(b)(6)

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

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUL 0 3 2014 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on August 13, 2013, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a fine artist. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

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

On appeal, the petitioner claims that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. LAW

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, we will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Wikipedia

The record of proceeding reflects that the petitioner submitted numerous screenshots from *Wikipedia*. As there are no assurances about the reliability of the content from this open, user-edited

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

Internet site, we will not assign weight to information from *Wikipedia*. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).[2]

C. Evidentiary Criteria[3]

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

The director determined that the petitioner did not establish eligibility for this criterion. Specifically, the director found that the petitioner's first place award at the in 2012, the at th in 2006, a in 2005, a in 2002, and the in 1997 did not meet the eligibility requirements for this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." It is the petitioner's burden to establish that the evidence meets every element of this criterion. Not only must the petitioner demonstrate her receipt of prizes and awards, she must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor, which, by definition, goes beyond the awarding entity.

On appeal, the petitioner does not contest the findings of the director or offer additional arguments regarding the 2005 the 2002 by the , and the 1997 . Therefore, the petitioner has abandoned these claims. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Regarding the petitioner's 2012 the petitioner submitted a letter from Juror for the 2012 who stated:

[2] *See* also the online content from http://en.wikipedia.org/wiki/Wikipedia:_General_disclaimer, accessed on May 7, 2014, and copy incorporated into the record of proceeding:

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

[3] On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

> Our first was held in December 2012, which included twenty artists from eight countries. One of the participants was [the petitioner], an established and commercially successful artist who is represented by , a leading fine arts dealer in . This exhibition included leading contemporary artists who are presently active in New York. Indeed, it is a highly competitive environment wherein contributions in all media were in evidence; painting, photography, sculpture, installation, video, and performance. [The petitioner] was a clear leader amongst the participants. She won First Place in the category. It was [the petitioner] who consistently drew the most attention from our students with her oil painting

Although explained why the petitioner was awarded first place, there is no evidence demonstrating that the petitioner's first place award is nationally or internationally recognized for excellence in the field. The petitioner did not submit any documentary evidence to establish the award's recognition beyond for excellence in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Regarding the petitioner's 2006 the petitioner submitted two letters from , Director of who confirmed that the petitioner received the in 2006, as well as a commendation in 2005. Although indicated that "is a renowned art critic and senior editor for the internationally distributed and taste-making art publication *Art in America*," there is no indication that the is a nationally or internationally recognized award for excellence in the field. In addition, the petitioner submitted screenshots from the website regarding the mission and activities of the foundation, as well as postings of the 2005, 2006, and 2013 awardees. However, the screenshots provide no evidence of recognition for excellence by the field of endeavor. The petitioner did not submit any documentary evidence beyond to establish that is a nationally or internationally recognized award for excellence in the field.

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner's prizes or awards be nationally or internationally recognized for excellence in her field. In this case, the petitioner did not demonstrate that her prizes or awards are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Accordingly, the petitioner did not establish 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.*

The director determined that the petitioner did not establish eligibility for this criterion. Specifically, the director found that the petitioner's memberships with the of New York, the , and the of New York did not meet this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is 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.

Regarding the petitioner submitted a letter from Global Director for who stated:

> The seeks to garner both the recognition of emerging talents and interest in the work of established artists whose creations remain inspirational today. Our firm offers artists the first investment opportunity created specifically to provide artists with a long-term financial planning program . . . .
>
> * * *
>
> The advisory board is comprised of world renowned artists and art professionals. Hence, our selection process is extremely rigorous. [The petitioner] has met our standards . . . .

The petitioner also submitted an email from who stated:

> The criteria is quality and promise. While most artists have an exhibition history and some career successes prior to acceptance, some are selected because the committee believe[s] their career track has exceptional promise. There have been some who have had extraordinary success since inception . . . .

In addition, the petitioner submitted screenshots from www.aptglobal.org reflecting that "[artists are nominated by an Associate Curator and then voted on by the team of Head Curators consisting of gallerists, art school academics, and other professionals from the art world." On appeal, the petitioner submits her contract with New York.

