



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

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

MATTER OF A-A-R-I-

DATE: MAY 19, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a center for painting and calligraphy exhibitions, seeks to classify the Beneficiary as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification makes visas available to foreign nationals 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 determined that the Petitioner had not provided documentation satisfying 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.

The matter is now before us on appeal. In his appeal, the Petitioner submits no new evidence, but argues that the Director erred in concluding that the Beneficiary did not meet the nationally or internationally recognized prizes or awards, membership, and published material criteria. Additionally, although the Director did not render a determination regarding the original artistic contributions of major significance and the commercial success criteria, the Petitioner argues that the Beneficiary meets those criteria. Further, the Petitioner states that the Director erred in not considering comparable evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

By statute, the extraordinary ability immigrant visa classification requires that foreign nationals demonstrate sustained national or international acclaim and present extensive documentation of their achievements. Specifically, section 203(b)(1)(A) of the Act explains that a foreign national is described as an individual with extraordinary ability 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 has risen to the very top of the field of endeavor. 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 a beneficiary's sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is a major, internationally recognized award). If a petitioner does not submit this documentation, then it must provide sufficient qualifying evidence indicating that the beneficiary meets at least three of the ten criteria 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 documentation is first counted and then, if fulfilling 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 U.S. Citizenship and Immigration Services' (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

The Petitioner provided evidence of the Beneficiary's achievements and expertise as an oil painter. However, in Part 6 of Form I-140, Immigrant Petition for Alien Worker, the Petitioner identified the proffered position as "Art Director." Further, the Petitioner submitted an Offer of Employment, dated October 10, 2014, stating that it intends to employ the Beneficiary as an Art Director at an annual salary of \$36,000. The Offer of Employment includes a description of the proffered position:

The duties of this art director position include the job of examining and evaluating art exhibitions and artwork, appraise them for quality and artistic merit, ascertain economic value through various different practices specific to the art appraisal world, identify the most optimal markets for selling various forms of artwork, and determining the best venues for publication and marketing. The art director is also responsible for organizing and arranging the artwork submitted by various artists to participate in art exhibition activities and provide seminars or conferences for specific art events.

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The duties associated with the proffered position include art appraisal, marketing, advertising, and arranging exhibitions. However, the evidence the Petitioner submitted with the instant petition pertains to the Beneficiary's work as an oil painter. The Petitioner provided no documentary evidence demonstrating that the Beneficiary has sustained acclaim as an art director, appraiser, marketer, seller, organizer, arranger, or curator.

In *Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. The Petitioner has not offered any documentary evidence of the Beneficiary's expertise as an art director or of his performance of the duties associated with the proffered position. Rather, the evidence in the record relates to the Beneficiary's achievements as an oil painter.

The information provided in Part 6 of Form I-140 and the Offer of Employment is clear that the Petitioner intends to employ the Beneficiary as an art director. Accordingly, the Petitioner must demonstrate that the Beneficiary satisfies the statutory requirement at section 203(b)(1)(A)(i) of the Act as well as the regulatory requirements at 8 C.F.R. § 204.5(h)(2) and (3) through his achievements as an art director.

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present the Beneficiary's one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not claimed or shown that the Beneficiary is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, the Petitioner must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

The Director concluded that the Petitioner met the criterion pertaining to the display of the Beneficiary's work in the field at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii). The Petitioner displayed several oil paintings at the [REDACTED] in [REDACTED] Germany as well as at the [REDACTED] and [REDACTED]. The record is supported by brochures from the [REDACTED] which contain the Beneficiary's named works as well as an excerpt from the [REDACTED] and [REDACTED] brochure which also contains photographs of the Beneficiary's named oil paintings. While the aforementioned displays of the Beneficiary's work reflect his achievements as an oil painter, they do not necessarily demonstrate his extraordinary ability as an art director. The statute and regulations require that the Beneficiary seeks to continue work in his area of expertise in the United States, and there is no indication that

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performing the functions of an art director is within his area of extraordinary ability. *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914.

