



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF H-T-

DATE: APR. 18, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a Chinese calligrapher, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those 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, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner submitted documentation meeting only two of the initial evidence criteria when at least three are required. The Petitioner then filed a motion to reopen and motion to reconsider that decision. The Director denied the motion, reaffirming the prior denial.

The matter is now before us on appeal. In his appeal, the Petitioner indicates that the Director erred in finding that he did not submit sufficient initial evidence and states that he has satisfied three additional criteria. We issued an initial notice of intent to dismiss, to which the Petitioner responded with additional documentation. Due to concerns with the newly submitted material, we issued a second notice of intent to dismiss and make a finding of material misrepresentation. The Petitioner again responded with additional evidence.

Upon *de novo* review, we will dismiss the appeal; however, we will not make a finding of material misrepresentation.

**I. LAW**

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

(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.

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. 8 C.F.R. § 204.5(h)(2). The implementing 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 or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

Satisfaction of 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 our 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 we 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 we examine "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

The Director found that the Petitioner gave evidence meeting two of the categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Specifically, the Director noted that the Petitioner submitted documentation of his participation as a judge of the work of others in the same or an allied field (8 C.F.R. § 204.5(h)(3)(iv)), as well as display of his work in the field at artistic exhibitions or showcases (8 C.F.R. § 204.5(h)(3)(vii)). On appeal, the Petitioner asserts that the Director erred in denying the additional criteria he seeks. Upon reviewing the evidence provided, we agree that the Petitioner has not satisfied the regulatory requirements of the additional criteria and we discuss address each one he has addressed below.

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

In considering evidence submitted under this criterion, the title of the role, which relevant, is not determinative. A leading role should be apparent from its duties and position within the hierarchy of the organization or establishment. A critical role should be evident from the impact the Petitioner has had on the organization or establishment.

In various submissions, the Petitioner has stated that he satisfied this criterion through evidence that he has served as the following:

- Chairman of the Administration Committee, [REDACTED]
- Chairman, [REDACTED]
- Chairman, [REDACTED]
- Senior Advisor, [REDACTED]
- Member, [REDACTED]
- Honorary Advisor, [REDACTED]
- Vice President, [REDACTED]
- Deputy, [REDACTED] and [REDACTED]
- Final Evaluation Committee Member, [REDACTED]

The Director determined that, despite evidence that the Petitioner served in most of these positions, he did not meet the requirements of this criterion. On appeal, the Petitioner states that the Director employed the wrong standard. We have considered all of the evidence submitted regarding the roles played by the Petitioner using the preponderance of the evidence standard. For the reasons outlined below, we find the Petitioner has not submitted sufficient evidence to satisfy the plain language of this criterion. We address each of the roles in the order they appear above.

1. Chairman of the Administration Committee, [REDACTED]

As evidence regarding his positions with these organizations, the Petitioner submitted a Letter of Appointment from the [REDACTED]. The record contains two translations, only one of which is certified as required by 8 C.F.R § 103.2(b)(3). The certified translation shows he was appointed “to the position of Administration Committee” on August 8, 2007. The second translation indicates the document confirms his appointment as the chairman of that committee. The Certificate of Registration for the foundation lists the Petitioner as the organization’s “Responsible Person” as of June 2, 2006. The Certificate of Registration further states the Petitioner holds the titles of “Chairman of the [REDACTED] and “Chairman of the [REDACTED]. The record does not contain information explaining why a position on the administration committee of an entirely different organization, the [REDACTED] is listed on the [REDACTED] Certificate of

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Registration. The Petitioner submitted no other evidence to indicate that he held a position in the [REDACTED]

Furthermore, as stated by the plain language of the criterion, the Petitioner must demonstrate that the organization has a distinguished reputation and that he played a critical or leading role within it. In this case, the Petitioner has not provided any evidence regarding the reputation of either the [REDACTED] or the [REDACTED]. The record similarly lacks information regarding the Petitioner's roles, such as job duties and responsibilities, or position within the hierarchies of the organizations. Finally, the Petitioner has not established his impact on these organizations. Without more, the Petitioner has not shown that either of these foundations has a distinguished reputation, or that he played a leading or critical role within them.

