)(3)(iv), the AAO withdraws the director's findings that the petitioner's evidence meets the nationally or internationally recognized awards criterion and the published material about the alien criterion pursuant to 8 C.F.R. §§ 204.5(h)(3)(i) and (iii). Accordingly, the petitioner has failed

to demonstrate that he satisfies the antecedent regulatory requirement of three types of evidence. Further, as will be explained in the AAO's final merits determination, the evidence that technically qualifies under the judging criterion at 8 C.F.R. §§ 204.5(h)(3)(iv) reflects participation that is not consistent with a finding that the petitioner enjoys sustained national or international acclaim at the very top of the field. As will be discussed further in the final merits determination, while counsel notes the caliber of the references who support the petition, their accomplishments and comments only reinforce the AAO's conclusion that the very top of the petitioner's field is far higher than the level he has achieved.

I. Law

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence:

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) 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;

(iii) 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;

(iv) 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 specialization for which classification is sought;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

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

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*, 580 F.3d 1030 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will apply the two-step analysis dictated by the *Kazarian* court.

II. Analysis

A. Evidentiary Criteria

This petition, filed on May 2, 2012, seeks to classify the petitioner as an alien with extraordinary ability as a writer. Counsel notes that the petitioner has worked "as a journalist, television writer and playwright." The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion.

The petitioner asserts that he received a [REDACTED] for his novel [REDACTED] that was published by [REDACTED]. The petitioner submitted a April 23, 2012 letter from [REDACTED] stating:

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

This letter confirms that [the petitioner] was the winner of the [redacted] for his novel [redacted] [The petitioner's] novel received the highest number of votes of the seven books nominated in the [redacted] category.

Books are nominated by the [redacted] and leading [redacted] publishers, and reflect the top titles published in the preceding year. The [redacted] award is administered by online book retailer [redacted] and results are published on the [redacted] site.

Receipt of a [redacted] award in the fiction category represents a significant honor for an author. Hundreds of books are eligible annually for this award, yet only a select few are nominated and only one title is declared the winner. Last year, the general winner was [redacted] historical narrative [redacted] and the winner in the [redacted] category was [the petitioner's] [redacted]

The petitioner also submitted [redacted] posted on the [redacted] website, but the English language translation accompanying the results was not certified by the translator and was not a full English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.* The submitted results indicate that [redacted] received a total of 499 votes in the [redacted] category. The AAO is not persuaded that receiving the highest number of votes on the [redacted] website constitutes excellence in the literary field.

The director issued a request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) stating that "no actual photo or photocopy of an award has been provided." The director specifically requested the petitioner to provide a copy of his prize or award certificate, or a clear photograph of his prize or award. In response, counsel states: "Regrettably, the photo is unavailable." Counsel fails to explain why primary evidence of the petitioner's award is unavailable. Rather than submitting primary evidence of the petitioner's [redacted] the petitioner instead submitted an April 23, 2012 letter from his book publisher asserting that he received the award. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.* In this instance, the petitioner has not demonstrated that primary evidence of his [redacted] does not exist or cannot be obtained.

On appeal, the petitioner submits what counsel claims is "a printout from the [redacted] website," but the submitted material does not bear an internet address to demonstrate its

specific source. Counsel points to “extensive media attention that was generated by [the petitioner’s] receipt of the award” and reference letters commenting on the petitioner’s receipt of the award.

The petitioner submitted an English language translation of a March 14, 2011 interview that was purportedly broadcast on the [redacted] in [redacted] stating that his novel “won the prize [redacted] but the petitioner failed to submit a video recording of the segment or a copy of the show’s television transcript in the [redacted] language. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). According to the “Work Experience” listed on the petitioner’s resume, the petitioner has worked as a “Program Development Expert” for [redacted] since 2010. In addition, the submitted interview translation states that the petitioner is “responsible for program development at [redacted]. The preceding interview by the petitioner’s colleague at the television station where he works does not establish that his award is a nationally or internationally recognized award for excellence in the literary field. None of the other television interview translations submitted by the petitioner specifically mention him as having won a [redacted].

The petitioner submitted an April 16, 2010 book review of [redacted] newspaper, but the submitted article does not mention the petitioner’s [redacted] award. The petitioner also submitted a March 9, 2011 article posted on the website of [redacted] newspaper, “The news of [redacted]” (emphasis added) stating: “The alum of the [redacted] in [redacted] [the petitioner] won the prize for author of the best [redacted].” According to the internet screenshot submitted by the petitioner, the March 9, 2011 article on [redacted] website had generated only “1318 views” and “2 comments” as of January 20, 2012. The petitioner has not established that media coverage limited to [redacted] and in an online article with only 1318 views demonstrates that his award is a nationally or internationally recognized award for excellence in the literary field. In addition, the petitioner submitted a 2010 interview in [redacted] magazine, but the article does not mention the petitioner’s [redacted] award. The petitioner also submitted a March 8, 2011 article posted at [redacted] an online student “Portal for Education and Science.” stating that the petitioner “won the award in the category [redacted] for his novel [redacted].” According to the internet screenshot submitted by the petitioner, the March 8, 2011 article posted at [redacted] had 109 positive responses and zero comments as of July 12, 2012. The petitioner’s documentation also included a March 8, 2011 article posted on the internet site of his alma mater, the [redacted] and at [redacted] and an additional unidentifiable internet address stating that he won a [redacted]. There is no documentary evidence showing that the preceding websites have significant national or international readership, or that the online articles submitted by the petitioner otherwise demonstrate the national or international

³ The petitioner received a Bachelor of Arts in Journalism-Mass Communication from the [redacted]

recognition of his award. None of the remaining published articles submitted by the petitioner mention his receipt of the award.

The petitioner submitted a February 21, 2012 letter from [REDACTED] retired [REDACTED] stating that he has collaborated with the petitioner in the past on "a four-volume study of classical dramatic monologues ranging from the Greek tragedians to Bernard Shaw." The AAO notes that [REDACTED] has also taught at [REDACTED], where the petitioner received his Master of Fine Arts degree in 1999.⁴ [REDACTED] further states: "[The petitioner's] second novel, [REDACTED] was written last year. . . . Its achievement was immediately recognized in [REDACTED] where it won the nation's [REDACTED] award – the equivalent of our Pulitzer Prize." The petitioner also submitted a February 20, 2012 letter from [REDACTED] currently a [REDACTED] who taught with [REDACTED] in the [REDACTED] states: [REDACTED] highest Literary Prize, the [REDACTED] which is equivalent in importance to the Booker Prize in England." There is no documentary evidence showing that the petitioner's [REDACTED] award is nationally recognized in [REDACTED] let alone that it has a level of recognition or distinction equivalent to that of the Pulitzer Prize or the Booker Prize, the two awards to which [REDACTED] compare the petitioner's award. With regard to [REDACTED] and [REDACTED] comments, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Further, if USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner has failed to submit evidence demonstrating the national or international *recognition* of his [REDACTED]. 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 his burden to establish every element of this criterion. There is no documentary evidence showing that the petitioner's award was recognized beyond the presenting organization, his employer, his alma mater, or his references at a level commensurate with a nationally or internationally recognized prize or award for excellence in the field.

