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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

B2

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 03 2007

SRC 04 061 50953

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Laura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the Director, California Service Center determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on January 13, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-140, Immigrant Petition for Alien Worker, was filed on December 24, 2003. The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established that she qualifies for classification as an alien of extraordinary ability.

Part 4 of the Form I-140 petition includes the following questions: "Are you filing any other petitions or applications with this one?" and "Has an immigrant visa petition ever been filed by or on behalf of this person?" If the response is "Yes," the respondent is requested to attach an explanation to the petition.

Under Part 4 of the present Form I-140, the petitioner responded "No" to both of the preceding questions. Under Part 8 of the petition, the petitioner signed the form under penalty of perjury that this petition is true and correct. Similarly, under Part 9 of the petition, counsel signed the form, declaring that she "prepared this petition . . . and it is based on all information of which [she] has knowledge." *See* 8 C.F.R. § 1003.102(j)(1).

Contrary to the petitioner's response under Part 4 related to whether the petitioner filed "any other petitions or applications with this one" or whether an immigrant visa petition had "ever been filed by" the petitioner, Citizenship and Immigration Services' (CIS) records reflect that the petitioner simultaneously filed two other I-140 petitions, WAC0406251391 and LIN0406851591, under this classification with the California Service Center and Nebraska Service Center on December 24, 2003, the same date on which the present petition was filed. Part 1 of the petition filed at the Nebraska Service Center, LIN0406851591, indicated the petitioner's address as [redacted] For this reason, the Nebraska Service Center returned the petition for lack of jurisdiction and indicated that it should be filed with the Texas Service Center, which has jurisdiction over Ft. Lauderdale, Florida.

Counsel responded by resubmitting the petition to the Nebraska Service Center along with a January 8, 2004 letter stating:

> We are in receipt of the returned petition package for the above client's case filed at your service center. Your return coversheet checked off the reason for the return regarding jurisdiction. However, **if you had read the forms I-140 you would clearly see that the "Petitioner" client** lives in Lincoln, NEBRASKA, which is the exact jurisdiction for the NEBRASKA Service Center. **If you do not understand this simple concept, please see your supervisor for retraining!**
>
> Please be more careful in your review of cases prior to return. The postage alone costs $35 for your mistake.

[emphasis in the original].

Part 3 of the petition filed at the Nebraska Service Center, LIN0406851591, listed the petitioner's address as [redacted] Further, the petitioner's Form G-325A, Biographic Information, submitted with the petition also indicated that she resided at the Lincoln, Nebraska address as of November 6, 2003, the date she signed the form attesting to the truthfulness of the information provided.[1] Therefore, on January 9, 2004 the Nebraska Service Center accepted the petition. On September 19, 2005, the petition (LIN0406851591) was denied by the Director, Nebraska Service Center.

Contrary to the address information provided for LIN0406851591, the petitioner filed a second I-140 petition under this classification with the California Service Center, WAC0406251391, on December 24, 2003 listing [redacted] as her address. Further, the petitioner's Form G-325A, Biographic Information, submitted with the second petition indicated that she resided at the preceding Rowland Heights, California address as of November 6, 2003, the date she signed the form attesting to the truthfulness of the information provided. On March 15, 2005, the petition (WAC0406251391) was denied by the Director, California Service Center for abandonment.

The present I-140 petition, SRC0406150953, was also filed on December 24, 2003, but listed [redacted] as the petitioner's address. Further, the petitioner's Form G-325A, Biographic Information, submitted with this petition indicated that she resided at the preceding Ft. Lauderdale, Florida address as of November 6, 2003, the date she signed the form attesting to the truthfulness of information provided. Specifically, the Form G-325 indicated that the petitioner's "RESIDENCE" was "[redacted] from November 2001 to the present time (the date of her signature). This address, however, was not for the petitioner's residence, but rather for counsel's law office.

According to the petitioner's most recent Form G-325A, signed and dated December 9, 2004, the petitioner resided at [redacted] from November 2001 to July 2004. From July 2004 to the date of her appeal, the record reflects that the petitioner has resided at [redacted] Contrary to information provided by the petitioner for the petitions filed under receipt numbers LIN0406851591 and WAC0406251391, the petitioner's most recent G-325A does not indicate that she resided at the Ft. Lauderdale, Florida or Rowland Heights, California addresses within the last five years.