2. Chairman, [REDACTED]

As evidence of this role, the Petitioner provided the registration document for the [REDACTED] showing him as its legal representative.<sup>1</sup> On a completed form ETA 750 Part B, U.S. Department of Labor Employment and Training Administration Application for Alien Employment Certification, the Petitioner indicated that from 1995 to the present he has worked as the Chairman of [REDACTED]. The ETA 750 listed his duties as follows: "In charge of the foundation which has donated 8 million books to rural schools in China, worth RMB4.5 million. The foundation also extends its programs to [teach reading and writing to] youth and teenagers in China." The Petitioner submitted a picture of an informational brochure for [REDACTED] that explained the organization's history as a contributor of books to rural school in China. According to the description, [REDACTED] donated books worth over RMB 40 million to thousands of rural schools between 1995 and 2005. More probative of the foundation's reputation would be information from independent sources, such as media coverage.

Furthermore, the regulatory criteria are designed to provide examples of "evidence that the [individual] 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). Accordingly, the evidence is most probative when it relates to the Petitioner's field of expertise. In this case, the Petitioner maintains that he has extraordinary ability as a calligrapher. The record does not indicate, however, that the role of Chairman of [REDACTED] has relevance to his abilities or acclaim in calligraphy or art. For all of these reasons, the material related to the Petitioner's position with [REDACTED] does not satisfy this criterion.

3. Member of the [REDACTED] and  
Honorary Advisor, [REDACTED]

The Petitioner provided certificates confirming his appointments as a member of the [REDACTED] and as an honorary advisor to [REDACTED]

<sup>1</sup> A translation of the registration lists the name of the foundation as the [REDACTED]. The record does not confirm that this entity is one and the same as [REDACTED].

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█ The letters do not include details regarding these organizations or his roles within them. As a result, such evidence does not satisfy the plain language requirements of this criterion. Even if the record contained such evidence, however, it appears that documentation regarding these roles or institutions was not submitted to demonstrate the Petitioner's ability in calligraphy or art. As with his role as the Chairman of █ the Petitioner's positions with █ do not appear to have any connection to calligraphy, the Petitioner's stated field of extraordinary ability. For all of these reasons, these roles cannot meet the requirements of this criterion.

4. Senior Advisor, █

The Petitioner indicated that he has been invited to be a senior advisor for the █. Other than the statements of the Petitioner, the record does not contain evidence of his position within this association. Rather, the Petitioner submitted a Chinese language document with no translation. As a result, the Petitioner has not established his position within the █ by a preponderance of the evidence. In addition, the record does not contain material regarding the reputation of the association. In response to the Director's RFE, the Petitioner noted that this organization "is the most important and renowned painting and calligraphy arts group under the █. However, the Petitioner's statement, without additional corroboration, cannot meet his burden of proof. *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)); see also *Chawathe*, 25 I&N at 376. For these reasons, this role cannot satisfy the leading or critical role criterion.

5. Executive Vice President, █

The Petitioner provided a "Letter of Appointment" dated October 8, 2013, from the █ which states: "After due consideration, the administration committee of █ hereby engage[s] you as a vice president of the Institute, and president and academician of the █. The Petitioner also submitted a print-out from █ website listing its leadership and committee members.<sup>2</sup>

Regarding the organization itself, the Petitioner provided a laminated flier for █ indicating that, since its foundation in 1999, it has sponsored "six world-level major Art and Calligraphy Exhibitions by Chinese-American Masters and 126 other exhibitions." The flier further states: "Notetably [*sic*], SEVEN members (professors and researchers) from █ received outstanding awards at the █ jointly organized by the █ the █ the █ and the █. The record does not contain

<sup>2</sup> Although the position names appear on this document in English, the names are in Chinese and the Petitioner did not submit a certified translation as required under 8 C.F.R. § 103.2(b)(3). Accordingly, the appointment letter is the only evidence supporting the Petitioner's role with this institute.