Furthermore, the AAO notes that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires qualifying "prizes or awards" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) require service on only a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of

⁴ The petitioner submitted a July 8, 2006 article in *Sega* newspaper that identifies [REDACTED] as the petitioner's "professor at the university." In addition, the petitioner submitted "Biographical Information" about [REDACTED] indicating that he was a visiting professor at [REDACTED]

experience must be in the form of “letter(s).” Thus, the AAO must conclude that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that his [REDACTED] meets the elements of this criterion, which he has not, a single qualifying award does not meet the plain language requirements of this criterion.

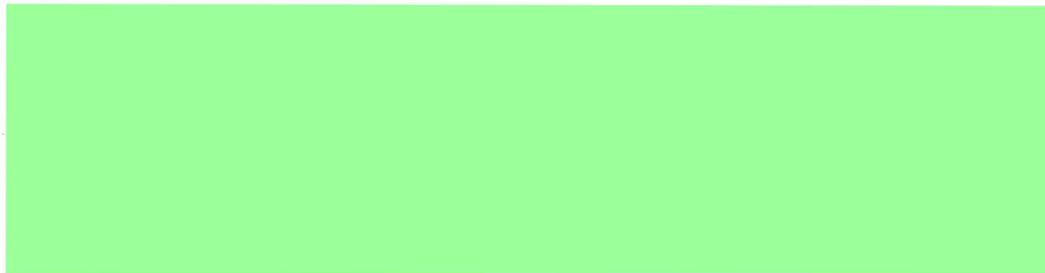
In light of the above, the petitioner has not established that he meets this regulatory criterion.

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 AAO withdraws the director’s finding that the petitioner meets this regulatory criterion.

In general, in order for published material to meet this criterion, it must be 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. 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.⁵

The petitioner submitted English language translations of interviews of him that were purportedly broadcast on:



With regard to the preceding English language translations, the petitioner failed to submit a video recording of the segment featuring him or a copy of the show’s television transcript in the [REDACTED] language. As previously discussed, going on record without supporting documentary

⁵ 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.

evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Further, the plain language of this regulatory criterion requires “published material about the alien” including “the title, date and author of the material.” A television show purportedly featuring the petitioner does not meet these requirements. Further, while the petitioner submitted general information about the preceding television networks from *Wikipedia* and the networks themselves, the petitioner did not submit evidence indicating the viewership of the specific programs on which he was interviewed. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁶ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source. In addition, regarding the self-serving information submitted from the television networks themselves, USCIS need not rely on self-promotional material. See *Braga v. Poulos*, No. CV 06 5105 SJO, *aff’d* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media).

The petitioner submitted a June 2006 article about himself in [REDACTED] magazine entitled [REDACTED]. While the petitioner submitted information about the magazine from its website, the petitioner failed to submit any independent, objective evidence establishing that [REDACTED] magazine is a professional or major trade publication or some other form of major media. As previously discussed, USCIS need not rely on self-promotional material. See *Braga v. Poulos*, at 680.

The petitioner submitted a June 2006 article about himself in [REDACTED] magazine entitled [REDACTED] but the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also submitted a June 2006 review of his book [REDACTED] but once again, the author was not identified as required by the plain language of this regulatory criterion. Further, the book review is about the petitioner’s book, not the petitioner himself. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien” relating to his work rather than simply about the petitioner’s work. Compare 8 C.F.R.

⁶ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . ***Wikipedia cannot guarantee the validity of the information found here.*** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on February 11, 2013, copy incorporated into the record of proceeding.

§ 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act (requiring evidence of published material about the alien's work). *See also Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at *1, *9 (S.D.N.Y. Nov. 14, 2012); *also see generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer). Moreover, there is no documentary evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted a 2010 interview of him in [REDACTED] entitled [REDACTED] but the author of the article was not identified as required by the plain language of this regulatory criterion. The petitioner also submitted a 2006 listing in [REDACTED] magazine indicating that his book [REDACTED] was the third best-selling book at [REDACTED] Bookstore (which the petitioner identifies as a bookstore in [REDACTED], but the English language translation accompanying the material was not a full English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the author of the material was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the submitted material was a listing of numerous books and did not focus on the petitioner. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien . . . relating to the alien's work in the field." Thus, an article that mentions the petitioner but is "about" someone or something else cannot qualify under the plain language of this regulation. *See Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at *9; *also see generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *7. Moreover, there is no documentary evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted a July 8, 2006 article about himself in [REDACTED] newspaper entitled [REDACTED]. The petitioner also submitted a [REDACTED] analysis prepared by [REDACTED] Professor of Journalism and Mass Communication at [REDACTED] and posted online by the [REDACTED]. [REDACTED] media analysis states:

In 2003, the daily circulation of [REDACTED] was estimated at about 300,000 copies; currently it stands at between 70,000 and 100,000 copies. The circulation of the other [REDACTED] newspaper, [REDACTED] also dropped drastically and from a circulation of about 150,000 copies to 60,000 copies.

Among the other national dailies [REDACTED] with a circulation of about 35,000 copies during the week and twice higher during the weekend, is worth a mention; others are [REDACTED] – about 12,000 copies, [REDACTED] – about 9,000 copies, [REDACTED] – about 15,000 copies, and [REDACTED] – 10,000 copies. The only daily that increased significantly its circulation in recent years is [REDACTED] whose circulation is currently estimated at over 100,000 copies.

[Emphasis added]. The petitioner also submitted information about [redacted] from the publication's own website, but as previously discussed, USCIS need not rely on self-promotional material. See *Braga v. Poulos*, at 680. According to [redacted]'s media analysis, [redacted] had the lowest circulation (9,000 copies) among the national dailies in [redacted]. The petitioner, therefore, has not established that the newspaper qualifies as a form of "major media" in the same manner as [redacted].