Thus, CIS records reveal that the petitioner has filed a total of three I-140 petitions under this classification, each at a different Service Center.[2] Each petition was received by a service center on December 24, 2003 and although they were submitted to CIS on the same date, all three petitions claim a different residence for the petitioner. Further, under Part 6, "Basic Information about the proposed employment," all three I-140

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[1] This information was obtained from the section of the Form G-325A entitled "APPLICANT'S RESIDENCE LAST FIVE YEARS, LIST PRESENT ADDRESS FIRST." The bottom of Form G-325A states: "SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT."

[2] We note that counsel was the attorney of record for all three of the petitioner's Form I-140 filings, preparing and signing each of her I-140 petitions.

petitions were left blank. None of the petitions were accompanied by clear evidence specifying how or where the petitioner intended to continue her work in the United States. The regulation at 8 C.F.R. § 204.5(b) requires that "Form I-140 . . . must be filed with the Service Center having jurisdiction over the intended place of employment." Additionally, the regulation at 8 C.F.R. § 204.5(h) allows an alien to file on his or her own behalf when seeking classification pursuant to section 203(b)(1)(A) of the Act. In such a case, the alien beneficiary may be listed as the petitioner on the Form I-140 and the self-petitioning alien would be required to list his or her place of residence. *See* 8 C.F.R. § 103.2(a)(6).

The petitioner, with the assistance of counsel, filed three separate Form I-140's at three different service centers: Texas Service Center, California Service Center, and Nebraska Service Center. The petitioner's stated address of record is different on each of the petitions, as the petitioner provided addresses in Ft. Lauderdale, Florida; Rowland Heights, California; and Lincoln, Nebraska. The provision of these different addresses constitutes a serious misrepresentation relating to the filing jurisdiction of these petitions. It should be noted that there is no evidence in the record that the alien ever submitted an official change of address notice Form AR-11 as required under section 265(a) of the Act, 8 U.S.C. § 1305 notifying the Texas Service Center of her residence in Lincoln, Nebraska or Tucson, Arizona prior to its approval of the present petition on November 8, 2004.

Aside from the petitioner's address being altered to fall under the jurisdiction of a particular service center, we note that the three petitions and their initial supporting documentation were virtually identical in content. It is inexplicable as to why counsel checked "No" under Part 4 of the three I-140 petitions when asked "Are you filing any other petitions or applications with this one?" and "Has an immigrant visa petition ever been filed by or on behalf of this person?" As counsel clearly had knowledge of all three filings based on her simultaneous preparation and submission of the petitions, it appears counsel's intent was to mislead or misinform CIS regarding the petitioner's actual address, the potential filing jurisdiction, and the existence of multiple I-140 filings under the same classification at different service centers. *See* 8 C.F.R. § 1003.102(c). In addition, these actions may also constitute frivolous behavior. *See* 8 C.F.R. § 1003.102(j). The AAO must express its deep concern and strongly discourage this behavior. This behavior appears even more egregious in light of the statements made by counsel in her January 8, 2004 letter to the Nebraska Service Center.

Upon consolidation of the three petitions into the same file and further review of the evidence of record, it became apparent that the petition in this matter had been approved in error by the Texas Service Center on November 8, 2004. As the petitioner most recently identified [redacted], Tucson, Arizona 85719 as her current residence, the petition was forwarded to the California Service Center for revocation of the approval.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 582, 590. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

On August 19, 2005, the director of the California Service Center issued a Notice of Intent to Revoke the approval of the petition. The notice of intent to revoke informed the petitioner that the evidence or record did not satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). We concur with this finding. The director's notice of intent to revoke also indicated that the record lacked evidence of the petitioner's "plans for employment as a musician" in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." At the time of the petition's approval on November 8, 2004, the record included no such evidence.

On September 16, 2005 and September 19, 2005, the California Service Center received the petitioner's responses to the Notice of Intent to Revoke and this documentation was incorporated into the record of proceeding. For reasons to be addressed below, we concur with the determination that the petition was initially approved in error and the director's January 13, 2006 decision revoking approval of the petition.

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

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
>
> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

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

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

CIS and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

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

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

The petitioner submitted a July 1995 certificate issued by the "Education Department of State Culture Ministry" of China stating: "[The petitioner] wins the Award of Excellent Performance in '95' Oriental Cup of National Juvenile (Youth Group) Competition of Zheng Performance. Note: Zheng, a Chinese folk instrument with 21- or 25-stringed plucked instrument in some ways similar to the zither."