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independent and objective evidence to corroborate these claims. As a promotional document, the flier alone is not sufficient to meet the Petitioner's burden of proof in showing that the organization has a distinguished reputation.

In addition, the Petitioner does not provide information regarding his duties as the organization's executive vice president, its position within the overall hierarchy, or his overall impact on the institute. The title of the role alone does not meet the plain language requirements of this criterion.

6. Deputy, [REDACTED]

The Petitioner provided a copy of a letter from the [REDACTED] dated October 29, 1996, which indicated he was appointed the "deputy" of a group of ten artists who would travel to Thailand to exhibit the paintings that comprise the book, [REDACTED]. According to the letter, the Petitioner was appointed the deputy in order to lead the exhibition in Thailand. The letter also states, however, that [REDACTED] leader of the [REDACTED], would be the head of the delegation. The Petitioner has not resolved the specifics of his role. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, the Petitioner has not offered objective evidence of the group's reputation. As a result, the Petitioner has not established that this role meets the plain language requirements of this criterion.

7. Final Evaluation Committee Member, [REDACTED]

In response to the RFE, the Petitioner stated that he "served in the final evaluation committee for selecting and judging artworks for the [REDACTED] which was sponsored by [REDACTED]. The Petitioner provided credit pages for a book entitled, [REDACTED] which indicate that he was a deputy director of the organization committee, an author of the book, and secretary general of the art committee. The Petitioner offered an uncertified translation of a document entitled [REDACTED] [REDACTED] [REDACTED] which lists the Petitioner as a committee member.

Even if the translation were certified as required under 8 C.F.R § 103.2(b)(3), the Petitioner has not shown that, as a member, he played a leading or critical role within the final evaluation committee. For example, he does not explain how his role was leading or critical as compared to other members of the committee. Lastly, he did not submit evidence to show that the committee has a distinguished reputation. For these reasons, the Petitioner has not satisfied the plain language of this criterion.

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

In the Director's denial of the petition, he noted that the Petitioner provided examples of his work, some of which appeared in magazines, as well as numerous letters of recommendation. The Director concluded, however, that this evidence was not sufficient to demonstrate the Petitioner's contributions of major significance in the field. In denying the Petitioner's subsequent motion, the

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Director addressed the letters submitted by the Petitioner, stating that, although they are complimentary of the Petitioner, they do not establish he made contributions of major significance to the field as a whole.

On appeal, the Petitioner emphasizes the letters of [REDACTED]. The opinions of the Petitioner's references are not without weight. However, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. See *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). As a result, we evaluate the content of letters to determine whether they support eligibility. See *id.* at 795-96; 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"). The references' statements regarding the bases for their opinions and how they became aware of an individual's reputation are important considerations. See also *Visinscaia*, 4 F. Supp. 3d at 134-35 (concluding our decision to give little weight to uncorroborated statements from professionals in the field was not arbitrary and capricious).

[REDACTED] the Chinese Studies Librarian at the [REDACTED] stated that he is familiar with the Petitioner due to the Petitioner's [REDACTED] donation of the Declaration of Independence in Chinese calligraphy to the Library of Congress. In describing the Petitioner's abilities, [REDACTED] noted that the Chinese art connoisseur, [REDACTED] had written very highly of the Petitioner, stating, for example that the Petitioner's works in painting and calligraphy "make a combination which reflects the epitome of the integration of the two distinctive Chinese artistic forms." Although the Petitioner provided an entry about himself in a book by [REDACTED] the entry did not show [REDACTED] making this or any of the other characterizations asserted by [REDACTED]. In this case, the record does not show the primary source of [REDACTED] comments about the Petitioner contributions to the field of calligraphy. While [REDACTED] does have primary knowledge of the Library of Congress' acceptance of the Petitioner's Declaration of Independence and corroborates that this donation occurred, neither [REDACTED] nor other evidence in the record gives an explanation as to how this donation constitutes a contribution of major significance to the field such that it has impacted the practice of calligraphy.