The petitioner submitted a March 9, 2011 article entitled [redacted] [redacted] is the best [redacted] that was posted on the website of [redacted] newspaper, "The news of [redacted] (emphasis added). According to the internet screenshot submitted by the petitioner, the March 9, 2011 article on [redacted] website had generated only "1318 views" and "2 comments" as of January 20, 2012. The petitioner also submitted information "from the website of [redacted] publisher of [redacted] newspaper," stating: [redacted] newspaper is the largest informative-analytical, regional daily in [redacted] with a circulation of 15,000 daily It is the first private, independent daily in the region." Regarding the self-serving information submitted from [redacted] publisher, as previously discussed, USCIS need not rely on self-promotional material. See *Braga v. Poulos*, at 680. The petitioner failed to submit any independent, objective evidence establishing that [redacted] is a form of major media.

The petitioner submitted a February 15, 2007 profile of him in [redacted] a [redacted] of his alma mater, [redacted]. The petitioner also submitted information from [redacted] website stating: [redacted] is a student-run newspaper and online publication at [redacted]. Over the years, [redacted] mission has been to provide [redacted] community, and everyone interested in the university, with the most relevant and current information." In addition, the petitioner submitted a March 8, 2011 article posted on the internet site of his alma mater, [redacted] [the petitioner] [redacted]. There is no independent, objective documentary evidence showing that [redacted] and [redacted] website qualify as professional or major trade publications or other major media.

The petitioner submitted a March 8, 2011 article entitled [redacted] winning [redacted] [the petitioner]" that was posted at [redacted] an online student "Portal for Education and Science." According to the internet screenshot submitted by the petitioner, the March 8, 2011 article posted at [redacted] had 109 positive responses and zero comments as of July 12, 2012. The petitioner also submitted March 8, 2011 articles about himself posted at [redacted] and at an additional unidentifiable internet address. The authors of the preceding online articles were not identified as required by the plain language of this regulatory criterion. Further, there is no documentary evidence showing that the preceding websites qualify as major media.

The petitioner submitted an April 16, 2010 article in [redacted] newspaper entitled [redacted] [the petitioner]." The petitioner also submitted a May 2006 article in [redacted] that briefly mentions the petitioner's novel, but the English language translation accompanying the material was not a full English language translation as required by the regulation at 8 C.F.R.

§ 103.2(b)(3). In addition, the author of the May 2006 article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the May 2006 article does not appear to be about the petitioner. The AAO notes that the media analysis from [REDACTED] states that [REDACTED] "has a very restricted circulation." Furthermore, while the petitioner submitted information from [REDACTED] describing itself as a "weekly newspaper for arts, culture and politics," the petitioner failed to submit evidence (such as objective circulation information from an independent source) showing the distribution of [REDACTED] relative to other [REDACTED] media to demonstrate that the newspaper qualifies as a form of "major" media.

The petitioner submitted an English language translation of an online article that was purportedly posted at [REDACTED] but the petitioner failed to submit a copy of the original article in the [REDACTED] language. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Further, the date and author of the article were not identified as required by the plain language of this regulatory criterion. In addition, there is no documentary evidence showing that [REDACTED] qualifies as a form of major media.

The petitioner submitted a July 2006 article in [REDACTED] entitled [REDACTED] but the author of the material was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also submitted information about the [REDACTED] from *Wikipedia*, but the *Wikipedia* entry does not discuss the [REDACTED] publication or its specific distribution. With regard to information from *Wikipedia*, as previously discussed, there are no assurances about the reliability of the content from this open, user-edited internet site. See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d at 909. Moreover, while [REDACTED] media analysis refers to the magazines [REDACTED] there is no objective evidence showing the distribution of [REDACTED] relative to other [REDACTED] magazines to demonstrate that it qualifies as a form of "major" media.

In light of the above, the petitioner has not established that he 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 petitioner submitted pages 2 and 3 of the Fall 1993 issue of [REDACTED] a student publication of his alma mater. Page 2 identifies the petitioner as one of four members of the editorial board for [REDACTED]

The petitioner submitted a January 17, 2012 letter from [REDACTED] Hollywood, California, stating:

Our festival was founded in Los Angeles in 2002 with the mission of educating about and promoting the cultural diversity of South East Europe through its annual presentations of films from this region and year-round screenings and programs. [REDACTED] organizes

international conferences and retrospectives, serves as the cultural hub and resource for scholars and filmmakers, and creates opportunities for cultural exchange between Southern California and [REDACTED]

* * *

As a result, the [REDACTED] has invited [the petitioner] to act as a reviewer and judge of international film entries, and we have benefitted tremendously from his insightful input.

* * *

For the 2011 edition of our festival, [the petitioner] reviewed six recent [REDACTED] films, and recommended two for inclusion into our program. The movie that he championed, [REDACTED] opened the festival and ended up receiving the first feature award. This certainly confirms [the petitioner's] extraordinary artistic abilities and his keen eye for the best the film industry has to offer. He has a unique understanding of what an American audience would appreciate about [REDACTED] art, skillfully bridging the gap between the [REDACTED] and the American mainstream.

The petitioner also submitted documentation of his six [REDACTED] film reviews for the 2011 [REDACTED]

This above evidence satisfies the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Accordingly, the AAO affirms the director's finding that the petitioner meets this regulatory criterion.

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this regulatory criterion. 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." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original scholarly or 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).

The petitioner submitted letters of support discussing his work. [REDACTED] the petitioner's former professor at [REDACTED] states:

Because of [the petitioner's] outstanding talent as a writer and literary critic, I have invited him to collaborate with me in the past

* * *

Together, [the petitioner] and I have prepared a four-volume study of classical dramatic monologues ranging from the [REDACTED] Through close readings of the many hundreds of texts we used, the volumes, in addition to their function as monologues, grew into an insightful history of evolving cultural patterns in Western thought. [The petitioner] contributed not only sophisticated scholarship and critical insight into text, but an astonishing range of knowledge of Western literature. The volumes are now recognized as unique for their originality and comprehensiveness.

[REDACTED] comments that the four volumes of classic dramatic monologues that he and the petitioner prepared are "recognized as unique for their originality and comprehensiveness." 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" in the field. While the petitioner's assistance may have been useful to [REDACTED] fails to provide specific examples of how their work has impacted the literary field as a whole or otherwise equates to original scholarly or artistic contributions of major significance in the field.

