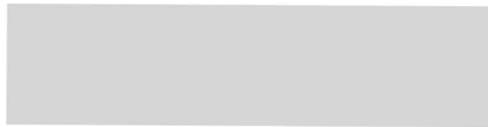
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)



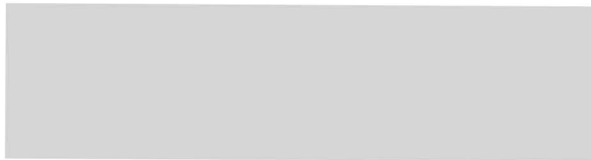
DATE: AUG 10 2015

FILE #:
PETITION RECEIPT #:

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal.[1] We will dismiss the appeal.

The petitioner, a martial artist, seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief and additional evidence. The petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (vii), and (viii). In addition, the petitioner attributes inconsistencies in the record to previous counsel. While the petitioner on appeal submits multiple online postings from dissatisfied clients of previous counsel, he does not provide the evidence required to establish ineffective assistance of counsel outlined in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

For the reasons discussed below, we agree that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. 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,

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[1] The petitioner was initially represented by different counsel, who will be referred to in this decision as "previous counsel."

(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 has 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) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria[2]

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

The director determined that the petitioner had not established eligibility for this criterion. On appeal, through counsel, the petitioner asserts he has won "several major national awards."

The petitioner initially submitted two certificates from the [redacted] stating that he won 1st place in "[redacted]" and

[2] We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner asserts that he meets or for which the petitioner has submitted relevant and probative evidence.

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" " and listing the "place" of the competition as " , China." The director issued a Notice of Intent to Deny (NOID) informing the petitioner that the logo appearing atop the two certificates did not match the official logo of the [3] Specifically, the director noted that the spacing of the words on the logo atop the certificates did not match that of the official logo and the word "Championships" had an incomplete spelling. The submitted certificates' logo wording appears as follows:

THE 3RD WORLD T RA DIT IONAL WUSHU CHAMPION SH

In addition, the petitioner submitted two certificates from the " ' stating that he won first place in the ' and " " competitions. Regarding these certificates, the director's decision stated: "Multiple internet queries failed to list the in These awards also have the official Olympics seal on them. Multiple internet queries failed to show any connection between the Olympics and the "

In response to the director's NOID, counsel asserts that previous counsel submitted the aforementioned certificates unbeknownst to the petitioner. Counsel states:

> The petitioner, who is now my client, did send [previous counsel] a massive number of documents, which notably did NOT include the two certificates that the Examiner referred to in this NOID. We can only speculate as to how [previous counsel] submitted these certificates – perhaps he retrieved them from an online source. Regardless, as stated in the signed statement my client, [the petitioner] did in fact win the prizes that were the subject of the examiner's comments, but does not have these certificates in his possession, nor did he have them when he sent his materials to [previous counsel]. I have asked my client to find the original certificates, or otherwise obtain documentary evidence that he did in fact win the events that were the subject of the examiner's comments.

The petitioner's appellate documentation, submitted more than eleven weeks after the director's NOID was issued, does not include the original certificates or any other documentary evidence from the competition organizers demonstrating that the petitioner "did in fact win the prizes" at the or as asserted by counsel.

The petitioner's response to the director's NOID included the "Regulations of the " (in English) printed from the website of the International Wushu Federation, "the international federation which governs wushu in all its forms worldwide." The submitted regulations state that the "place" of the competition was " China" and not " China" as indicated on the certificates initially submitted with the petition. In addition, the petitioner submitted a November 2014 letter from a martial arts coach in the stating: "I know for a fact that [the

[3] *See* http://www which displays the official logo, accessed on July 14, 2015, copy incorporated into the record of proceeding.

petitioner] has won the , which I understand [USCIS] has some doubt about." The record, however, does not include any verifiable primary evidence from the competition to support Mr. Wang's assertion. USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications); *see also Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field). The official results for the " China" that are available on the website of the International Wushu Federation do not list the petitioner as the winner of any events at the competition.[4]

On appeal, the petitioner submits a notarized statement asserting:

> I need to clarify that I was not aware that these documents were in my petition. Also I have been asked to signed [sic] ONLY one document by my previous lawyer [ ], it was a contract for the payment for the attorney fee. It was December 20[,] 2010. Afterward, I have not signed any other documents. I have not seen the final petition before he submit the petition, which was received by USCIS on August 2[,] 2011.

