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

(b)(6)

[redacted]

DATE: SEP 2 2 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 Director, Texas Service Center, denied the employment-based immigrant visa petition on January 8, 2014. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on February 5, 2014. The appeal will be dismissed.

According to the petition, filed on June 6, 2013, the petitioner seeks classification as an alien of extraordinary ability in the arts, as a painter, sculptor and multi-media artist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien, as initial evidence, can present evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(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 files additional supporting documents, including a November 25, 2013 [redacted] article and a 2013 document entitled '[redacted]' The petitioner asserts that she meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), and (vii). For the reasons discussed below, the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. THE 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.

United States 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. 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 initial evidence of a one-time achievement, that is a major, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 the 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." *Kazarian*, 596 F.3d 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 the AAO 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 the AAO concluded)." *Kazarian*, 596 F.3d 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 case, the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that she is one of the small

[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 (vi).

percentage who are at the very top in the field of endeavor, or has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Prior O-1 Visa Petitions

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. The regulatory requirements for an immigrant and non-immigrant alien of extraordinary ability *in the arts* are dramatically different. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as simply "distinction," which is further defined as follows:

> Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field 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." While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in nonimmigrant regulations, 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in 8 C.F.R. § 214(o), does not appear in 8 C.F.R. § 204.5(h). As such, the petitioner's approval for a non-immigrant visa under the lesser standard of "distinction" is not evidence of her eligibility for the similarly titled immigrant visa.

B. Evidentiary Criteria[2]

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

---

[2] The petitioner does not claim that she meets the regulatory categories of evidence not discussed in this decision.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The director concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that her receipt of a $15,000 from the , a $1,000 , and a $7,000 meet this criterion. The petitioner has not shown that she meets this criterion.

First, the evidence shows that that the petitioner received the $15,000 called the after the filing of her petition. Specifically, according to ' filed on appeal, the introduction of the resolution authoring funding of the was on June 19, 2013; the final action, which was the adoption of the resolution, was on July 16, 2013. The petitioner filed her petition on June 6, 2013, before she received the Indeed, the first time the petitioner filed evidence of her receipt of this was in response to the director's request for evidence (RFE), four months after the filing of her petition. Although the ' ' notes that the Consortium approved the recommendations on May 22, 2013, the document indicates that the Board of County Commissioners of Florida, appropriated the funds for the on July 16, 2013, after the petitioner filed her petition in June 2013.

It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The petitioner cannot secure a priority date based on the anticipation of a future qualifying award. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.")

Second, even if we were to consider the 2013 , the petitioner has not shown that it is a nationally or internationally recognized prize or award for excellence. The " ' states that only residents within five counties of Florida could apply for the , and that the petitioner was one of 14 of over 300 applicants selected to receive a The document provides that the selection process involved application review by a panel of regional arts experts, "a national panel of three out-of-state arts experts" and recommendation approval by the Board of Directors.

According to the Activities Report 2012-2013, the national panel consisted of Executive Director of in Texas; Associate Curator at the Assistant in the Department of Education and Public Programs at the On appeal, the petitioner asserts that the "participation of the national panel of judges is prima facie evidence that this prize was national in recognition, notwithstanding its regional applicant pool." The petitioner, however, has not supported her assertion with any legal authority.

At best, the evidence shows that the constitutes a locally or regionally recognized award or prize, which is insufficient to establish that it is a qualifying award or prize under the criterion. Although the selection process included review by experts who live outside of Florida, the petitioner has not shown that this review renders the for which only residents of five counties in Florida could apply, a nationally or internationally recognized award. In addition, the record lacks evidence relating to the prestige of this fellowship award or evidence that the national or international media reported about the fellowship program or its award recipients. Indeed, according to Artists and Communications Manager, Department of Cultural Affairs, the fellowship program "offers the largest *regional*, government-sponsored artists' grants in the United States" and that the petitioner received the fellowship award because she is one of "the best artists living and working in ' (Emphasis added.)