A review of the submitted documentation does not establish that requires outstanding achievements as a condition for membership. Although stated that selection process is extremely rigorous since its advisory board is comprised of worldly renowned artists and professionals, she did not provide any specific description of the selection process. According to the webpage for provided by the petitioner, advisory team has experience in

"identifying artists with high potential of success and in supporting these artists through the early and mid-stages of their career." Further, according to email, artists can become members of if the committee believes that the artists have exceptional promise rather than already having demonstrated outstanding achievements. Membership conditions that are based upon speculative future potential of artists in the early or mid-stage of their career are not sufficient to establish that the applicant's membership is based upon demonstrated outstanding achievements. Accordingly, the evidence does not establish that the Head Curators bases its determination on outstanding achievements for membership.

Regarding , the petitioner submitted a letter from President of who stated:

> To be a member, a recommendation from an existing member is required. The first screening is by a candidate's portfolio. After the candidate is selected, s/he has the second screening, which consists of an interview. Admission is highly selective and some years we accept no one. Applicants must evince a clear artistic trajectory and promise in their field. In addition, the applicant must understand our mission fully and have a great passion to be a productive member of this community through his/her art works and activities. We do not seek to merely increase our membership. Selection is predicated on our desire to identify and promote quality art . . . .

In the petitioner's brief on appeal, the petitioner states:

> [T]o maintain the status of top Japanese "fine art" artist association with quality individuals, the selection process of artist members is very exclusive and not open to the public. Thus the applicant needs a member's recommendation. . . . [M]embers have at least four year college degrees in Art. Many of them have Master's degrees.

The petitioner indicates that the guidelines for membership are:

1. Applicants must have at least ten (10) years of career as an artist.
2. Applicant must submit current portfolio, statement and resume.
3. Applicant must make presentation of his/her artworks in front of the board members.
4. Recommendation letter of a current member is required.

Although the petitioner submitted numerous documents regarding projects and exhibitions, the documentation does not support the petitioner's assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). We must look to the plain language of the documents executed by the petitioner and not to subsequent statements. *Cf., Matter of Izummi,* 22 I&N Dec. 169, 185 (Comm'r 1998). There is no evidence reflecting that JAANY's

membership requires an applicant to have at least a ten-year career as an artist, and that an applicant must make presentations of his/her artwork in front of board members. In fac the president of , does not mention these two claimed guidelines as requirements for membership. Neither the petitioner's claimed guidelines, nor statement that an applicant requires a recommendation from a member and the screening of an applicant's portfolio, reflects outstanding achievements for membership. Furthermore, similar to the above-mentioned membership requirements for indicated that applicants must demonstrate promise in their field rather than the regulatory requirement of demonstrating membership based upon outstanding achievements.

Regarding on appeal, the petitioner claims that the director's decision does not discuss this association. However, a review of the director's decision reflects that the director indicated that the petitioner claimed eligibility for this criterion based in part on the petitioner's membership with and the director ultimately concluded that none of the petitioner's memberships met the eligibility requirements for this criterion.

Notwithstanding, at the initial filing of the petition, the petitioner submitted a letter from President of the New York Chapter of Ms. provided some background regarding the association and praised the petitioner for her work but provided no evidence of the eligibility requirements for membership with On appeal, the petitioner submits screenshots from www.summiesociety.org and www.metronysumieart.org reflecting background and activities of the association, as well as a membership application.

The petitioner claims on appeal that "[t]o be a member, you have to have sufficient experience of Sumi-e. As a result, all members are well-experienced or established Sumi-e artists . . . ." However, the documentation does not support the petitioner's claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). A review of the membership application indicates that it requires an applicant to provide biographical information and to pay a fee. Although the application reflects different membership fees depending on the membership status, such as "regular," "supporting," "sustaining," "sponsor," "patron," and "student," the petitioner did not indicate her current membership status and did not submit any documentation regarding the requirements for each status, so as to demonstrate that outstanding achievements are required for membership. Furthermore, the petitioner did not submit any documentation to establish that membership with is judged by nationally or internationally recognized experts in their disciplines or fields. For these reasons, the petitioner did not establish that her membership with meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Accordingly, the petitioner did not establish that she meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is

sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director determined that the petitioner did not establish eligibility for this criterion. Specifically, the director found that the petitioner submitted various screenshots reflecting announcements of exhibitions where the petitioner is among a list of artists. The director indicated that the petitioner submitted information regarding the and the but did not submit any of the articles. On appeal, the petitioner claims that she did submit the articles "[b]ut for some unexplained reason the Director could not find them." A review of the record of proceeding reflects that the petitioner did submit some articles in response to the RFE and submits additional articles on appeal.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[4] Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation."