Although the petitioner asserts that he had no knowledge of the aforementioned award certificates submitted in connection with the Immigrant Petition for Alien Worker (Form I-140), the petition was "Certified and Filed By Internet" from the petitioner's e-mail address, , on August 2, 2011. On that date, the petitioner certified under penalty of perjury that the petition and all evidence submitted with it, either at the time of filing or thereafter, are true and correct. *See* section 287(b) of the Act; 8 U.S.C. § 1357(b); 8 C.F.R. § 103.2(a)(2); 28 U.S.C. § 1746; 18 U.S.C. § 1621. As the petitioner certified the truthfulness and correctness of the evidence submitted with his petition, he bears responsibility for the award certificates offered in support of the petition. *See Hanna v. Gonzales*, 128 F. App'x 478, 480 (6th Cir. 2005) (finding that an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). *Cf., Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991) (finding that a represented party who signs his or her name to documents filed in court bears personal, non-delegable responsibility to certify truth and reasonableness of the documents and failure to meet that duty subject signor to Rule 11 sanctions). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993).

In addition to the aforementioned awards, the petitioner submitted two certificates from the " stating that he won and listing the "place" of the competition as " ." In response to the director's NOID, the petitioner submitted information about the

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[4] *See* accessed on July 14, 2015, copies incorporated into the record of proceeding.

competition printed from which states that the competition was "held in ." The petitioner has not resolved the inconsistency regarding the location of the competition. Furthermore, the logo appearing atop the two certificates does not match the official logo of the [5]

With regard to the multiple inconsistencies relating to the " " certificates, the certificates, and the " " certificates, 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The petitioner submitted three certificates from the " " stating that he won first place in the " " " " and " " competitive categories. In addition, the petitioner submitted information about the competition printed from but he does not identify the operator of the website or explain how its information has the same level of reliability as that available on the websites of the or the

Furthermore, the director's denial notice stated that the foreign language documentation submitted for this criterion was not accompanied by properly certified English language translations. The regulation at 8 C.F.R. §103.2(b)(3) provides in pertinent part:

> *Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which 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.

Although the director informed the petitioner of this deficiency in the denial notice, the petitioner has not submitted certified English language translations for any of his award certificates or the competition information in the Chinese language. Because the petitioner did not submit properly certified English language translations for any of the Chinese language award certificates and competition information, we cannot determine whether the evidence supports the petitioner's claims. Accordingly, the existing English language translations of the documents in Chinese are not probative and will not be accorded any weight in this proceeding.

The petitioner submitted five certificates from the " " stating that he won first place in the all-around, sparring, long fist and other weapons

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[5] *See* which displays the official logo, accessed on July 14, 2015, copy incorporated into the record of proceeding.

categories; second place in the broad sword and other fist categories; and third place in the staff art category. The preceding certificates reflect provincial recognition rather than nationally recognized prizes or awards for excellence in the field. In addition, the petitioner submitted three certificates from the " stating that he won first place in the staff art, sword art, and long fist art categories. The aforementioned certificates reflect local recognition rather than nationally recognized prizes or awards for excellence in the field. Furthermore, the English language translations accompanying the certificates from the and the were not certified by the translator as required by the regulation at 8 C.F.R. §103.2(b)(3).

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. In this case, there is no documentary evidence demonstrating that the aforementioned awards were recognized beyond the presenting organizations at a level commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, 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 director determined that the petitioner had not established eligibility for this criterion.

On appeal, the petitioner asserts that he submitted published media reports, DVD video of himself performing in a play in and documentation of his appearance on the ' ."

The petitioner initially submitted a 2011 article in (a student newspaper at the), a 2011 article in (Kentucky), a 2011 article in an 2011 article in , an 2011 article in the a 2011 article in the North Carolina), an 2011 article in the , a 2011 article in South Carolina), a 2011 article in (Kentucky), an 2006 article in , a 2007 article in (South Carolina), an 2011 article in a 2011 article in the), a 2011 article in , an article in and a 2007 article in The aforementioned articles are about the and its many acts, and they do not identify the petitioner. The plain language of the regulation, however, requires "published material about the alien." Materials that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Furthermore, there is no documentary evidence showing that the aforementioned newspapers are major media.

In response to the director's NOID, the petitioner submitted advertisements for the in 2011), 2011), , Texas) 2011), and 2011). The petitioner is not named in the advertisements, they are not about him, and their authors were unidentified. Accordingly, the submitted material does not meet the plain language requirements of this regulatory criterion.

The petitioner submitted an 2011 article in entitled " 2011 article in entitled " " a 2011 article in entitled " " a 2011 article in entitled " " and a 2011 article in entitled " " The aforementioned articles are about the circus and its many acts, and do not identify the petitioner. Again, articles that are not about the petitioner do not meet this regulatory criterion.