In his decision, the Director did not address the Petitioner's initial claim to high salary or other significantly high remuneration under 8 C.F.R. § 204.5(h)(3)(ix). However, the Petitioner did not raise this as an issue either in its response to the Director's RFE or on appeal. Instead, the Petitioner claims commercial success under 8 C.F.R. § 204.5(h)(3)(x). Accordingly, the issue regarding the Beneficiary's salary or remuneration is not before us and will not be further addressed in this decision.

We now turn to the criteria at issue on appeal. For the reasons discussed below, the Petitioner has not demonstrated that the Beneficiary meets any of those criteria.

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

Under this criterion, not only must the petitioner demonstrate the beneficiary's receipt of prizes and awards, but it must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor, which, by definition, means that they are recognized beyond the awarding entity.

In the instant case, the Director determined that the Petitioner did not establish the Beneficiary's eligibility for this criterion. We concur with the Director's finding.

With its initial petition submission, the Petitioner claimed that the Beneficiary meets this criterion by virtue of having "been awarded a [redacted] for his work, [redacted] at the established [redacted] on October [sic] 2011." According to the Petitioner, the Beneficiary also "received a [redacted] for his oil painting, [redacted] from the [redacted] on July 10, 2011." Additionally, the Petitioner stated that the Beneficiary received the "great honor of having his oil painting, [redacted] collected and displayed at the [redacted] [in] July 2010." In support of its claims, the Petitioner submitted three certificates in the Chinese language reflecting the aforementioned [redacted] and honor. The English language translations accompanying the certificates, however, were not certified by the translator 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 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. *Id.* Because the Petitioner did not submit properly certified translations of the certificates, we cannot determine whether the evidence supports the Petitioner's claims.

The Director found that the enumerated prizes did not meet the plain language of this regulatory criterion because it appeared that the prizes were "local or regional in nature." In his April 22, 2015, RFE, the Director afforded the Petitioner an opportunity to submit evidence demonstrating the criteria used to grant the prizes or awards; the significance of the prizes or awards, to include

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national or international recognition which the prizes have received; the reputation of the awarding organizations; the pool of candidates from which recipients were considered for the awards, including their geographic dispersion; the number of prizes which are granted each year; and the identities of previous recipients of the awards.

The Petitioner responded to the Director's RFE on July 17, 2015, and submitted a brief with no additional evidence. In its response, the Petitioner stated "The evidence previously submitted to satisfy factor (i), documentation of the beneficiary's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field or endeavor, should be sufficient in light of the Petitioner's careful selection of the Beneficiary in employment screening procedures." The Petitioner then makes reference to the three certificates mentioned above and states, "The Petitioner has judged that these achievements are sufficiently distinguishing, ensuring that he commands sufficient respect to perform the proposed job duties." On appeal, the Petitioner submits the same brief and makes the same assertion providing no new evidence in support of its claim.

The Petitioner contends that the aforementioned documentation establishes the Beneficiary's renown as a painter. Each of the three certificates supplied to satisfy the instant criterion represents some form of recognition for a specific oil painting produced by the Beneficiary. However, as noted above, the Petitioner intends to employ the Beneficiary as an art director, performing duties such as art appraising, marketing, advertising, and making selections for and arranging exhibitions. The evidence offered for the instant criterion pertains to none of those areas of expertise. Awards resulting from the Beneficiary's success as a painter are not indicative of his national or international recognition as an art director. Again, the statute and regulations require that the Beneficiary seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914.

Furthermore, even if the documentation pertained to the Beneficiary's field of expertise, we would still find that it does not meet the requirements of this criterion. In this case, there is no documentary evidence demonstrating that the Beneficiary's awards were recognized at a level commensurate with nationally or internationally recognized awards for excellence in the field. In addition, with respect to the Beneficiary's " [REDACTED] " the evidence does not reflect the Beneficiary's receipt of an actual prize or award. While having one's painting displayed at the [REDACTED] might constitute an honor, the Petitioner has not demonstrated that the same constitutes a specific prize or award.

As there is no evidence demonstrating that the Beneficiary has received nationally or internationally recognized prizes or awards for excellence in art directing, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

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Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

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

In the instant case, the Director determined that the Petitioner did not establish the Beneficiary's eligibility for this criterion. We concur with the Director's finding.