Regarding this competition, an undated letter from "Vice Chairman, Zheng Association, Chinese Musician Association & Chinese Folk Wind and String Instrument Association," states: "This competition is held by Culture Ministry of People's Republic of China. More than three hundred professional performers from all over the country attended this competition, but of all only ten extraordinary talented artists finally got this award."

We do not find that the petitioner's receipt of a "Juvenile" or "Youth Group" award is sufficient to meet this criterion. The petitioner's award is limited by its terms to young competitors in the early stages of their career and thus excludes more experienced and established musicians from consideration. There is no evidence showing that the petitioner faced competition from throughout her entire field, rather than her approximate age group within that field. We find that the petitioner's receipt of a Juvenile (Youth Group) performance award is not an indication that she has reached the "very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their field, rather than for individuals aspiring to reach the top at some unspecified future time. Further, there is no evidence such as media coverage surrounding this competition or other evidence showing that this award, which was conferred upon the petitioner and nine other individuals, commands recognition at the national or international level. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the awards or prizes submitted for this criterion be nationally or internationally *recognized* and it is the petitioner's burden to establish every element of a given criterion. We further note that section 203(b)(1)(A)(i) of the Act requires "extensive documentation" of sustained national or international acclaim. Pursuant to the statute and regulations, the petitioner must provide adequate evidence to establish that the awards presented under this criterion enjoy significant national or international stature. Simply alleging that a prize is nationally or internationally recognized cannot suffice to satisfy this criterion. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Contemporaneous evidence of national or international recognition associated with the award is of far greater probative value, particularly when the statute requires "extensive documentation" of sustained national or international acclaim.[3] We find that the preceding factors diminish the significance of the petitioner's National Juvenile (Youth Group) Competition performance award.

The undated letter from further states: "In 1986, [the petitioner] won the Award of Excellent Performance in '[redacted]g of ShannXi province Competition of Zheng Performance." The record includes no primary evidence of this award. Contemporaneous evidence of the petitioner's actual receipt of this award is of far greater probative value than an undated letter issued several years after this competition allegedly took place. Nevertheless, we find that this award reflects provincial recognition rather than national or international recognition. We further note that the petitioner was no older than ten years old at the time of this competition.

In addition to the preceding deficiencies, there is no evidence showing that the petitioner has received any awards for excellence in music subsequent to 1995. The absence of such evidence indicates that the petitioner has not demonstrated sustained national or international acclaim in the several years immediately preceding the petition's filing date.

In a November 17, 2003 "Memorandum in Support of Petition," counsel argues the petitioner's May 26, 2003 "Carnegie Hall Recital Solo Performance" meets this criterion. The record includes a May 2003 concert

[3] For example, large-scale competitions typically issue event programs listing the order of events and the names of all of the participants. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official comprehensive results for the 1995 National Juvenile (Youth Group) Competition of Zheng Performance.

schedule showing that the petitioner performed on the third floor of Carnegie Hall at the [redacted] Weill Recital Hall.[4] Unlike the majority of the events listed in the May 2003 concert schedule, the petitioner's recital included no ticket prices.[5] We further note that the Sanford I. Weill Recital Hall, where the petitioner performed along with a number of "student recitals" in May 2003, is the smallest of Carnegie Hall's three venues. Nevertheless, we do not find that the petitioner's stage appearance at the Joan and Sanford I. Weill Recital Hall constitutes a prize or award for excellence in music. The petitioner's musical performance is far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be further addressed there.

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

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

The petitioner submitted evidence of her membership in the Gu Zheng Commission of the China Folk Orchestra Association (CFOA) and the Gu Zheng Branch of the China Musicians Association (CMA). In addressing this evidence, the director's notice of intent to revoke stated: "No documentation was submitted as to the criteria utilized in judgment of the achievements for membership in these two associations."

In response, the petitioner submitted a September 7, 2005 letter from Yanjia Zhou stating:

> As for the entry criteria for the membership of CMA, first I want to say that being a member of CMA is the highest honor for a musician in China. So, the criteria are very strict. The applicant has to match all of below standards:
>
> • The applicant has to get recommendation from two current members who are in the same filed [sic] as the applicant

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[4] Carnegie Hall has three stages: the largest being the Isaac Stern Auditorium which seats 2,804 people, the and [redacted]l which seats 599 people, and the smallest being the Joan and Sanford I. Weill Recital Hall which seats only 268 people. *See* http://www.carnegiehall.org/article/the_basics/art_overview.html, accessed on June 25, 2007.