Third, the petitioner has not shown that her $1,000 constitutes a qualifying award or prize under the criterion. According to Founder and Executive Director the petitioner received the grant through the which is designed to assist practicing, professional and emerging artists residing in The applicant pool of this grant is thus geographically restricted to artists residing in the This restriction is not indicative that the grant constitutes a nationally or internationally recognized award or prize for excellence. In addition, Ms. states that the criteria for receiving the grant are "professional growth/career advancement," "professional commitment" and "planning/confirmation." In her explanations for these terms, Ms. does not indicate that it is a grant that recognizes a recipient's excellence in the field of endeavor, as required under the plain language of the criterion. Rather, the purpose of the grant is to assist artists in their professional development.

The evidence shows that the petitioner's $1,000 funded her participation in the from March 2008 to April 2008. The petitioner has not shown that her participating in this program constitutes a qualifying award or prize. The petitioner has not submitted evidence showing that being invited to participate in a residency program is the equivalent of receiving an award or prize, let alone a nationally or internationally recognized award or prize for excellence. Moreover, according to Program Director of , the petitioner was chosen to participate in the residency program because she is "an artist of high ability," who is "highly skilled in [her] craft and ha[s] the intellectual ability to articulate [her] artistic expression to other artists-in-residence and visiting artists." These selection criteria are insufficient to show that the petitioner's participation in the residence program constitutes her receipt of a nationally or internationally recognized award or prize for excellence in her field.

Fourth, the petitioner has not shown that her receipt of a $7,000 grant constitutes her receipt of a qualifying award or prize under the criterion. According to the letter from Board Chair, the amount "does not constitute full funding of [the

petitioner's] proposed activities." In addition, the petitioner has not provided sufficient evidence relating to the selection process of this grant. The record lacks information relating to how many people applied for the grant, how many people received the grant in 2010, and what criteria the judges considered when selecting individuals for the grant. The record also does not establish that the grant's aim was to recognize an artist's excellence in the field. Rather, as Ms. letter indicates, the grant sought to fund the petitioner's proposed activities, which at the time of the grant, had not yet started or completed. The plain language of the criterion requires that the petitioner received the award or prize in recognition for her excellence in the field. As such, grants or fellowships that fund the petitioner's future projects or activities do not meet this criterion.

Moreover, the evidence submitted to show the recognition of the petitioner's prizes or awards is from the entity that issued or funded the prizes/awards. Such evidence has limited evidentiary value in demonstrating any recognition beyond Florida. The petitioner has not supported this evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the selection of the prizes/awards outside Florida.

Finally, the record includes evidence of the petitioner's other achievements, including being named the best artist in by the , receiving a $2,940 grant from the , and wining first and second place finishes in contests in Argentina. On appeal, however, the petitioner has not continued to assert that these achievements constitute nationally or internationally recognized awards or prizes for excellence. As such, we conclude that the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States 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) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Accordingly, the petitioner has not presented documentation of her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

> *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.* 8 C.F.R. § 204.5(h)(3)(iii).

The director concluded that the petitioner met this criterion. The evidence in the record supports this conclusion. The petitioner has submitted articles about her from the and which are professional or major trade publications or other major media. Accordingly, the petitioner has presented published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The director concluded that the petitioner did not meet this criterion. On appeal, the petitioner, relying primarily on reference letters, asserts that she meets this criterion. The evidence in the record shows that the petitioner has not shown that she meets this criterion. Specifically, the petitioner has not shown that her work constitutes contributions of major significance in the field.

First, the petitioner relies on evidence that she has displayed her work in galleries and museums. These displays, absent evidence that the petitioner's work constitutes "contributions of major significance in the field," are not sufficient to establish that the petitioner meets this criterion. The regulations contain a separate criterion regarding evidence of the display of the petitioner's work, which is a criterion we conclude below that the petitioner meets. *See* 8 C.F.R. § 204.5(h)(3)(vii). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from display. As such, display of one's work is not sufficient evidence under the contributions criterion absent evidence that the display represents contributions of "major significance in the field." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115. In *Kazarian*, the court reaffirmed its holding that our adverse finding under this criterion was not an abuse of discretion. 596 F.3d at 1122. Typically, in considering whether a display is a contribution of major significance, we look at the impact the display has in the field.