[REDACTED] also notes the Petitioner's receipt of the title of "Distinguished Contemporary Calligrapher in China by [the] [REDACTED]" and the invitation to be "Executive Director of [REDACTED]". The Petitioner provided a letter from the [REDACTED] as corroborating evidence regarding his position with that association. Neither the letter nor other evidence in the record, however, gives information regarding the significance of these titles or the prestige of either organization. Without details explaining the import of these accolades, reference to them does not demonstrate that the Petitioner has made contributions of major significance to the field as a whole.

The Petitioner also highlights a letter from [REDACTED] Executive Dean and Professor of the [REDACTED]. The letter notes the "original academic contributions" of the Petitioner and is accompanied by a paper [REDACTED] authored entitled [REDACTED]. [REDACTED] On the Unique Creative Accomplishments and Characteristics of [the Petitioner]'s Calligraphic Art." It appears [REDACTED] paper was posted onto the discussion forum



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of [redacted] website, an organization for which [redacted] is the executive vice president. The paper discusses the Petitioner's accomplishments and contributions as a calligrapher. In this case, however, the record lacks evidence establishing the credentials of either [redacted] or [redacted] in the world of calligraphy and art. Despite [redacted] self-stated titles of Professor and Executive Dean, the record does not show that [redacted] is an institution of learning, that [redacted] has academic or other credentials, or another explanation for these titles, which he uses interchangeably with president. Although the Petitioner submitted numerous certificates awarded to [redacted] from civic organizations, he has not provided support for [redacted] claimed qualifications for judging calligraphy or artwork.

The Petitioner has also stated that his works have been published in books and magazines. He provided different catalogues and magazines; however, all of these items are in the Chinese language and are not accompanied by an English language translation, as required by regulation. 8 C.F.R. § 103.2(b)(3). Without appropriate translations, these documents do not demonstrate the appearance of his work in publications. The Petitioner did submit a copy of pages from the book [redacted] which contains a one-page entry on the Petitioner. According to the uncertified translation, the book gives the Petitioner's background and a summary of the sale of his works. Though complimentary, the entry does not articulate specific contributions by the Petitioner that have had major significance in the field.

Initially, the Petitioner also noted an event that was held in 1999 to commemorate the 2550th anniversary of the birth of Confucius. According to the Petitioner, a committee consisting of various cultural organizations selected 188 pieces of artwork out of 3,000 submissions. The chosen pieces were then featured in an exhibition and book. The Petitioner indicated that two of his pieces were chosen for the occasion. As evidence of this honor, the Petitioner provided award certificates, as well as copies of pages of the book, [redacted]. The documents are in the Chinese language, however, and the Petitioner did not submit translations, as required by regulation. 8 C.F.R. § 103.2(b)(3). As a result, the evidence presented does not corroborate the accomplishment described by the Petitioner as required. *Soffici*, 22 I&N at 165 (citing *Treasure Craft of California*, 14 I&N at 190); see also *Chawathe*, 25 I&N at 376.

On appeal, the Petitioner also emphasizes the letters and certificates of appreciation, commendation, and recognition from the [redacted] the Library of Congress, the State of [redacted] California, and the [redacted].

Upon review, however, the Petitioner has not shown that these certificates bear relation to his work in calligraphy or art. Several of the certificates are silent regarding the reason the Petitioner received them. The certificates that do contain some explanation indicate they were given for his charity work. For example, the certificate from the U.S. Department of Education was presented to the Petitioner in his capacity as Chairman of the [redacted] "[for his] commitment to establish[ing] Children[']s Libraries to help them in learning." Awards provided for this reason, while laudable, do not support the Petitioner's statement that he has made contributions of major significance to calligraphy.



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Moreover, as noted in our second NOID, dated February 23, 2016, we confirmed with the U.S. Department of Education that it did not issue the award the Petitioner presented to us. The Petitioner responded with a letter from [REDACTED] the former Deputy Director of the [REDACTED] of the U.S. Department of Education, and a picture showing [REDACTED] presenting him with the certificate. In the letter, [REDACTED] explains that her former office produced the commendation, but that it has “no official standing.” While the Petitioner has overcome our finding that the submission of the award was misrepresentation, the rebuttal does not remove our doubt about the significance of the certificate. 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. *Ho*, 19 I&N at 591-92. At the very least, such issues reduce the probative value of the certificates provided.