The petitioner submitted several foreign language articles, such as and with non-certified English language translations. As these articles do not comply with the regulation at 8 C.F.R. § 103.2(b)(3) and 204.5(h)(3)(iii), they have no probative value and will not be considered.

Moreover, with the exception of one article, the petitioner's evidence does not reflect published material about the petitioner relating to her work consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act, which only requires published material about the alien's work. Rather, the articles reflect material regarding exhibitions in which the petitioner is credited as one of numerous other artists displaying their work; the articles are not about the petitioner. For instance, the petitioner submitted an article entitled, The article is about the exhibit entitled, Although the article contains a single reference to the petitioner's artwork, the article is not about the petitioner. Similarly, the petitioner submitted a screenshot entitled,

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

The screenshot is about an exhibit entitled, " rather than the petitioner. The petitioner also submitted several articles, such a), and which are reviews of exhibitions in which the petitioner's work was briefly critiqued. Articles that are not about the petitioner, however, do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

As indicated above, the petitioner did submit one article that can be considered published material about the petitioner relating to her work –). However, the petitioner did not include the author of this article or the authors for some of the other submitted articles such as , as required by the regulation. Furthermore, the petitioner did not submit any documentary evidence demonstrating that as well as the other websites such as and is other major media. In addition, many newspapers or organizations, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. The petitioner did not establish that Internet accessibility is a realistic indicator of whether a given website is "major media." For these reasons, these articles do not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Even if the petitioner were to submit supporting documentary evidence showing that meets the elements of this criterion, which she has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material in more than one professional or major trade publication or other major medium. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *Cf. Maramjaya v. USCIS*, 2008 WL 9398947, *1, *6 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005, at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

The petitioner's documentary evidence does not reflect published material about her relating to her work in professional or major trade publications or other major media.

Accordingly, the petitioner did not establish that she meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner did not previously claim eligibility for this criterion, either at filing or in response to the director's RFE. However, on appeal, the petitioner now argues that she meets eligibility for this criterion. The methods vary by which a petitioner can be notified of evidentiary requirements. For example, a petitioner is considered to be on notice through the specific requirements outlined within the regulations, or through various forms of communication from USCIS to a petitioner or applicant noting an evidentiary deficiency or requesting more evidence. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). The regulation at 8 C.F.R. § 204.5(h)(3) notified the petitioner of the specific filing requirements to demonstrate eligibility under the extraordinary ability classification. In addition, the instructions to the Form I-140 petition state that the petitioner "must attach evidence with [the] petition showing that the alien has sustained national or international acclaim" and then lists the ten regulatory criteria, including evidence of "[p]articipation on a panel or individually as a judge of the work of others in the field or an allied field." Finally, the director issued a request for evidence listing all of the regulatory criteria.

As the petitioner was notified of the evidence required to demonstrate eligibility and was afforded the opportunity to provide the evidence prior to the issuance of an adverse decision, new eligibility claims will not be considered on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766. Consideration of the petitioner's additional claims of eligibility must be accomplished through the filing of a new petition. *See id.* at 766. *Cf. Matter of Jimenez*, 21 I&N Dec. 567, 570 n.2 (BIA 1996) (finding that claims of eligibility for a waiver presented for the first time on appeal are not properly before the Board of Immigration Appeals and the Board will not issue a determination on the matter.) Although we maintain *de novo* review of appellate cases and a petitioner may supplement the record in regards to previous claims, a petitioner may not raise a previously unclaimed eligibility criterion on appeal. *See Matter of Soriano,* 21 I&N Dec. at 766.