With the initial petition submission, the Petitioner claimed that the Beneficiary met this criterion by virtue of his membership in the [REDACTED]. As evidence of the Beneficiary's membership in the [REDACTED] the Petitioner submitted a letter from [REDACTED] professor of [REDACTED] and a translation bearing the title [REDACTED]. As the submitted translation was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine whether the evidence supports the Petitioner's claims.

The Director concluded that the evidence did not meet this criterion because it did not demonstrate that membership in the [REDACTED] is based upon outstanding achievements in the field of endeavor as judged by recognized national or international experts in the field. In his April 22, 2015, RFE, the Director afforded the Petitioner an opportunity to provide evidence demonstrating that outstanding achievements were required to become a member. The Director also requested documentation establishing that those individuals who are responsible for judging prospective members are either national or international experts in their disciplines or fields.

The Petitioner's response consisted solely of a statement, unsupported by documentary evidence, arguing: "The Beneficiary's involvement in the artistic world has similarly been judged by the Petitioner to be enough for the Art Director position, showing that the evidence previously submitted to satisfy factor (ii), documentation of the alien's membership in associations in the field for which classification is sought which require outstanding achievements of their members, is satisfied." In addressing the Beneficiary's membership in the [REDACTED] the Petitioner stated "[T]he Beneficiary's membership in the [REDACTED] is further supported by his many contacts in the artistic field." The Petitioner also mentioned that the Beneficiary is "eminent enough" to "be able to perform his duties as Art Director."

Although the Director specifically requested evidence which would demonstrate the membership criteria for the [REDACTED] as well as the requirements for those judges who are responsible for

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determining a prospective member's qualifications for membership, the submitted no additional evidence and, thus has neither demonstrated that the association in question requires outstanding achievements of its members, nor demonstrated that those individuals who are responsible for reviewing prospective members are national or international experts in their disciplines or fields. Further, the Petitioner has not identified the field of endeavor that formed the basis for the Beneficiary's membership in the [REDACTED]. In other words, the Petitioner has not shown whether the Beneficiary was granted membership in the association due to his achievement as an art director or as an artist. However, the name of the association suggests that membership is open to artists, as opposed to other individuals working in the broad field of art. Membership based upon the Beneficiary's success as an artist cannot be considered evidence of his outstanding achievement as an art director.

As there is no evidence demonstrating that the Beneficiary is a member of an association in the field of art directing which requires outstanding achievements of its members as judged by recognized national or international experts in their disciplines or fields, the Petitioner has not established that the Beneficiary 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.

In general, in order for published material to meet this criterion, it must be about the beneficiary 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. Furthermore, this criterion requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation."

The Director determined that the Petitioner did not establish the Beneficiary's eligibility for this criterion. We concur with the Director's finding.

In its initial petition submission, the Petitioner claimed that the Beneficiary satisfied this regulatory criterion by virtue of having been the topic of works which were published in a number of magazines and newspapers. The Petitioner provided a dual language article, entitled "[REDACTED]"¹ in [REDACTED] (November 2008); a dual language article, entitled "[REDACTED]" in [REDACTED] (October 2008); images of paintings and an untranslated foreign language article, entitled "[REDACTED]" in [REDACTED] (September 2001); a foreign language article with an uncertified abstract of a translation bearing the title "[REDACTED]" in [REDACTED] (September 2008); a foreign

¹ The quoted language is the translation as it appears on the document.

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language article with an uncertified abstract of a translation bearing the title "[REDACTED] (Hometown)" in [REDACTED] (August 2011); a copy of a foreign language article with an uncertified abstract of a translation bearing the title "[REDACTED] in [REDACTED] (February 2012); and a foreign language article with an uncertified abstract of a translation bearing the title "[REDACTED] in [REDACTED] (February 2012).

The aforementioned foreign language articles and their accompanying translations are not complete and have not been certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). As the Petitioner did not submit properly certified translations of the documents, we cannot determine whether the evidence supports the Petitioner's claims.

The Director found that the evidence did not meet the instant criterion because the Petitioner did not demonstrate that the named publications qualified as professional or major trade publications or other major media.