Lastly, the Petitioner has repeatedly emphasized that his work is collected by prominent individuals throughout the world, including the following organizations and world leaders:

- United Nations;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Leaders of Taiwan Government;
- A number of galleries in China and other Countries.

Although collection by prominent figures indicates the popularity of the Petitioner's work, the plain language of this criterion requires that the Petitioner demonstrate that he has made contributions of major significance to the field through his calligraphy. However, the Petitioner has not explained how the acceptance of his donations to prestigious individuals or organizations has contributed to the field as a whole. For these reasons, the evidence submitted by the Petitioner does not meet the plain language requirements of the regulation.

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

In the denial of the petition, the Director acknowledged that the Petitioner provided numerous contracts for the sale of his work. He also stated, however, that the Petitioner had not given evidence that he received payment in accordance with any of the contracts. The Director further noted that the Petitioner did not submit material regarding the salaries or remuneration generally received by calligraphers or artists against which to compare the Petitioner's income. The Director found that, without such information, the Petitioner could not establish that the amount he received was significantly high compared to others in the field.

On appeal, the Petitioner recounts the contracts for sale and notes that, in response to the Director's request, he provided additional letters from buyers confirming that they purchased work from him. He states that “[the Director] did not clearly indicate what other evidence is required to show the

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payment.” After reviewing all of the evidence, we agree with the Director that the Petitioner has not met the legal requirements of this criterion because he has not shown what others in the field receive, or that he received the amounts specified.

This criterion requires that the Petitioner’s salary or remuneration for services be significantly higher than others in the field. To demonstrate this, the Petitioner must necessarily give some evidence of the salary or remuneration for services of others in the field. In this case, the Director alerted the Petitioner to this deficiency in the record, however, the Petitioner has still not provided any documentation regarding the earnings of calligraphers or artists generally. Without such information for comparison, the Petitioner has not satisfied this criterion.

Regardless, even if the Petitioner had established the salary or remuneration received by others, we agree with the Director that he has not provided sufficient credible evidence of his own salary or remuneration from work as a calligrapher. The Petitioner stated that he gave material showing the auction of his work for large sums of money. Each of the documents contains Chinese language text, however, they are not accompanied by English language translations, as required by regulation. 8 C.F.R. § 103.2(b)(3). The Petitioner also wrote that an auction of some of the most important works in his career as an artist was held on [REDACTED] 2008. He indicated that 39 of his works sold for a total of \$1,009,443. In support of these sales, he provided the second page of a spreadsheet in Chinese. It is not, however, accompanied by an English-language translation. The Petitioner also indicated that he submitted a sales report certified by an auctioneer. An examination of the document to which the Petitioner referred shows, however, an unidentified individual’s auctioneering license, with no sales report or receipt. The license indicates it is valid from December 2006 through December 2007, meaning it was no longer valid at the time of the auction on [REDACTED] 2008. Regarding the auction, the Petitioner maintained that he gave “footage of the coverage of the auction by the network to [the whole] world.” The documents submitted, however, are print-outs from an unidentified website. All captions and other identifying text are in Chinese and are not accompanied by an English language translation, as required by 8 C.F.R. § 103.2(b)(3).

The Petitioner also stated that the following pieces of his work have been auctioned for the following amounts:

<b>Date</b>	<b>Title of work</b>	<b>Amount</b>
[REDACTED] 2010	[REDACTED]	\$17,800
[REDACTED] 2011	[REDACTED]	\$16,800
[REDACTED] 2011	[REDACTED]	\$14,200
[REDACTED] 2011	[REDACTED]	\$23,100
[REDACTED] 2011	[REDACTED]	\$35,000

As corroboration of these sales, the Petitioner submitted print-outs from the internet. All text is in the Chinese language and unaccompanied by English language translation. The Director raised this issue in the denial; however, the Petitioner has still not provided translations, as required by 8 C.F.R. § 103.2(b)(3). As a result, the record does not contain the necessary corroboration of the sales

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affirmed by the Petitioner. *Soffici*, 22 I&N at 165 (citing *Treasure Craft of California*, 14 I&N); see also *Chawathe*, 25 I&N at 376.