[REDACTED] states:

[The petitioner] became literary collaborator to [REDACTED] and with [REDACTED] went on to publish four volumes of dramatic monologues "From [REDACTED] Those books have since become classics in their field, and [the petitioner's] input was critical to this accomplishment. It is clear to anyone who reads these volumes that the notes and exemplary critical analysis in these texts is the result of deep understanding and superb scholarship of both these authors.

* * *

[The petitioner] has achieved renown in his native [REDACTED] through the publication of his two novels [REDACTED] a comic romp through the absurdities of [REDACTED] His second novel [REDACTED] is a modern masterpiece of thoughtful reflection on the consequences of cultural obsolescence.

[REDACTED] won [REDACTED] highest Literary Prize, the [REDACTED] Award, which is equivalent in importance to the Booker Prize in England. [The petitioner] has prepared spellbinding English translations of both these works. When published in the United States, I believe these two translations will expand on [the petitioner's] acclaim and recognition in [REDACTED] and will establish him in the United States as one of the preeminent novelists of the emerging "global" perspective in international literature.

[REDACTED] asserts that the four volumes of dramatic monologues prepared by [REDACTED] with the assistance of the petitioner "have since become classics in their field," but [REDACTED] fails to provide specific examples of how those volumes have been of major influence in the field. For

instance, [REDACTED] does not indicate that the volumes have been extensively published, enjoyed by multiple generations of readers, or widely praised by independent book critics so as to demonstrate that the volumes have been of “major significance in the field.” [REDACTED] also states that [REDACTED] highest Literary Prize, the [REDACTED] Award, which is equivalent in importance to the Booker Prize in England.” As previously discussed, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. at 15. There is no documentary evidence showing that the petitioner’s [REDACTED] award has a level of recognition or distinction equivalent to that of the Booker Prize. The AAO cannot conclude that receiving a total of 499 votes through a book retailer’s online voting system demonstrates that the petitioner’s novel is of major significance to the field as a whole. [REDACTED] does not provide specific examples of how the petitioner’s novel has substantially impacted the literary field or otherwise constitutes an original artistic contribution of major significance in the field. Lastly, [REDACTED] expresses his belief that “[w]hen published in the United States,” the two translations of the petitioner’s books “will expand on [the petitioner’s] acclaim and recognition in [REDACTED] and will establish him in the United States as one of the preeminent novelists of the emerging ‘global’ perspective in international literature.” The AAO notes that any impact resulting from the novels [REDACTED] being published in English and distributed in throughout the United States post-dates the May 2, 2012 filing of the petition. Eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

[REDACTED] states:

I am well familiar with [the petitioner’s] plays, screenplays and his two award-winning novels, [REDACTED] published in 2006, and [REDACTED] published in 2011 (and winner of the [REDACTED]). These two novels have garnered an international reputation in the field. What is most striking to me about his creative work is that from the very beginning, even back in the late 1990’s, [the petitioner’s] work revealed a keen global perspective, bringing together his experiences in his native [REDACTED] and his increasing knowledge and appreciation for the culture of the West. It is this level of creativity and artistic wisdom that separates [the petitioner] from the rest and propels him to the top of the field. He is a most talented writer, one whose work is original and inventive, probing, and passionate.

* * *

[The petitioner’s] latest creative accomplishments, the two novels, were both nationally recognized with top literary awards. Both novels include fluid dramatic language and

highly charged cinematic stories, which is to say, they could be adapted into movies quite easily.

asserts that the petitioner's novels "have garnered an international reputation in the field," but she fails to provide specific examples regarding how the petitioner's work has had a major influence on the literary field. In the field of literature, it is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted the field as a whole in order to meet this regulatory criterion. also comments that the petitioner's novels "could be adapted into movies quite easily," but there is no documentary evidence showing that any motion picture production companies have executed such an agreement with the petitioner as of the date of filing the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petitioner cannot file a petition under this classification based solely on the expectation of future eligibility. *Id.*

states:

I am an award-winning writer and director of television, film and theater, having written and directed for hit television shows such as . I have worked with and evaluated many creative professionals, and [the petitioner] is one of the more outstanding.

* * *

Originally, I came across [the petitioner's] work in 1999 and was struck immediately by his play . It was clear even from that early work that [the petitioner] has an important artistic voice, a deep grasp of structure, and an aptitude for research.

A couple of years later, as part of the writing team on the NBC television show I brought [the petitioner] to the company, as an associate to the production. I have followed his outstanding work over the years. I enthusiastically confirm that I would hire him to work for me

* * *

Recently, I had the pleasure of reading [the petitioner's] novel which has received national and international acclaim. It is the work of an extraordinary writer, with a firm grasp of storytelling, character and language. An additional accomplishment of the text is the painstaking research of every strata of society. The story moves from ghettos, to high-ranking political offices, to the beaches and mountain villages of the country. [The petitioner] studied the recent history of and used it to fictionalize actual persons and events. The authentic details, researched through travel and interviews, show [the petitioner's] skill for adapting reality to the intricacies of fiction. I was not surprised to learn that his novel has been voted the highest literary prize in .

(b)(6)

[redacted] praises the petitioner for his play [redacted] and his novel [redacted] but she fails to provide specific examples regarding how these works have significantly impacted the field or otherwise equate to original artistic contributions of major significance in the field. [redacted] also compliments the petitioner on his "aptitude for research" and his "skill for adapting reality to the intricacies of fiction." The AAO notes that having a diverse or unique skill set is not an artistic contribution of major significance. Rather, the record must be supported by evidence that the petitioner has already used his unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998).

[redacted] and [redacted] states:

[The petitioner] is a remarkable talent who has made tremendous contributions, which has left a permanent mark on our national literature and culture. Therefore, I fully support his petition of extraordinary ability and attest that he belongs to the top 1% of [redacted] literary talent.

* * *

It takes really extraordinary professionals to work for such giant media institutions as the Academy Awards and the television show [redacted] [The petitioner] obviously impressed the producers of such landmark productions which are viewed by billions of viewers all over the world. Upon his return to [redacted] in 2004, he immediately rose to become one of the top professionals in this country's mass media. . . . Several months after his return, [the petitioner] was offered the Executive Producer position on the only [redacted] TV series at the time, [redacted] Later, he became a Creative Producer, the top job, on [redacted] a truly groundbreaking show, which started the current avalanche of local productions.