Our review is a determination as to whether the director erred in his determination. If a claim was not previously made, there could not have been any error on the part of the director. As the petitioner did not previously claim eligibility for this criterion before the director, the director did not err in his decision, and we will not consider the petitioner's new claims on appeal.

Accordingly, the petitioner did not establish 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 director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original contributions "of major significance in

the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The director found that the petitioner's recommendation letters did not meet the plain language of this regulatory criterion. On appeal, the petitioner claims that the letters should also be considered as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim "shall" include evidence of a one-time achievement or evidence of at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. Moreover, the regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." It is clear from the use of the word "shall" in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to her occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation as a fine artist cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the petitioner mentions evidence in the brief that specifically addresses 8 of the ten criteria at the regulation at 8 C.F.R. § 204.5(h)(3). An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the petitioner's occupation. Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

On appeal, the petitioner claims that her eligibility for this criterion based on her artwork sales at and The petitioner submitted a letter from , Adminstrator, who stated that the petitioner "has not only contributed works to three of our exhibitions and one contemporary art fair in Shanghai, we have also sold her art works." Mr. , however, did not explain how these contributions were made to the field as a whole rather than being limited to the and The petitioner did not submit any documentary evidence to establish that her work at or has a significant impact to the field, so as to demonstrate that she has made original contributions of major significance in the field.

The petitioner also claims on appeal that she has made original contributions of major significance in the field based on her service as a Sumi-e guest-lecturer at The petitioner submitted a letter from President of , who stated that most of her

students are established Western artists, such as who incorporated the petitioner's teachings into her own work. did not establish how the petitioner's guest-lecturing has been of major significance in the field. Instead, provided a single example of a student who has benefited from the petitioner's teachings. The petitioner has not demonstrated that any of her guest lecturing has resulted in original contributions of major significance in the field pursuant to the plain language of this regulatory criterion.

Further, the petitioner claims on appeal that she meets this criterion based on her design for a table tennis paddle. The petitioner submitted a letter from Founder and President of who stated that the petitioner "created paddles with an emblematic design upon them that shows her mastery of the traditional Japanese aesthetic which is known for its simplicity and elegance." Although confirmed the petitioner's design of paddles, there is no evidence reflecting that her design has been of major significance to her field. The petitioner did not demonstrate the impact or influence of her design, so as to establish that she has made an original contribution of major significance in the field.

Finally, on appeal the petitioner claims eligibility for this criterion based on her art exhibition management at Gallery. A second letter from stated that the petitioner "has consistently been a leader and contributor to our endeavors." Although this claim is more applicable to the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii) briefly discussed the petitioner's contributions to the Gallery rather than any original contributions of major significance to the field as a whole. The petitioner has not demonstrated that her contributions at Gallery and have resulted in any original contributions of major significance in the field.

The petitioner submitted recommendation letters that highly praise her talents and skills as a fine artist, indicating that she "is an extraordinary talented voice in New York's art scence" , "is one of the international art community's well-respected and critically lauded artists" , that her "body of work occupies a unique and highly prominent position in the art world" , and "is a highly original and important professional working in contemporary art (Dr. . None of the letters indicated how the petitioner's skills are original contributions of major significance in the field. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Assoc. Comm'r 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive

evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a fine artist who has made original contributions of major significance in the field. *See also Visinscaia*, CV No. 13-223, at *1, *6 (D.D.C. Dec. 13, 2013) (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Although those familiar with the petitioner generally describe her as "extraordinary," there is insufficient documentary evidence demonstrating that the petitioner has made original contributions of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. Vague, solicited letters that repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. In this matter, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). Without supporting evidence, the petitioner has not met her burden of establishing her present contributions of major significance in the field.

Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout her field, or has otherwise risen to the level of contributions of major significance, 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.

The director determined that the petitioner established eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

Accordingly, the petitioner 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.

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation."