The petitioner submitted a 2011 article about himself and his partner in entitled " " but the author of the material was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a photograph from a 2012 article in (northern New Jersey) entitled " " The caption under the photograph does not identify the petitioner. In addition, the submitted evidence does not include the text of the accompanying article or its author. Without submitting the full content of the article, the petitioner has not established that the material is about him.

The petitioner submitted an 2012 article in entitled " " an 2012 article in (Virginia) entitled " " a 2012 article in entitled " " a 2012 article in entitled " ," a 2013 article in South Carolina) entitled " ", a 2013 article in the entitled " " The aforementioned articles do not mention the petitioner and they are not about him.

The petitioner submitted two articles entitled " " and " " section of 2012). The submitted material includes a photograph of the petitioner, but he is not mentioned in the articles.

The petitioner submitted an 2012 article in (Ohio) entitled " " The article describes multiple circus acts and includes only one sentence mentioning the petitioner and his partner. Accordingly, the article is about the circus and not the petitioner.

The petitioner submitted the beginning of an 2012 article in Ohio) entitled " " The incomplete article is accompanied by three

photographs, one of which identifies the petitioner and his partner. As the submitted evidence does not include the full text of the article, the petitioner has not established that the article is about him.

The petitioner submitted a 2013 photograph in entitled " " but the accompanying text does not identify the petitioner.

The petitioner submitted 2014 articles in and . In addition, the petitioner submitted three articles (2013) from Spanish language publications in Mexico. The submitted articles were unaccompanied by certified English language translations as required by the regulation at 8 C.F.R. §103.2(b)(3). Without proper translations, the foreign language articles are not probative and will not be accorded any weight in this proceeding.

In addition to the aforementioned deficiencies, all of the articles from 2011 and later were published subsequent to filing the Form I-140 on August 2, 2011. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider any articles published after August 2, 2011, as evidence to establish the petitioner's eligibility at the time of filing. Furthermore, aside from the circulation information submitted for the remaining newspapers does not establish that they are major media.

The petitioner submitted a DVD video of his performance in a stage show entitled " " (2008) and Chinese language articles about the show, but the articles were unaccompanied by certified English language translations as required by the regulation at 8 C.F.R. §103.2(b)(3). Again, without proper translations, the foreign language articles are not probative and will not be accorded any weight in this proceeding. Furthermore, the petitioner has not established that the ' video and accompanying articles constitute published material about him in major media.

The petitioner also submitted documentation that he appeared in Act 7 (on the , 2012, episode of the ' ' television program on . The petitioner's television appearance, however, post-dates the filing of the Form I-140. In addition, the petitioner asserts that he received an invitation in 2014 to perform on future episodes " Again, 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. Accordingly, we cannot consider any televised performances after 2011, as evidence to establish the petitioner's eligibility at the time of filing. Furthermore, the plain language of this regulatory criterion requires "published material about the alien" including "the title, date and author of the material." The petitioner has not established that a televised act meets these requirements.

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 director determined that the petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion, and the director's determination on this issue will be withdrawn. We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

The petitioner initially submitted three Certificates of Appreciation for participating as a judge at the
" In addition, the petitioner submitted information about the ' ' from the website of the but the online material did not identify the petitioner as a judge for the competition or the individuals whose work he judged.

The plain language of this regulatory criterion requires evidence of the petitioner's "participation . . . as a judge of the work of others." Submitting certificates of appreciation without evidence demonstrating whose work the petitioner judged is insufficient to establish eligibility for this criterion. Furthermore, the multiple inconsistencies relating to the " ' certificates and the " (certificates submitted for the criterion at 8 C.F.R. § 204.5(h)(3)(i) cast doubt on the reliability of the appreciation certificates submitted for this regulatory criterion. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591-92.

In response to the director's NOID, the petitioner submitted a "Certificate of Recognition" stating that he participated as a judge in the " ' in 2014. In addition, the petitioner submitted photographs from the championships reflecting his involvement, a poster for the event, a listing of the event's 194 competitive categories, and a registration form for the event. The petitioner's participation in the post-dates the filing of the Form I-140. Again, 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. Accordingly, we cannot consider any events judged by the petitioner after August 2, 2011, as evidence to establish his eligibility at the time of filing.

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

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

The director determined that the petitioner had not established eligibility for this criterion.

On appeal, the petitioner asserts that his stage performances, martial arts demonstrations, and circus acts meet this regulatory criterion. The petitioner mentions his performances at the 2014 in Illinois, the 2014 at the in Illinois, the 2014 ' ' at in Illinois, and on the 2012 episode of the " television program. The aforementioned performances post-date the filing of the Form I-140. Again, 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. Accordingly, we cannot consider any performances by the petitioner after August 2, 2011, as evidence to establish his eligibility at the time of filing.