* * *

[The petitioner] wrote a novel which has no equivalent in this country's post-communist literature. [redacted] remains in a category of its own, not just in terms of writing technique, but in terms of its ideas. His second novel [redacted] voted [redacted] draws from our homegrown tradition of crime writing and reporting, and goes beyond the facts, events and numbers in the recent [redacted] history. [The petitioner] doesn't have any traces of the small country writer's syndrome, provincialism. His concerns are global, and he has the ability to match them with his writing.

asserts that the petitioner “belongs to the top 1% of literary talent” but does not explain how the petitioner’s work has been of major significance to the literary field. While states that the petitioner served as an Executive Producer for and as a Creative Producer for there is no documentary evidence showing that the petitioner’s original work for these television programs constitutes artistic contributions of major significance in the field. asserts that a truly groundbreaking show, . . . started the current avalanche of local productions,” but fails to identify the “local productions” resulting from the petitioner’s work or to provide specific examples of how the petitioner’s original innovations were of major significance to the television industry. Regarding the petitioner’s novels and although such works may certainly be considered original, the record contains no evidence such as the books’ influence on other fiction authors, their impact on society, or an unusually large number of copies sold, to demonstrate that his works are considered to be of major significance to the literary field.

playwright and teacher, states:

For over five decades my teaching career has included, beside work at I, thus, am delighted to confirm that [the petitioner] is a writer of extraordinary ability who has earned a sustained reputation as one of most important modern novelist [sic]. He is . . . a prize-winning author and translator and is considered one of the leading international scholars of today. I have had occasion, as well, to observe [the petitioner] in his work as a celebrated researcher and translator.

asserts that the petitioner is a “writer of extraordinary ability,” but merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). also comments that the petitioner is “one of most important modern novelist[s]” and “one of the leading international scholars of today.” As previously discussed, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. at 15. While offers general praise for the petitioner, fails to specifically identify the petitioner’s original contributions and how they have been of major significance in the literary field. The lack of any specific information offers no evidence of original artistic contributions of major significance in the field.

states:

for the past 5 years has been the biggest radio group in Apart from producing many radio programmes and music formats, we also organize some of the top music events throughout the year, among them is the this country’s equivalent of the Grammy Awards.

I have been familiar with [the petitioner's] writings since his early theatrical plays in the mid-1990s. They were an instant success; immediately connecting with his intended audience. As a result, [the petitioner] became a nationally known dramaturge, with a strong reputation as one of the country's best. The scope of themes and topics that interest him led him to a world stage, the largest stage on the planet where he aims to create his art, Hollywood.

[The petitioner] has worked on multiple highly successful and award-winning productions, such as the [REDACTED]

* * *

As soon as he returned to [REDACTED] in 2004, I was thrilled to offer him the writing of the script for [REDACTED]. His experience at the [REDACTED] made him the top talent I needed for our show, which is not only the number one music show in terms of viewing audience but also renowned for the daring and innovation of its production. Writing the script of a live ceremony which is also a television show requires a complex combination of skills, and [the petitioner] is better prepared than anyone else in this country. His unique background makes him the number one choice for a show which strives to be the best. As a result, I confirm that [the petitioner] played a critical and leading role on the distinguished production of the [REDACTED] and his superb effort resulted in an outstanding show.

[REDACTED] comments that the petitioner's "early [REDACTED] were "an instant success," but there is no documentary evidence demonstrating the petitioner's substantial influence as a playwright or that his work was otherwise of major significance to the field at large. [REDACTED] also comments on the petitioner's "experience at the [REDACTED]" "complex combination of skills," and "unique background." As previously discussed, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Assuming the petitioner's skills and experience are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221. While [REDACTED] states that the petitioner wrote the script for [REDACTED] does not provide specific examples demonstrating the impact of the petitioner's work at a level indicative of original artistic contributions of major significance in the field.

[REDACTED] states that she worked as Programming Director [REDACTED] from 2005 - 2008. [REDACTED] further states:

In 2007, after introducing reality television on the market with [REDACTED] which was a tremendous success not only for the station but for the industry as a whole, the management of [REDACTED] decided to follow the success by producing a daily drama series.

(b)(6)

* * *

[redacted] management and our partners from [redacted] unanimously gave [the petitioner] the key position of Creative Producer, which was critical to the show's and, ultimately, network's, success.

* * *

As a result of [the petitioner's] outstanding strategic choices, the writers on our show, [redacted] went on to become the most successful professional screenwriters in the country today.

Overall, [the petitioner] turned the production into a resounding success. Despite many programming reshuffles after [redacted] got bought by [redacted] for a record sum, [redacted] stayed as one of a very few programs that continued to perform steady and well among its target audience. He, through his immeasurable talents, established a firm base on which the show ran for over two years.

While the petitioner's work and strategic choices as a creative producer may have contributed to [redacted] fails to specifically identify an original artistic contribution made by the petitioner or explain how it has impacted the television industry as a whole. The lack of any specific information offers no evidence of original artistic contributions of major significance in the field.

The preceding references praise the petitioner and his work, but there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance in the field. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of "major significance." The AAO is not persuaded by vague, solicited letters that simply repeat the statutory or regulatory language but do not explain how the petitioner's contributions have already influenced 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 at 1036 *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field.

The opinions of the petitioner's references are not without weight and have been considered above. 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 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. *See id.* at 795-796; *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"). Thus, the content of the references' 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 that one would expect of a writer who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's work has been unusually influential, substantially impacted his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he 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 petitioner submitted evidence of his books [REDACTED] but his novels do not equate to "scholarly articles in the field, in professional or major trade publications or other major media."

The petitioner submitted documentation indicating that he served as an "editor" for [REDACTED] book [REDACTED]. The AAO notes that [REDACTED] was the author of the book, not the petitioner. Providing oversight of [REDACTED] authorship of [REDACTED] or assisting her with copyediting the text does not constitute evidence of the petitioner's "authorship" of a scholarly article in a professional or major trade publication or some other form of major media.

The petitioner submitted pages from a book entitled [REDACTED]. The cover of the book states: "Edited by [REDACTED] with the assistance of [the petitioner]." In addition, the copyright page of the book states: "edited with introductions by [REDACTED] with the assistance of [the petitioner]." The petitioner also submitted a February 17, 2012 internet screenshot from [REDACTED] stating that the book was "was written by [REDACTED] (Editor)," with "Contributions by" the petitioner. On appeal, the petitioner submits a new internet screenshot from [REDACTED] now listing both [REDACTED] and the petitioner as "Editor." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The "Publisher Notes" states that the book "[c]ontains over 250 monologues that cover over [REDACTED]." The petitioner also submits internet screenshots from two online libraries stating that [REDACTED] was "edited with an introductions [sic] by [REDACTED] with the assistance of [the petitioner]."