On appeal, the petitioner claims eligibility for this criterion based on her roles at of New York, and The petitioner does not, however, make any claims or refer to any documentation regarding the distinguished reputations of of New York, , and Moreover, although the petitioner previously made other claims of eligibility, such as her roles at , which were addressed in the director's decision, she does not contest the findings of the director or offer additional arguments. Therefore, the petitioner has abandoned these claims. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n. 2; *Hristov v. Roark*, 2011 WL 4711885, at *9 (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Regarding of New York, on appeal the petitioner refers to the previously discussed letter from , President of of New York, who stated that the petitioner has "been extremely helpful to our chapter because she speaks, reads and writes Japanese." Moreover, stated that the petitioner volunteered at two events. The contributions that the petitioner has made to the of New York are not indicative of leading or critical roles consistent with the plain language of the regulation. The petitioner did not submit any other documentation that reflected her roles with of New York that could be considered leading or critical beyond participating and volunteering at events sponsored by the of New York. The petitioner did not submit, for example, any documentary evidence that distinguished her roles from other members of of New York, so as to reflect that she performed in a leading or critical role. Furthermore, although on appeal the petitioner submits screenshots from and reflecting background and activities of the association, there is no indication that of New York has garnered a distinguished reputation. The petitioner did not submit independent, objective evidence reflecting the reputation of the of New York. *Cf., Braga v. Poulos,* No. CV 06 5105 SJO *aff'd* 2009 WL 604888 (USCIS need not rely on the self-promotional material).

Regarding , on appeal the petitioner claims that she has performed leading and critical roles as an artistic director in important aspects of its art exhibitions. The previously discussed letter from indicated that the petitioner "stirred considered interest" regarding a recent exhibition. In addition, indicated that the petitioner "collaborated with other visual and performing artists as a calligrapher" and "teaches the technique of Japanese Ink Painting at with great success." however, did not indicate the petitioner's roles rise to the level of leading or critical as required by the plain language of the regulation. The petitioner did not submit any other documentation evidencing her roles at There is no evidence, for example, comparing the roles of the other artists to the petitioner in her collaboration on events and projects. Moreover, when compared to the President of it appears that the petitioner performed in a far lesser role that is not reflective of a leading or critical role. In addition, the petitioner did not establish that

has a distinguished reputation. The record of proceeding contains screenshots from reflecting the background and events of the entity. Although received the from the which appears to be a local award, the petitioner did not submit sufficient objective evidence demonstrating the distinguished reputation of

Regarding , the petitioner submitted sufficient documentary evidence demonstrating that she performed in a leading or critical role. However, the petitioner has not established that has a distinguished reputation. Although the petitioner submitted documentation from , as well as evidence of various demonstrations and exhibits, there is no evidence establishing the distinguished reputation of Even if the petitioner demonstrated that has a distinguished reputation, which she did not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the petitioner to perform in a leading or critical role for more than one organization.

Accordingly, the petitioner did not establish that she 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 did not previously claim eligibility for this criterion, either at filing or in response to the director's RFE. However, on appeal, the petitioner now argues that she meets eligibility for this criterion and her "initial I-140 filing apparently and inadvertently did not include this evidence."

As the petitioner did not previously claim eligibility for this criterion before the director, the director did not error in his decision, and we will not consider the petitioner's new claims on appeal.

Accordingly, the petitioner did not establish that she meets this criterion.

C. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

III. O-1 Nonimmigrant Status

The petitioner indicated on her Form I-140, Immigrant Petition for Alien Worker, that she was last admitted to the United States on July 25, 2012, as an O-1 nonimmigrant. On appeal, the petitioner claims that "she was granted O-1 visas two (2) times with two (2) different sponsors over six years during which time she has succeeded to an even higher level of extraordinary achievement in the art world as required under this immigrant petition." Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states that "[t]he term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1

regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines 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 evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner's receipt of O-1 nonimmigrant classification is not evidence of her eligibility for immigrant classification as an alien with extraordinary ability. Further, an approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis upon review of the evidence of record.

Many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

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

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800 (E.D. LA 1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

IV. CONCLUSION

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

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination.[5] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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

ORDER: The appeal is dismissed.

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[5] We conduct appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d at 145; *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).