The Petitioner's response to the Director's RFE consisted solely of a statement, unaccompanied by any additional evidence. The Petitioner's statement referenced the evidence already submitted and argued that "[t]he Petitioner has determined that this level of activity in the art world is sufficient for the job of art director, and that the Beneficiary was offered the job of art director for an art center as preeminent as the Petitioner further demonstrates that the Beneficiary satisfies the requirements for EB-1A immigration."

According to the uncertified translations accompanying the foreign language articles, the documentation submitted to meet this criterion pertains to the Beneficiary's activities as an oil painter. The Petitioner has provided no evidence reflecting the Beneficiary's work in art direction, marketing, advertising, or curating. Moreover, there is no indication that the Beneficiary's relation to any of the aforementioned fields formed the subject of any of the articles provided as evidence. Articles written about the Beneficiary's work as an artist cannot be considered evidence of his standing as an art director. Again, the statute and regulations require that the Beneficiary seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914.

Regardless, the published materials provided do not meet the requirements of this regulatory criterion. The two articles in [REDACTED] appear to be about the Beneficiary and his work as an oil painter; however, there is no documentary evidence reflecting the circulation of [REDACTED] to establish that the magazine is a major trade publication or other form of major media. The material in [REDACTED] includes images of paintings as well as an untranslated foreign language article, but none of the paintings contain discernable signatures or names. Moreover, as the article in [REDACTED] is untranslated, the name of the author is unknown as is the content of the article. In addition, the Petitioner provided no circulation information for [REDACTED]. Furthermore, the cover of [REDACTED] is dated September 2001 and the Petitioner's November 12, 2014, letter accompanying the petition specifically stated that the Beneficiary has "been featured in [REDACTED] on [*sic*] September of 2001." Pages 32-40 of the publication, however, include multiple images of paintings that are dated 2006-2008 and a biography of

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the Beneficiary listing events that occurred through 2009. The date of publication claimed by the Petitioner and appearing on the magazine's cover is not consistent with the dates appearing on pages 32-40. The Petitioner has not resolved this discrepancy with independent, objective evidence. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The articles in [REDACTED] and [REDACTED] appear to be about the Beneficiary. However, the Petitioner has not demonstrated that any of the four publications qualifies as professional or major trade publications or other major media, as the Petitioner has provided no documentation regarding the circulation for or recognition of these publications.

Additionally, the majority of the Petitioner's documentary evidence does not comply with the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requiring "the title, date, and author of the material, and any necessary translation." While the Petitioner submitted a few articles reflecting published material about the Beneficiary and his artwork, the Petitioner did not establish that the material was published in professional or major trade publications or other major media. Submitting published material about the Beneficiary and his work is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) without establishing that the material was published in professional or major trade publications or other major media.

In light of the above, the Petitioner has not established that the Beneficiary meets this criterion.

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

To meet this criterion, the evidence must establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. See 8 C.F.R. § 204.5(h)(3)(v); see also *Visinscaia*, 4 F. Supp. 3d at 135-36. The Director did not address this issue either in his RFE or in his final decision. However, we find that the Beneficiary does not meet this criterion.

With its initial petition submission, the Petitioner claimed that the Beneficiary meets this criterion because his "[w]ork has been praised for its originality by [REDACTED] Professor of [REDACTED] [REDACTED] as well as by the [REDACTED]. The Petitioner also states that the Beneficiary's "[o]il paintings contributed greatly to the field of Chinese expressionism;" and that the Beneficiary "[r]eceived three awards in recognition of his great accomplishments." In support of its claims, the Petitioner referenced the evidence supplied to establish the Beneficiary's membership in associations which require outstanding achievements of their members (e.g. a letter from [REDACTED] and a letter from the [REDACTED] as well as evidence supplied to demonstrate that the Beneficiary received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor (e.g. [REDACTED] and a letter

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acknowledging that the Beneficiary's oil painting is being displayed at the [REDACTED]

With regard to the Beneficiary's awards and [REDACTED] membership, the regulations include separate criteria for those categories of evidence. *See* 8 C.F.R. § 204.5(h)(3)(i) and (ii). Documentation relating to or even meeting the awards and membership criteria is not presumptive evidence that the Beneficiary also satisfies this criterion. To hold otherwise would render meaningless the regulatory requirement that a beneficiary meet at least three separate criteria. Both of the aforementioned criteria and the reasons why the Beneficiary did not satisfy them have already been addressed above. Regardless, as we will explain below, the documents submitted under 8 C.F.R. § 204.5(h)(3)(i) and (ii) do not show that the Beneficiary's work rises to the level of contributions of major significance in the field.