[5] The petitioner submitted a printout generated from www.google.com reflecting ticket prices for her event at Weill Recital Hall ranging from $15 to $20, which were significantly less than the ticket prices listed for the numerous other events identified in the May 2003 concert schedule.

- The applicant has to be outstanding in his or her field (e.g.: a winner of top prize in national or international competition in his or her field)
- The applicant must demonstrate that he or she has made great achievements and contributions to his or her field and that development must have strong cultural or social effect

* * *

The criteria for [CFOA] membership are also very strict. Only small percentage of outstanding folk musicians of China is qualified for the membership application. The applicant has to be qualified for one of below standards:

- The associate professor or professor in the universities or colleges where Chinese traditional instruments are taught
- The top winner in national or international traditional instrument competition
- The Chief Conductor, Concertmaster/Concertmistress or Principals of top Chinese Orchestras

The letter from [redacted] fails to specify the source his information regarding the CMA and CFOA membership standards. His statements constitute claims rather than first-hand documentation of the associations' actual membership requirements. Evidence of the membership bylaws or the official admission requirements for these associations is of far greater probative value than [redacted]s assertions. Further, there is no evidence that individuals seeking membership in the CMA and CFOA are evaluated by national or international experts. In regard to the CFOA, we do not find that holding an associate professorship is tantamount to outstanding achievement in music. We find that the evidence submitted by the petitioner fails to establish that admission to membership in the CMA and CFOA requires outstanding achievement or that potential members are evaluated by national or international experts in consideration of their admission to membership. Thus, the petitioner has not established that she meets this criterion.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication or from a publication printed in a language that the vast majority of the country's population cannot comprehend. 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.[6]

[6] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Prince

The petitioner submitted articles from 2000 and 2003 appearing in *World Journal*, *Singtao News*, *Neo-Asian American Times*, *China Press*, and *Torsdag*. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The preceding articles were not accompanied by English language translations as required by both the regulation at 8 C.F.R. § 103.2(b)(3) and the plain language of this criterion. Further, there is no evidence showing that the preceding publications have substantial national or international circulation to such an extent that they qualify as major media.

The petitioner submitted a five-sentence announcement appearing in the "Local" section of the *Lincoln Journal Star* on November 4, 2002 entitled "Chinese Harpist to play Wednesday." The petitioner also submitted postings from the "Community Calendar" section of Lincoln's *Neighborhood Extra* dated November 2, 2002 and May 17, 2003 announcing the petitioner's upcoming recitals. The latter announcement states:

> [The petitioner] presents Zheng (Chinese harp) recital 7:30 p.m. Saturday at the Unitarian Church, 6300 A St. A fundraiser to support her trip to New York City for her debut performance at Carnegie Hall. Recital sponsored by the Unitarian Music Group, the Lincoln Chinese Cultural Association and the Chinese Students and Scholars Association.

There are no circulation statistics for this publication, nor has any other evidence been submitted showing that the brief local announcements in the *Lincoln Journal Star* and *Neighborhood Extra* meet the requirements of 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner also submitted an August 14, 2003 article about her appearing in the Arts and Culture section of *China Daily*. **In addressing this evidence, the director's notice of intent to revoke stated: "No** documentation was submitted to establish the extent of the newspaper's subscribers or distribution as compared to other publishing organizations in this area of news/entertainment coverage." In response, the petitioner submitted information printed from the newspaper's internet website stating: "*China Daily*, established on June 1, 1981, is the only national English-language newspaper in China. The paper is printed in Beijing, Shanghai, Guangzhou, Hong Kong, New York and Jakarta. Its circulation is 200,000 . . . ." The record does not indicate whether the same version of the newspaper is printed in all six of these cities or whether a different version is printed in each city. In this instance, there is no evidence showing that the issue in which the petitioner appeared had a circulation of 200,000 rather than a lesser circulation limited to only one of the preceding cities. Further, as English is not the predominant language in China, it has not been shown that an article appearing in this newspaper constitutes published material in "major media."[7] Even if the petitioner were able to establish that this publication is considered "major media" this single piece of evidence is not sufficient to meet this criterion.

William County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

[7] The Beijing dialect of Mandarin is the predominant language in China.