With regard to [REDACTED] the previously mentioned letter from [REDACTED] states:

Together, [the petitioner] and I have prepared a four-volume study of classical dramatic monologues ranging from the [redacted] Through close readings of the many hundreds of texts we used, the volumes, in addition to their function as monologues, grew into an insightful history of evolving cultural patterns in Western thought. [The petitioner] contributed not only sophisticated scholarship and critical insight into text, but an astonishing range of knowledge of Western literature.

As previously discussed, the letter from [redacted] states:

[The petitioner] became literary collaborator to Professor [redacted] and with Professor [redacted] went on to publish four volumes of dramatic monologues "[redacted] Those books have since become classics in their field, and [the petitioner's] input was critical to this accomplishment. It is clear to anyone who reads these volumes that the notes and exemplary critical analysis in these texts is the result of deep understanding and superb scholarship of both these authors.

There is no documentary evidence to support [redacted] assertion that the four volumes "have since become classics in their field." As previously discussed, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. at 15. Further, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. at 165. Regardless, the plain language of this regulatory criterion requires evidence of the "alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." The petitioner has not established that assisting [redacted] in compiling books of dramatic monologues written by authors such as [redacted] equates to the petitioner's "authorship of scholarly articles." In this instance, the petitioner failed to submit documentary evidence of the specific "scholarly articles" in the four volumes that he authored. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). In addition, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. Moreover, even if the petitioner were to submit evidence of the scholarly articles that he authored in the four volumes, which he has not, there is no evidence demonstrating that [redacted] four books equate to professional or major trade publications or other major media.

The petitioner submitted a "short story" entitled [redacted] that was published in [redacted] but the petitioner has not established that his short story equates to a "scholarly article." Further, there is no evidence showing that [redacted] qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted a "marketing article" in [redacted] entitled [redacted] The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of the "alien's authorship of scholarly articles *in the field*, in professional or major trade publications or other major media." [Emphasis added.] The title of the article indicates that it

pertains to marketing and business rather than the petitioner's field of the literary arts. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise). Further, the petitioner failed to submit a certified English language translation of the article as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner submitted an essay entitled [REDACTED] that was published in [REDACTED] but he failed to submit a certified English language translation of the essay as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no documentary evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted poems and short stories that he authored in [REDACTED] and articles that he wrote for [REDACTED] newspaper, but he failed to submit certified English language translations of his published literary works as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of *scholarly* articles in the field." [Emphasis added.] Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this instance, the record lacks evidence demonstrating that the petitioner's literary works were peer-reviewed, contain any references to sources, or were otherwise considered "scholarly." Moreover, there is no documentary evidence showing that [REDACTED] qualify as professional or major trade publications or other major media.

The petitioner submitted three articles entitled [REDACTED] and [REDACTED] [REDACTED] that he wrote for an issue of the [REDACTED]. The articles, which are about events at [REDACTED] and its students' activities, do not equate to "scholarly articles." Further, there is no evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

In light of the above, the petitioner has established that he meets the plain language requirements of this regulatory criterion.

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

The petitioner did not initially claim eligibility for this regulatory criterion. In response to the director's request for evidence and again on appeal, counsel asserts that the petitioner's work as writer for [REDACTED] television shows meets this criterion. The director concluded that writing a script for a film or television show did not constitute display of the petitioner's work in the field at artistic exhibitions or showcases. Neither counsel nor the petitioner has explained how his specific productions were displayed "at artistic exhibitions or showcases." 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 writer. When he writes a script for a film, a television show, or a play, he is not displaying his work in the same sense that a painter or sculptor displays his work in a gallery or museum. The petitioner is writing a script

that others will perform; he is not “displaying” his work. 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).

On appeal, counsel states:

Whether the AAO concludes that this regulatory criterion is, indeed, applicable to the petitioner’s occupation, or if the criterion does not readily apply for his occupation, this evidence can be regarded as comparable evidence, we respectfully request that [the petitioner’s] successful career as a screenwriter whose written scripts have been produced . . . be considered admissible evidence.

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 the alien’s 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). 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). In fact, as indicated in this decision, the petitioner submitted evidence that specifically addresses eight of the categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). 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.

Regardless, even if the AAO were to consider the petitioner’s “career as a screenwriter” as comparable evidence for the regulation at 8 C.F.R. § 204.5(h)(3)(vii), the AAO is not persuaded that simply writing material for television shows or films is sufficiently comparable to having one’s work displayed “at artistic exhibitions or showcases.” For instance, while a screenwriter or producer whose film is shown at film festival showcases (such as the Sundance Film Festival and the Cannes Film Festival) may constitute evidence comparable to “artistic exhibitions or showcases” for this regulatory criterion, simply writing a screenplay without having it showcased in some formal manner does not qualify as comparable evidence for this regulatory criterion. To the extent that the petitioner is a writer for television or film productions, it is inherent to his occupation to write scripts for television shows or screenplays for motion picture films that are shown to the public. Not every such production is an artistic exhibition designed to showcase the writer’s work.

In light of the above, the petitioner has not established that he 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 letter from [redacted] stating:

[redacted] management and our partners from [redacted] unanimously gave [the petitioner] the key position of Creative Producer, which was critical to the show's and, ultimately, network's, success.

* * *

[redacted] is among the world leaders in the production of daily dramas. The fact that this renowned company that has its pick of the world's leading entertainment professionals chose [the petitioner] as our project's Creative Director fully confirms his position as one of the leading talents in the field. In fact, [redacted] manual, which we adopted for the production, states in regards to the Creative Producer: "The Big Job. The producer is the caring, visionary, creative head of the series. He/She . . . is the guardian of the vision for the show. He/She is the only person on the whole team with a clear vision of what the show is about in the broadest terms. He is aware of future stories. He casts the main roles. He decides on the look of the show. It is his/her difficult task to manage the gentle balance between the creative and the logistics." Clearly, this confirms that the position of the Creative Director is a critical and leading role, and playing such a role for [redacted] a distinguished organization, underscores [the petitioner's] renown and acclaim.

* * *

Overall, [the petitioner] turned the production into a resounding success. Despite many programming reshuffles after [redacted] got bought by [redacted] for a record sum, [redacted] stayed as one of a very few programs that continued to perform steady and well among its target audience.