On appeal, the Petitioner highlights more recent contracts for his work. In all cases, however, the Petitioner provided only contracts and letters and did not submit evidence showing the actual transfer of funds. Although the Petitioner maintains that the Director did not clearly indicate what other evidence is required to show payment, we note that he did not give checks, bank account statements, transfer receipts, income tax receipts, or any other documents showing the transfer of the large sums affirmed by the Petitioner.

A contract with [REDACTED] signed on January 20, 2014, states it will pay the Petitioner \$6,500 monthly to be its [REDACTED]. In return, the Petitioner will produce an unspecified amount of artwork and the parties will share in the commission "according to the preset ratio." The Petitioner did not give information regarding the preset ratio for commission apportionment. In addition, although the Director indicated that the Petitioner did not provide evidence that he has been paid by or produced artwork for [REDACTED], he has not submitted supporting documentation showing either on appeal. We agree with the Director's finding that, without additional information, the contract submitted by the Petitioner is not sufficient to establish that he received salary or other remuneration through his contract with [REDACTED].

The Petitioner submitted a contract dated December 25, 2010, between himself and [REDACTED] of [REDACTED]. The contract stipulates that [REDACTED] will pay the Petitioner \$613,000 for 13 pieces of artwork, to be delivered by September 10, 2011. The Petitioner also provides a "Certificate" dated September 20, 2014, from the [REDACTED]<sup>3</sup> stating that she signed a contract with the Petitioner and that, as of June 26, 2013, she had paid the Petitioner approximately \$510,000. This timeline does not abide by the schedule outlined in the contract, which states that the purchaser was to pay the full purchase price after receiving half of the artwork, and that all 13 pieces would be delivered by September 10, 2011. More importantly, as with the other contracts, the Petitioner did not submit evidence showing payment from [REDACTED] through wire transfers, cancelled checks, bank statements, or other equivalent evidence.

The record includes a Memorandum dated September 26, 2013, indicating the Petitioner sold [REDACTED] to [REDACTED] for approximately \$50,000. The record does not contain further documentation regarding the sale, such as evidence of payment, completion of the pieces, or their transfer. The Petitioner also provided a Cooperation Agreement dated April 13, 2014, between himself, [REDACTED]. The Cooperation Agreements states that all parties will cooperate to sell the Petitioner's artwork. It delineates their shares from the proceeds of the sales, stating that [REDACTED] will receive 45 percent, the Petitioner will receive 47 percent, and [REDACTED] will receive eight percent. The evidence provided does not indicate whether any artwork was ever sold pursuant to this agreement, or whether the Petitioner

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<sup>3</sup> We assume that [REDACTED] are the same person.

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received any proceeds from the sales. Without additional information and corroboration, these documents do not show the Petitioner received salary or remuneration through the arrangement.

The Petitioner provides another contract dated July 6, 2013, between himself and a non-profit organization, [REDACTED]. The contract stipulates that [REDACTED] will sell 700 pieces of the Petitioner's artwork for not less than \$8,000 per piece, for total sales of not less than \$5,600,000. It further indicates that the Petitioner will donate a total of 30 percent of the sales proceeds to the non-profit on a quarterly basis. A letter from the Chief Financial Officer (CFO) of [REDACTED] dated September 24, 2014, indicates that, between October 2013 and July 2014, it acquired 72 pieces of art from the Petitioner and raised \$576,000, of which 40 percent (\$230,400) went to the Petitioner. The letter from [REDACTED] conflicts with the contract signed the year before: whereas the 2013 contract states that [REDACTED] will get 30 percent of the sales income, the 2014 letter indicates that [REDACTED] kept 60 percent.