In response to the director's notice of intent to revoke, the petitioner submitted a March 29, 2004 article about her appearing in the "Arts & Entertainment" section of the *Daily Nebraskan*. The article states: "[The petitioner] moved to the United States two years ago when her husband was offered a J.D. Edwards scholarship at the University of Nebraska-Lincoln. After attending UNL last year, [the petitioner] currently is taking classes at Southeast Community College." There is no evidence showing that the *Daily Nebraskan* qualifies as major media. Further, this article was published subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, the AAO will not consider this article in this proceeding.

The petitioner also submitted material printed from various internet websites (aside from the material previously discussed). For example, a posting on www.asiawind.com promotes a "2003 Chinese New Year Concert" at Ohio State University's Weigel Hall Auditorium organized by the Chinese American Association of Central Ohio.[8] There is no evidence showing that these internet postings mentioning the petitioner received a significant number of website visitors. Further, much of this documentation consists of promotional material relating to the petitioner's musical performances or her compact disc "The Rhythm of the Fall." Moreover, this documentation does not include the date and author of the material or the necessary English language translation as required by the plain language of this criterion. Promotional material, which is not the result of independent journalistic reportage, cannot serve to meet this criterion. This material does satisfy the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and is simply not indicative of national or international acclaim.

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

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

The petitioner submitted recommendation letters from her former music instructors and individuals associated with events or projects in which she was involved, but their letters fail to specify an original contribution of major significance in the music field directly attributable to her. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance the field, the petitioner must show that her work has had a significant national or international impact. We accept that the petitioner has shown talent as a Zheng player, but the record lacks independent evidence demonstrating that her contributions have significantly influenced her field. For example, there is no evidence showing the extent of the petitioner's influence on other professionals in the music field or that the field has somehow changed as a result of her work. The mere fact that the petitioner is a talented musician does not demonstrate that her activities are nationally or internationally acclaimed as having major significance in the field.

[8] The petitioner was one of several artists performing at this event and only one sentence in the concert announcement is devoted to the petitioner.

With regard to the personal recommendation of the petitioner's professors and teachers, the source of these recommendations is a highly relevant consideration. Such letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of her affiliated institutions. The statutory requirement that an alien have "sustained national or international acclaim," however, necessitates evidence of recognition beyond the alien's educators and personal acquaintances. *See* section 203(b)(1)(A)(i) of the Act. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a musician who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed at the national or international level, we cannot conclude that her work rises to the level of a contribution of major significance.

It is noted that although counsel initially argued that the petitioner's compact discs, "The Rhythm of the Fall" and "Collection of Zheng Music," and her performance at Carnegie Hall's Sanford I. Weill Recital Hall meet this criterion, the petitioner's compact disc recordings and musical performance are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be further addressed there. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for original contributions of major significance and commercial successes, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

We further note that the petitioner's response to the director's notice of intent to revoke and her appellate submission did not challenge the director's conclusion that this criterion has not been met. For the reasons discussed above, the petitioner has not established that she meets this criterion.

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

Counsel initially argued that the petitioner's compact discs and various musical performances meet this criterion. The plain language of this criterion, however, indicates that it is more appropriate for visual artists (such as sculptors and painters) rather than for than for performing artists such as the petitioner. It is inherent to the occupation of musician to perform before an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's musical performances are far more relevant to the "commercial successes in the performing arts" criterion and will be addressed there. The petitioner has not established that she meets this criterion.

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

In the November 17, 2003 "Memorandum in Support of Petition," counsel states: "[The petitioner] has performed a leading and critical role for China, Chinese traditional folk music organizations, and the traditional folk musical arts in general, by expertise in and performance of her Zheng music in her live performances and recordings." Counsel then lists two of the petitioner's compact discs and several of the petitioner's performances as evidence for this criterion, but fails to specifically identify the "organizations or establishments" for which the petitioner has performed in a leading or critical role. A compact disc or a public performance is not an "organization" or an "establishment." As stated previously, the petitioner's compact disc recordings and concert performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be further addressed there.

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner, however, has submitted no evidence showing that the cultural organizations for which she has worked have distinguished reputations or that she has performed in a leading or critical role for these organizations.

The petitioner's response to the director's notice of intent to revoke included a September 14, 2005 letter in which counsel asserts that the petitioner "was appointed . . . Director of the Beijing Contemporary Music Institute" from 2000 to 2001. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is no evidence showing that this institution had a distinguished reputation or that the petitioner was responsible for the institution's success or standing to a degree consistent with the meaning of "leading or critical role."