The petitioner submitted documentary evidence demonstrating that [redacted] Television and [redacted] Media had distinguished reputations during his employment. Although the petitioner may have performed in a leading or critical role as Creative Producer/Director for the [redacted] television show, the petitioner has not established that he performed in a leading or critical role for the [redacted] production company or the [redacted] Television network. In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien is responsible for the success or standing of the organization. The petitioner failed to submit organizational charts or similar documentary evidence to demonstrate where his Creative Producer/Director position fit within the overall hierarchy of [redacted] Television. The letter from [redacted] fails to explain how the petitioner's role was leading relative to that of [redacted] Television or [redacted] other television series producers and directors, let alone the top officers or executives who ran the companies. Further, the submitted evidence does not

establish that the petitioner was responsible for the preceding companies' success or standing to a degree consistent with the meaning of "critical role." While the petitioner may have performed admirably on the [redacted] television show project, there is no evidence showing that his role as Creative Producer/Director was leading or critical to the preceding companies as a whole.

The petitioner submitted a letter from [redacted] stating:

As CEO of [redacted] I manage the company's operations in [redacted] that include seven of the leading radio stations in [redacted] as well as the number one music TV channel in the country. [redacted] is owned by one of the leading [redacted] that owns the leading radio stations in [redacted]. Apart from producing many radio programmes and music formats, we also organize some of the top music events throughout the year, among them is the [redacted] this country's equivalent of the Grammy Awards.

* * *

I was thrilled to offer [the petitioner] the writing of the script for [redacted]. His experience at the [redacted] made him the top talent I needed for our show, which is not only the number one music show in terms of viewing audience but also renowned for the daring and innovation of its production. . . . As a result, I confirm that [the petitioner] played a critical and leading role on the distinguished production of the [redacted] and his superb effort resulted in an outstanding show.

The petitioner submitted general information about [redacted] from its website, but there is no documentary evidence showing that [redacted] have a distinguished reputation. Regarding the self-serving information in [redacted] letter and submitted from [redacted] parent company's website, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680. Further, while the petitioner may have written the script for [redacted] the petitioner failed to submit documentary evidence showing that he performed in a leading or critical role for [redacted] as a whole. Moreover, the AAO notes that a one-time event such as the [redacted] production does not constitute an "organization" or an "establishment."

As previously discussed, the petitioner submitted a letter from [redacted] stating:

Together, [the petitioner] and I have prepared a four-volume study of classical dramatic monologues ranging from the [redacted]. Through close readings of the many hundreds of texts we used, the volumes, in addition to their function as monologues, grew into an insightful history of evolving cultural patterns in Western thought. [The petitioner] contributed not only sophisticated scholarship and critical insight into text, but an astonishing range of knowledge of Western literature. The volumes are now recognized as unique for their originality and comprehensiveness.

The petitioner also submitted a letter from [REDACTED] stating:

Those books have since become classics in their field, and [the petitioner's] input was critical to this accomplishment. It is clear to anyone who reads these volumes that the notes and exemplary critical analysis in these texts is the result of deep understanding and superb scholarship of both these authors.

The AAO cannot conclude that providing assistance to [REDACTED] in compiling books of dramatic monologues equates to the petitioner having "performed in a leading or critical role for *organizations* or *establishments* that have a distinguished reputation." [Emphasis added.] On appeal, counsel states: "Counsel concedes that a study of monologues is not an organization or establishment."

In light of the above, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

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

The petitioner submitted November 2011, December 2011, and January 2012 earnings statements from [REDACTED] stating that he receives a "Basic Salary" of 2,600 leva monthly, or 31,200 leva yearly. In addition to his "Basic Salary," the petitioner's earning statements reflected "Additional pay due to Experience" amounting to 10.8 - 11.4 percent added to his monthly salary. The petitioner also submitted a certificate from [REDACTED] stating that he received gross income of 22,371.78 leva in 2007 and 29,518.47 leva in 2008. In addition, the petitioner submitted 2010 and 2011 "AVERAGE ANNUAL WAGES AND SALARIES" information from the [REDACTED] for all those working in the broad fields of "Arts, entertainment and recreation." The petitioner must submit evidence showing that he has earned a "high salary" or other "significantly high remuneration" in relation to others in his specific field, not simply a salary that is above "average" for those working in the "Arts, entertainment and recreation" occupational cluster. Average salary information for those performing work in a grouping of occupations with different responsibilities is not a proper basis for comparison. Instead, the petitioner must submit documentary evidence showing the earnings of those in his occupation performing similar work at the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, the petitioner has not established that he meets this regulatory criterion.

Summary

The petitioner has failed to demonstrate his receipt of a major, internationally recognized award or to satisfy the antecedent regulatory requirement of three categories of evidence. 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

The AAO will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 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. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), and (v) – (ix).

With regard to the evidence submitted for the category of evidence at 8 C.F.R. § 204.5(h)(i), the petitioner submitted online results indicating that his book [REDACTED] received a total of 499 votes in the [REDACTED] category and won the [REDACTED]. As previously discussed, the petitioner failed to submit primary evidence of his award. Further, the AAO is not persuaded that receiving 499 votes on the [REDACTED] website demonstrates national or international recognition for excellence in the literary field. The petitioner has not established that the single award submitted for the category of evidence at 8 C.F.R. § 204.5(h)(i) is indicative of or consistent with sustained national acclaim, or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iii), all of the material submitted by the petitioner was deficient in at least one of the regulatory requirements such as not including an author, not being about the petitioner, and not appearing in a professional or major trade publication or some other form of major media. The petitioner has not established that the material submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iii) is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iv), the nature of the petitioner's judging experience is a relevant consideration as to whether the submitted evidence is indicative of his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The petitioner submitted evidence showing that he served as one of four members of the editorial board for [REDACTED] in the Fall 1993 issue of [REDACTED], a student publication of his alma mater. The AAO cannot conclude that editing the work of fellow students during his undergraduate studies at [REDACTED] is indicative of the petitioner's sustained national or international acclaim at the very top of the literary field. Internal review of

student work is not indicative of or consistent with national or international acclaim. *Cf. Kazarian*, 580 F.3d at 1035. Further, evaluating other undergraduate students, who have not yet begun working professionally in the field, is not commensurate with being among that small percentage who have risen to the very top the field.