On appeal, the Petitioner states that the "Beneficiary's oil paintings have been favorably reviewed," and, therefore, are indicative of contributions of major significance in the field. The Petitioner refers to the letter from [REDACTED] in which he lauded the Beneficiary's work in the field of oil painting. As the translation accompanying his letter was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine whether the letter supports the Petitioner's claims. Notwithstanding the limited evidentiary value of the letter, [REDACTED] did not offer any specific examples of the Beneficiary's work in oil painting that are of major significance in the field. The letter from the [REDACTED] dated June 12, 2012, is also written in a foreign language and is accompanied by an uncertified translation. This letter, which bears no authorial identification, also noted the Beneficiary's work in the field of oil painting and indicated that he has won awards for his painting as well as having had his work displayed at unnamed exhibitions. The letter did not identify any specific contribution that has widely influenced other oil painters or otherwise constitutes a contribution of major significance in the field.

Again, the evidence referenced for this criterion relates to the Beneficiary's work as an oil painter. The Petitioner neither claims nor demonstrates that the Beneficiary is responsible for original contributions of major significance in the field as an art director. The statute and regulations require that the Beneficiary seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Without additional, specific evidence showing that the Beneficiary's work as an art director has been unusually influential, has substantially affected the field, or has otherwise risen to the level of contributions of major significance, the Petitioner has not established that the Beneficiary meets this criterion.

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

The Petitioner initially submitted an "Offer of Employment" stating that the Beneficiary would receive "an annual salary of \$36,000.00" as art director, but the Petitioner provided no basis for comparison showing that the Beneficiary's salary was high relative to that of others in the field of art direction.

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In addition, the Petitioner claimed that the Beneficiary met this evidentiary criterion by virtue of the values assigned to his paintings at art sales. The Director did not address this issue in his RFE and in its response, the Petitioner no longer claimed that the Beneficiary met the criterion. Rather, the Petitioner argued that the Beneficiary enjoyed commercial success under 8 C.F.R. § 204.5(h)(3)(x). The documents reflecting the values assigned to the Beneficiary's paintings, however, are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ix) and will be addressed here.

In response to the RFE, the Petitioner stated that the Beneficiary's work has been valued for as much as 160,000 RMB (\$26,000 USD).² In support of its claim, the Petitioner referenced a copy of a foreign language certificate with an uncertified English language translation, bearing the title [REDACTED]. The Petitioner also referred to the document as representing the sale of one of the Beneficiary's works at the [REDACTED].

The Petitioner's evidence also included a document which refers to the [REDACTED] on December 4, 2008. The cover page with the auction name is attached to a second page that includes a painting attributed to the Beneficiary, entitled [REDACTED]. Beneath the representation of the painting is what appears to be a price in the amount of RMB: 140,000 – 160,000. This, however, has not been demonstrated since the numerical indicator follows a foreign language description that was not properly translated. As the aforementioned documents were not accompanied by certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine whether they support the Petitioner's claims. Thus, there is no indication as to the significance of the preceding amount.

Nevertheless, the documentation provided does not demonstrate eligibility in this instance. The Petitioner claims that the Beneficiary's work has sold for as much as 160,000 RMB (\$26,000 USD) at the [REDACTED] on December 4, 2008, and refers to a certificate from the [REDACTED] as evidence of this sale. However, the document identified does not substantiate the sale of the Beneficiary's work. Rather, the certificate states [REDACTED] through our professional artist evaluation committee has decided to collect and treasure your 2008 original oil painting [REDACTED]. The document does not indicate whether the [REDACTED] purchased the Beneficiary's painting or, if so, how much it paid for the work. There is no indication on this certificate that the Beneficiary received any remuneration for the painting. Further, the Petitioner submitted no other documentary evidence demonstrating that the Beneficiary has ever sold or been offered money for any of his works.