The evidence in the record is insufficient to show that the petitioner's display has had an impact consistent with contributions of major significance in the field. According to the petitioner's "reach is global, with pieces exhibited at venues such as the ' The petitioner was involved in an art exhibition called ' presented in an abandoned amusement park in Germany. According to Ms. the petitioner's influence "is felt in Germany . . . [and] her home country of Argentina." Ms. however, provides no specific information on how the petitioner has influenced arts in Germany or in Argentina. At best, the evidence shows that the art world has noticed the petitioner's work and has considered it to be worthy of showing. This consideration, without evidence that her work also has affected and/or advanced the field in a significant way, is insufficient to show that the petitioner's work constitutes "contributions of major significance in the field," as required under the plain language of the criterion.

On appeal, the petitioner asserts that she need not provide evidence that other artists emulated or copied the petitioner's work. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia v. Beers*, __ F. Supp. 2d __, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not

demonstrate her impact in the field as a whole). As such, the petitioner must provide evidence that her work has impact in the field as a whole that is consistent with contributions of major significance in the field.

Second, a museum's acquisition and exhibition of the petitioner's work is insufficient to show the petitioner meets this criterion, absent a showing that the petitioner's contributions are of major significance in the field as a whole. According to acquired the petitioner's ' ' which is a bearskin rug textile made of the "skin" of stuffed teddy bears, for its exhibit ' ' Mr. explained that "[e]ach year, thousands of visitors will see and be inspired and affected by it." He further states that for "an artist to have her work exhibited in the permanent collection of a major metropolitan museum is the hallmark of her accomplishments and represents a major impact in the field." Although the evidence shows that the considered the petitioner's artwork worthy of becoming a part of its permanent collection, it is insufficient to show the piece constitutes a contribution of major significant in the field. The modern and contemporary art collection includes the work of an unspecific number of artists; neither Mr. nor other evidence in the record indicates that all the pieces in the collection constitute contributions of major significance in the field. Indeed, Mr. provides that the "modern and contemporary art collection of features internationally prominent artists as well as emerging talents," who might not have been established artists or artists who have made contributions of major significance in the field. On appeal, the petitioner asserts that "for an artist to have [her] work on permanent display in a major museum is . . . prima facie evidence of an original contribution of major significance." The petitioner, however, does not support her assertion with any legal authority.

Moreover, the article discusses the exhibit and references artists whose work is part of the exhibit. The article, however, does not mention the petitioner or her ' ' This lack of reference is not indicative of the piece being a contribution of major significance in the field. Although the article published on discusses the petitioner's piece in three sentences and includes a photograph of the piece, the article makes no mention of or the petitioner's impact in the field.

Third, evidence that the petitioner's work has been accepted in an art show is insufficient to show that it constitutes contributions of major significance in the field. In selected the petitioner's project ' to include in its section. The letter from indicates that the demand for participation is "strong and almost three times as many applications were submitted as there are booths available." Mr. states that the art fair exhibits only a few local artists. An online printout from indicates that the selection committee "is made up of prominent art gallerists, who make their final selections based upon criteria that remain consistent from year to year. Through this rigorous selection process, ensures that our galleries present work of the highest quality." The

petitioner has not submitted any evidence showing that one of the selection criteria was that the piece constitutes a contribution of major significant in the field, such that it has affected and/or advanced the field in a significant way. At best, the selection of the petitioner's work to be included in the art fair shows the petitioner's work is worthy of showing. According to the article has "43,000 visitors, and countless receptions and exhibits [that are] crammed into four days in early December." The petitioner has not shown that her work being one of the "countless . . . exhibits" is indicative of her have made contributions of major significance in the field. Additionally, as discussed above, there is a separate criterion for display of the petitioner's work, which we conclude is a criterion that the petitioner meets. *See* 8 C.F.R. § 204.5(h)(3)(vii).

Fourth, evidence that the petitioner has been commissioned to create art and enjoys recognition in the region is insufficient to show she meets this criterion. According to Executive Director and Chief Curator of the the museum "commissioned [the petitioner] to create a site-specific installation entitled on the sidewalks in the grounds surrounding the Museum." Ms. states that "the impact of [the petitioner's] works have gone far beyond mere gallery exhibitions, in that they impact the thousands of viewers who annually visit and the thousands more who stroll the museum's grounds." According to Ms. , the petitioner is "recognized for her many public art installations in " her work "is experienced by a large segment of the population," and that her "public art displays have been commissioned by the local and county governments and have their imprimatur." The evidence in the record does not establish that any of the petitioner's work constitutes a contribution of major significance in the field. The facts that a museum and local government entities have commissioned the petitioner to create art and allowed public access to the artwork are insufficient to show the significance, let alone major significance, of the work in the field. At issue is the petitioner's impact in the field, not impact to the public. At best, the evidence shows that the petitioner is a working artist, who has been asked to work and who has received compensation for her work.