Counsel's September 14, 2005 response letter also cites an August 31, 2005 letter from Executive Director, Pro Musicis Foundation, "a 501(c)(3) organization incorporated in New York," which arranges performance tours and presentations for international artists. [redacted] letter and an accompanying 2004 concert program indicate that the petitioner performed "in Carnegie Hall's Weill Recital Hall on April 21, 2004 and in Pickman Concert Hall at the Longy School of Music in Cambridge, Massachusetts on April 25, 2004." There is no evidence showing that the Pro Musicis Foundation has a distinguished reputation or that the petitioner was responsible for the foundation's success or standing to a degree consistent with the meaning of "leading or critical role." Nevertheless, the performances described in John Haag's letter occurred subsequent to the petition's filing date. As stated previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. at 45. Accordingly, the AAO will not consider these performances or the petitioner's role for the foundation in this proceeding.

In light of the above, the petitioner has not established that she 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 initially claim to meet this criterion, but submitted evidence of her public performances and compact disc recordings. This criterion calls for commercial success in the form of "sales" or "receipts"; simply submitting event programs, letters of support, and promotional material indicating that the petitioner took part in various performances cannot meet the plain language of this criterion. For example, the petitioner has submitted no evidence of ticket sales or attendance figures for her 2003 recital at Weill Recital Hall. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner's individual performances often drew record crowds, were regular sell-out performances, or resulted in greater audiences than those of most others in her field.

In response to the director's notice of intent to revoke, the petitioner submitted a September 1, 2005 letter from [redacted], Manager, Publishing Department, POLOARTS Cultural Transmission Corporation, stating that his company "initially published 10,000 units of 'Rhythm of the Fall' . . . which have sold out and are in second release" in "Mainland China." [redacted]'s letter does not establish that sales of 10,000 units is a high national sales volume in Mainland China, nor is there evidence indicating the amount of profit accrued to the petitioner from these sales. Without supporting evidence indicating that the petitioner's compact disc recording was among the top sellers in the folk music category (as measured by *Billboard* rankings, for example), we cannot conclude that her "Rhythm of the Fall" compact disc was commercially successful. Further, the plain language of this criterion requires "evidence of commercial *successes* in the performing arts." Evidence of commercial success resulting from the release of a single compact disc is not sufficient to meet this criterion. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that her national or international acclaim has been sustained.

The petitioner's response also included a September 6, 2005 letter from [redacted], Event Director, Greater Cincinnati Chinese Music Society (GCMS), stating that his "association invited [the petitioner] to perform twice in one of the most celebrated cultural event [sic] of Tri-state in 2003 and 2004. Since 1999 our association has invited many renowned musicians . . . to perform in our concert." [redacted] further states that the 2003 GCMS concert in which the petitioner participated as one of a number of performers "was sold-out" and that "more than a thousand audience members attended." There is no evidence showing that the petitioner's name received the top billing at this event or that sales of approximately 1,000 tickets is indicative of commercial success at the national or international level. [redacted] also states that the petitioner "performed without accepting any remuneration." Regarding the 2004 performance mentioned in [redacted] letter, we note that this event occurred subsequent to the petition's filing date. As stated previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. at 45. Accordingly, the AAO will not consider the latter performance in this proceeding.

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

In this case, the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3) that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

In addressing her failure to satisfy the regulation at 8 C.F.R. § 204.5(h)(5), the petitioner's response to the director's notice of intent to revoke included a September 16, 2005 job offer letter and contract from the Well Pacific Cancer Foundation's Pacific Performing Arts Center. This job offer letter and contract came into existence subsequent to the petition's filing date. A visa petition may not be approved after the petitioner becomes eligible under a new set of facts. *Id.* A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Accordingly, the AAO will not consider this documentation in this proceeding.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Nor is there "clear evidence" (in existence as of the petition's filing date) indicating that the petitioner will continue work in her area of expertise in the United States.[9] Therefore, the petitioner has not established eligibility pursuant to sections 203(b)(1)(A)(i) and (ii) of the Act and the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968), affirmed in *Matter of Estime*, 19 I&N Dec. at 450 and *Matter of Ho*, 19 I&N Dec. at 582, 590. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

[9] The introductory language of section 203(b) of the Act relates to visa "allocation for *employment-based* immigrants." [Emphasis added.] Occasional participation in unpaid performances in the United States (as in the present case) is not adequate to demonstrate eligibility pursuant to section 203(b)(1)(A)(ii) of the Act.