² As of April 5, 2016, 160,000 RMB (or CNY) is worth \$24,697.07 USD. See <http://www.xe.com/currencyconverter/convert/?Amount=160000&From=CNY&To=USD> (accessed April 5, 2016).

³ It appears either that the exhibit to which the Petitioner referred was erroneously labelled or that the Petitioner made an erroneous reference. Exhibit 7 relates to a certificate from the [REDACTED]. Exhibit 19 relates to the [REDACTED].

Without evidence demonstrating that the Beneficiary has commanded a high salary or significantly high remuneration for his work relative to others in the field of art direction, the Petitioner has not established that the Beneficiary meets this criterion.

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

The Petitioner did not claim this criterion in its initial submission. However, in response to the Director's RFE, the Petitioner argued that the Beneficiary satisfies this criterion. The Director did not address this issue in his final decision. On appeal, the Petitioner maintains that the "Beneficiary has enjoyed commercial success as an artist." The plain language of this criterion requires "[e]vidence of the commercial successes in the performing arts." In the instant case, the Beneficiary has experience as an oil painter and is presently seeking employment as an art director. The Beneficiary's field is not in the performing arts. The evidence offered for this criterion (documents pertaining to the value of the Beneficiary's paintings) is more relevant to the remuneration criterion at 8 C.F.R. § 204.5(h)(3)(ix) and has already been addressed there. There is no documentary evidence demonstrating that the Beneficiary has achieved commercial successes "in the performing arts." Accordingly, the Petitioner has not established that the Beneficiary meets this criterion.

B. Comparable Evidence

At the time of filing the petition, in response to the Director's RFE, and again on appeal, the Petitioner argues that its "offer of employment" should be considered as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4). The Petitioner states, "[T]he fact that the Petitioner supports the Beneficiary is thus a significant achievement in and of itself." The Petitioner explains that it holds a prominent reputation within the art world and that its offer of employment constitutes comparable evidence under 8 C.F.R. § 204.5(h)(4), "[i]ndicating that the Beneficiary fulfills the requirements for immigration under EB-1A."

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" if the ten categories of evidence "do not readily apply to the beneficiary's occupation." *Id.* 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 beneficiary's occupation and how the documentation submitted is "comparable" to the specific objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In this instance, the regulatory language precludes the consideration of comparable evidence, as there is no indication that eligibility for visa preference in the Beneficiary's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). The Petitioner has not demonstrated that the regulatory criteria do not readily apply to art directors. In addition, the Petitioner has not shown that its offer of employment is comparable to the caliber of documentation required under the categories of evidence at 8 C.F.R. § 204.5(h)(3). For instance, the Petitioner has provided no documentary evidence from national or international experts in the field of art, attesting to its reputation in the field and no other documentary evidence demonstrating that the Petitioner is renowned within the field. Therefore, the Petitioner has not shown that its job offer would set the

Beneficiary apart as extraordinary. Furthermore, the Petitioner's offer of employment was already considered under the salary criterion at 8 C.F.R. § 204.5(h)(3)(ix). 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.

C. Continuing Work in Area of Expertise

The Petitioner seeks to employ the Beneficiary as an art director. Under the regulation at 8 C.F.R. § 204.5(h)(5), the petitioner is not required to submit an offer of employment. However, the petitioner must submit clear evidence that the beneficiary is coming to the United States to continue work in the area of expertise. *Id.* In the present matter, the Petitioner did not provide documentation demonstrating that the Beneficiary will continue to work as an oil painter, the field in which the Beneficiary demonstrated a measure of expertise, and has indicated its intention to employ the Beneficiary in the role of art director. There is no indication that the Beneficiary intends to continue working in his area of expertise (oil painting) in the United States pursuant to section 203(b)(1)(A)(ii) of the Act and the regulation at 8 C.F.R. § 204.5(h)(5).

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 provided evidence for the Beneficiary satisfying 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 *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. 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.

Cite as *Matter of A-A-R-I-*, ID# 16594 (AAO May 19, 2016)