The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(iv) also included the letter from [REDACTED] stating that the petitioner reviewed six [REDACTED] films for the [REDACTED]. On appeal, the petitioner submits information about [REDACTED] from its website. Regarding the self-serving information in [REDACTED] letter and submitted from the [REDACTED] website, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680. The petitioner also submits a May 15, 2012 interview of [REDACTED] published in [REDACTED] an online publication of the [REDACTED]. The article states that [REDACTED] recently “curated [REDACTED] which included films that “played at different times in [REDACTED].” The preceding article focuses on [REDACTED] and fails to demonstrate that [REDACTED] has earned national notoriety, has distinguished itself from the numerous other film festivals held throughout the United States, or that the films screened at the festival are produced and directed by established professional filmmakers. Further, the May 15, 2012 article post-dates the filing of the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. There is no evidence showing that the petitioner’s participation in the [REDACTED] is indicative of sustained national or international acclaim. The petitioner failed to submit evidence demonstrating that he has judged top filmmakers at the national or international level rather than amateur or student filmmakers in the early stages of their career. *Cf., Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899 (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”). Moreover, the documentation submitted by the petitioner indicates that he has reviewed films for only one film festival in 2011. The documentation submitted by the petitioner does not establish that his level and frequency of judging is commensurate with sustained national or international acclaim at the very top of the field.

With regard to the documentation submitted for the categories of evidence at 8 C.F.R. §§ 204.5(h)(v) and (vi), the petitioner has documented his authorship of two novels; his assistance to [REDACTED] in compiling books of dramatic monologues; and his authorship of an essay, short stories, poems, a marketing article, articles in [REDACTED] articles in [REDACTED] a script for [REDACTED] and television program scripts. The petitioner, however, has not established that his publication record and original contributions are indicative of sustained national or international acclaim at the very top of the field. Demonstrating that the petitioner’s work was “original” without demonstrating the “major significance” of his scholarly and artistic contributions is not useful in setting the petitioner apart through a “career of acclaimed work.” H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that “an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation). . . .” Literary work that is unoriginal would be unlikely to secure the petitioner employment in his field or to result in publication of his work, let alone to

qualify him for classification as a writer of extraordinary ability. To argue that all of the petitioner's original literary work is, by definition, "extraordinary" is to weaken that adjective beyond any useful meaning, and to presume that most such work is "unoriginal." In this case, the record does not contain sufficient evidence that the petitioner's original work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(vii), as previously discussed, the petitioner has not established that he has displayed his work in the field "at artistic exhibitions or showcases." The evidence submitted by the petitioner does not establish that his work as a screenwriter, television writer, or playwright is 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)(3)(viii), as previously discussed, the petitioner has not established that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The evidence submitted by the petitioner does not establish that his positions were leading or critical to [REDACTED] or otherwise commensurate with sustained national or international acclaim at the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix), the petitioner has not established that he has earned a high salary in relation to others in the field. The petitioner has not demonstrated that his salary places him among that small percentage who have risen to the very top of the field of endeavor. *See Matter of Price*, 20 I&N Dec. at 954; *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x at 713-14; *Grimson v. INS*, 934 F. Supp. at 968; *Muni v. INS*, 891 F. Supp. at 444-45. The salary evidence submitted by the petitioner is not indicative of or consistent with sustained national acclaim, or a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field.

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 AAO notes that [REDACTED]; letter specifically points to individuals in the field whose achievements far exceed those of the petitioner. For instance, [REDACTED] states:

Throughout his career, [the petitioner] has had the honor of working alongside World-renowned talents such as writer/director/producer and five-time Oscar winner [REDACTED]; the Emmy-winning and Oscar-nominated director and producer of the Oscars award shows [REDACTED] who has produced more Oscars than anyone in history (14 times between 1990 and 2008) and served as president of the [REDACTED] and also the internationally renowned writer/director/producer [REDACTED] creator of [REDACTED] and former president of the Writers Guild of America. Clearly, working together with such widely recognized celebrities and leading authorities in the field confirms [the petitioner's] sustained level of international acclaim.

Mr. [REDACTED] letter fails to specify the nature of the petitioner's work for [REDACTED]. There is no indication that the petitioner held equivalent responsibilities rather than working as their subordinate and performing lesser duties. Reputation by association with [REDACTED] various projects (which involve numerous contributors at varying degrees of responsibility) does not automatically establish that the petitioner himself enjoys sustained national or international acclaim at the very top of the field.

In addition, the AAO notes that many of the petitioner's references' credentials are far more impressive than those of the petitioner.

For example, Dr. [REDACTED] states:

I am a retired [REDACTED] and also [REDACTED] at the [REDACTED]. . . . In theatre, I've written some forty plays produced in the U.S., Italy, Germany, Israel and in venues in many other countries, and have done [REDACTED] and also in Pittsburgh, where the reviews were broadcast over several hundred stations in the U.S. As a result, I am honored to have earned a reputation as one of the leading authorities in the field of dramaturgy and theatre.

Dr. [REDACTED] states:

I graduated from the [REDACTED] with a Master of Fine Arts Degree in Playwriting. My plays have been produced across the country in Connecticut, New York, Wisconsin, Minnesota, Texas, California, Oregon, New Mexico, Arizona, and Washington State. My most produced play has received almost 40 productions since 1989. I have been published as a playwright, and reviewed novels for the [REDACTED] for ten years (my novel reviews have been syndicated in the [REDACTED]). I have also served on a number of panels for the [REDACTED] in Washington, D.C. I also write for television, and had a teleplay air on [REDACTED] on PBS; I was also a lead writer on a PBS mini-series. I was hired by [REDACTED] in 1986 and have been the [REDACTED] playwriting program since 1989. As [REDACTED] and [REDACTED] I have been instrumental in admitting and teaching 23 years of playwriting students.

[REDACTED] states:

I am an award-winning writer and director of television, film and theater, having written and directed for hit television shows such as [REDACTED]. I have also written the screenplays for [REDACTED] based on my play; [REDACTED] inspired by a [REDACTED].

psychiatric textbook; and [REDACTED] adapted from [REDACTED] best-selling novel. I am also an accomplished playwright and theater director.

[REDACTED] states:

I am a Professor at [REDACTED]. It has been my privilege to be Editor-in-Chief of [REDACTED]. I am the author of several books on political, civil and media tendencies in our society. In terms of civil service, I have the honor of serving as [REDACTED] the parliamentary body which oversees and regulates the electronic media, this country's equivalent of the U.S.'s Federal Communications Commission (FCC).

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained. In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim as a writer, or being among that small percentage at the very top of the field of endeavor. 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.

III. Conclusion

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

Review of the record, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.