Furthermore, the petitioner is a martial arts performer. When he performs on stage, as part of a martial arts demonstration, or as part of a circus act, he is not displaying his work in the same sense that a painter or sculptor displays his or her work in a gallery or museum. In addition, to the extent that the petitioner is a martial arts performer, it is inherent to his occupation to perform and demonstrate his skills. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.[6] 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 in *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)). *See also Visinscaia v. Beers,* 4 F.Supp.3d 126, 135-36 (D.D.C. 2013). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, he has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

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 director determined that the petitioner had not established eligibility for this criterion. On appeal, the petitioner asserts that a letter of support from a circus program book, and newspaper articles demonstrate his leading or critical role for the circus.

In response to the director's NOID, the petitioner submitted a November 2014 letter from , Paymaster, stating:

> [The petitioner] has been up until recently when he left the Circus, a leading and key member of our circus performance group, has been the team leader of our for several years. His amazing skill and incredible performance acumen

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[6] Stage and circus performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x), which focuses on volume of sales and receipts as a measure of the petitioner's commercial success in the performing arts. The petitioner, however, did not submit any documentary evidence of "sales" or "receipts" demonstrating that his performances were indicative of commercial successes in the performing arts.

> both of which have impressed our audience across America. [The petitioner] is a top martial artist whose skills enable him to jump through a ring of knives that is also ablaze . . . . His act has been featured on our program book and his image used as a representation of demonstration on our tickets, in our advertisements and other marketing materials.

Mr. does not explain how his administrative position as paymaster qualifies him to assess the importance of petitioner's role as a performer in the show in the same manner as the circus director or general manager, for example. The petitioner also submitted photocopies from the "Illuscination" program book. The cover of the program book includes an image of the petitioner along with multiple other circus acts and performers. Two circus performers holding birds are at the center of the cover and their images are three times larger than that of the petitioner who is in the background. The "Illuscination" program book includes a full-page photograph of the petitioner diving through a blazing ring of swords. In addition, the program book includes full pages devoted to other performers such as magician acrobat the , animal trainer trapeze artist tightrope walkers and horse trainers . The submitted evidence does not demonstrate that the petitioner was featured more prominently in promotional materials than the other circus acts. Not every performing act constitutes a leading or critical role for the circus.

As discussed previously, the petitioner submitted newspaper articles about the and its many acts. The submitted published materials demonstrate that the has a distinguished reputation, but the articles are not about the petitioner and they do not single out his role as leading or critical for the circus. Although the petitioner submitted a 2011 article about himself and his partner in the article was published after the Form I-140 was filed. Again, 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. Accordingly, we cannot consider any articles published after 2011, as evidence to establish the petitioner's leading or critical role for the circus at the time of filing.

In general, a leading role is demonstrated by evidence of where the petitioner fits within the hierarchy and duties of an organization or establishment, while a critical role is demonstrated by evidence of the petitioner's contributions to the organization or establishment's operational viability. The petitioner did not provide an organizational chart or other similar evidence to establish where his role fit within the overall hierarchy of the circus. The submitted documentation does not differentiate the petitioner from the other circus performers so as to demonstrate his leading role, and fails to establish that his performances contributed to the circus in a way that was of substantial importance to its success or standing in the entertainment industry.

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

B. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

C. Director's "finding of fraud or willful misrepresentation of a material fact"

With regard to the inconsistencies concerning the petitioner's award certificates, the director's decision mentioned "multiple internet queries" that revealed significant concerns regarding the reliability of the submitted evidence. The director's decision, however, did not point to specific internet query results or offer clear and probative evidence demonstrating that the petitioner submitted fraudulent documentation or willfully misrepresented a material fact. Although the inconsistencies regarding the petitioner's awards raise serious concerns and cast doubt regarding the reliability of the petitioner's evidence, the evidence of record does not support the director's finding of fraud or willful misrepresentation of a material fact. Denial of this petition cannot be based upon the serious allegations of the director without evidence offered in support of those conclusions. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the director's finding of fraud or willful misrepresentation of a material fact is withdrawn.

D. Prior P-1 Nonimmigrant Visa Status

The record reflects that the petitioner has been in the United States as a P-1 nonimmigrant, a visa classification that requires him to perform "with an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time." *See* section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B). While USCIS has approved prior P-1 nonimmigrant visa petitions filed on behalf of the petitioner, these prior approvals do not mandate the approval of a similar immigrant visa. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

Many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103. *See also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS is not required to treat acknowledged errors as binding precedent. *See Sussex Eng'g Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the petitioner, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La. Mar. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.[7]

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

ORDER: The appeal is dismissed.

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[7] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d at 145. In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).