We raised these contradictions in our notice of intent to dismiss (NOID) dated February 23, 2016. In response, the Petitioner stated:

The Petitioner and the [REDACTED] signed two contracts. The original contract dictates that [REDACTED] will get 30% of the sales income and [the Petitioner] will get 70%. Subsequently, in consideration of the organization's dire need of funding and out of [the Petitioner's generosity], the two parties signed a new contract which designated that [REDACTED] got to keep 60% whereas [the Petitioner] kept the balance. The second contract used the same date as the first contract for the purpose of keeping the validity of the contract remains three years starting from the date when the first contract was signed.

Although the Petitioner states he submitted a second contract indicating that [REDACTED] will keep 60 percent of sales proceeds and the Petitioner will get the balance, a review of the record reveals no such contract. The Petitioner did provide a letter from the Secretary of [REDACTED] dated March 21, 2016, and a second contract dated July 6, 2013, both of which dictate that the total proceeds from the sales of the Petitioner's artwork will be split between [REDACTED] and a second non-profit organization, the [REDACTED]. As a result, the new documentation does not reconcile the discrepancies raised, but creates further inconsistencies between the statements of the Petitioner and the evidence in the record. Specifically, the most recently-submitted contract dated July 6, 2013, indicates that the Petitioner will not receive any remuneration for the sale of his artwork through [REDACTED], while the letter from [REDACTED] dated July 2014 states that he received \$230,400. As with the other contracts in the record, there is no corroboration showing payment from [REDACTED] pursuant to the contract.

Based on the contradictory information provided in these contracts and letters, the documents submitted do not credibly establish a contractual relationship between the Petitioner and either [REDACTED] or the [REDACTED]. Even if the documents were credible, however, we note that the most recent arrangement presented by the Petitioner indicates that he is to receive no income from the sale of artwork through [REDACTED]. As

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a result, the contracts and letters related to the Petitioner's arrangement with that organization do not establish the Petitioner's salary or other remuneration.

In addition to contracts, the Petitioner submitted other documents in support of the amounts he has received for his artwork. A self-written page entitled [redacted] [the Petitioner]'s [redacted]. The page indicates that the Petitioner's rendition of the [redacted] has set the record for the highest price among renditions by all contemporary artists. As evidence of this record, the page indicates several attached pages compare the price of the Petitioner's [redacted] with that of other artists. The Petitioner does provide several pages from a website; however, the text is entirely in the Chinese language and is not accompanied by an English language translation, as required by regulation. 8 C.F.R. § 103.2(b)(3). The Petitioner similarly gave a print-out from the website Find Art in order to show prices of calligraphic works of [redacted]. Once again, the text is entirely in the Chinese language and is not accompanied by an English translation, as required by regulation. 8 C.F.R. § 103.2(b)(3). As a result, the Petitioner has not presented evidence to corroborate the comparable selling price for his version of [redacted].

Lastly, we note that the previously mentioned entry on the Petitioner in [redacted] states: "His calligraphy work [redacted] (226 x 46cm x (50)) was sold for CHY 5,000,000. The deal of this single work has set a record of the highest concluded price of contemporary Chinese calligraphist's creation." Despite this statement, the record does not contain other mention of a record held by the Petitioner for highest concluded price for a piece of contemporary Chinese calligraphy. The book contains no date or further evidence about the sale. Without more, this statement is not sufficient evidence of the Petitioner's salary to meet this criterion.

The Petitioner has not shown what other calligrapher or artists receive for salary or remuneration. In addition, he has not established what he received for salary or remuneration as a calligrapher. For the above reasons, we agree with the Director that the Petitioner has not satisfied the plain language of this criterion.

### III. CONCLUSION

The documents submitted in support of extraordinary ability must show 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 satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 individual "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), (3); *see also Kazarian*, 596 F.3d at 1119-20 (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). Although we need not provide the type of final merits determination referenced in

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*Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

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. § 291 of the Act. Here, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of H-T-*, ID# 13963 (AAO Apr. 18, 2016)