In 2013, the named the petitioner the best artist in According to Ms. this "is testament to the impact that [the petitioner] has had on this community." According to Mr. this "means that [the petitioner] has had a major impact on the public as an artist." This accolade signifies that the petitioner enjoys a level of recognition in and possibly the region. This recognition is insufficient to show the petitioner's impact in the field as a whole. As such, it does not establish that she has made contributions of major significance in the field.

Fifth, the evidence has not shown that the petitioner's use of material or her emphasis on a collaborative work environment is original, such that she is the first or one of the first people to have done it. According to the petitioner's references, including Ms. , the petitioner "combin[es] many disciplines as she pursues ongoing collaborations with creative individuals from various backgrounds," and unlike other artists, the petitioner "works inclusively and socially, finding new access points for communication to create public, intensive, and process-oriented works."

According to Assistant Professor, Department of Art History, Theory, and Criticism, School of the the reviews of the petitioner's work "are by and large glowing and fascinated with her use of process and materials, in particular her weaving of human hair in her sculptural work, installations, and performances." Mr. states that the petitioner is "unique and influential because of the variety of materials and media she uses." Mr. does not provide any specific information relating to the basis of his conclusory statement. USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990). In short, the evidence in the record is insufficient to show that these aspects of the petitioner's work are original. Indeed, according to Dr. the petitioner's is "quite close to a major feminist such as without being derivative; as in all good art, it is an expansion on the previous idea that nonetheless evokes it." Moreover, even assuming the petitioner's use of material and her emphasis on a collaborative work environment are original, the evidence does not establish these aspects of her work constitute contributions of major significance in the field, i.e., they have had a significant impact or have caused a fundamental change or advancement in the field.

Sixth, on appeal the petitioner submits a December 2013 article to show that she meets this criterion. As noted, it is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner cannot secure a priority date based on the anticipation of future activity at a level consistent with contributions of major significance. *See Matter of Wing's Tea House*, 16 I&N Dec. at 160; *Matter of Izummi*, 22 I&N Dec. at 175-76. As such, the petitioner's accomplishments and activities that postdate the filing of her petition do not establish that she meets this criterion. In addition, the December 2013 article, entitled ' does not discuss the impact or influence of the petitioner or her work in the field. Rather, it is about how real estate developers are using art to help them sell real estate properties. As such, the article does not establish that the petitioner has made contributions of major significance in the field.

Finally, the record contains reference letters in addition to those specifically discussed above. None of them, however, establishes that the petitioner meets this criterion. Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.[3] *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 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 letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion

[3] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. at 795; *see also 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))

The reference letters in the record primarily contain vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. For example, Mr. [redacted] asserts that the petitioner is "unique and influential," without providing details supporting his conclusory statement. *See Visinscaia*, 2013 WL 6571822 at *6 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field). Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at *1, 5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756, Inc.*, 745 F. Supp. at 17.

Accordingly, the petitioner has not presented evidence of her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The director concluded that the petitioner met this criterion. The evidence in the record supports this conclusion. The petitioner has submitted evidence showing that her artwork has been shown in art galleries and museums. Specifically, her [redacted] was part of the [redacted] exhibit, her [redacted] was exhibited on the grounds of the [redacted] and her [redacted] were exhibited at the [redacted] Accordingly, the petitioner has presented evidence of the display of her work in the field at artistic exhibitions or showcases. The petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

In her initial filing, the petitioner asserted that she met this criterion. In the director's RFE, the director concluded that the petitioner did not submit any evidence in support of this criterion. In her response of the director's RFE, the petitioner did not challenge the director's finding. The petitioner has also not challenged the director's finding on appeal. Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

C. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence in the field of endeavor, as required under the regulation at 8 C.F.R. § 204.5(h)(3).

III. 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 have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. 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.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

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.

---

[4] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).