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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:

LIN 07 243 50082

Office: NEBRASKA SERVICE CENTER

Date: AUG 04 2009

IN RE:

Petitioner:
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:

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the performing arts, 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On motion, counsel asserted that certain evidence was not available from Bosnia Herzegovina, which counsel characterizes as a “third world country.” The director noted that the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or other unavailability of required evidence creates a presumption of ineligibility. On appeal, counsel asserts that this regulation is not applicable because the regulations relating to the classification sought do not require specific evidence. Counsel is not persuasive. Several of the criteria require very specific evidence. For example, the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of commercial successes in the performing arts, “as shown by box office receipts or record, cassette, compact disk, or video sales.” Thus, this regulation clearly requires evidence of box office receipts or media sales. In order to rely on secondary evidence or affidavits to establish commercial success, the petitioner must first comply with 8 C.F.R. § 103.2(b)(2)(ii) in establishing that primary evidence is not available, which requires an original statement on government letterhead. Significantly, counsel’s mere assertions, unsupported by documentation, that such evidence is unavailable in Bosnia are insufficient. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also discusses the petitioner’s burden of proof, asserting that the petitioner met her burden because it is more likely than not that she has sustained national or international acclaim. Section 291 of the Act provides:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant, immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be.

The law goes on to assert that the evidence must establish eligibility “to the satisfaction” of the adjudicating officer. This burden is confirmed in *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965) and *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The regulations governing the present immigrant visa determination have no requirement mandating that U.S. Citizenship and Immigration Services (USCIS) specifically accept the credibility of personal testimony, even if not corroborated. The regulations provide that eligibility may be established through a one-time achievement or through

documentation meeting at least three of ten criteria. The commentary for the proposed regulations implementing this statute provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (1991).

The criteria require specific documentation beyond mere testimony, such as awards, published material about the alien, and box office receipts. As another example of the specific nature of the documentation required, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the “title, date and author” of the published material about the alien. The only criterion for which letters are specifically relevant is the criterion relating to the alien’s leading or critical role for an entity with a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii). While letters may place the evidence for other criteria in context, they cannot serve as primary evidence of the achievement required by the criterion. While we acknowledge that there was a highly destructive war in Bosnia, we cannot ignore that, as noted by one of the petitioner’s references and the *Wikipedia*¹ materials submitted on appeal, the war in Bosnia lasted from 1992 through 1995,² ending over nine years before the petitioner entered the United States and more than 11 years before the petition was filed. It is the petitioner’s burden to establish why records after that date would be unavailable. As stated above, counsel’s bare assertion that the records are unavailable because Bosnia Herzegovina is a “third world country” is insufficient. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

¹ With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site. Specifically, Online content from *Wikipedia* is subject to the following general disclaimer:

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.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on June 17, 2009, a copy of which is incorporated into the record of proceeding. *See also Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

² The Dayton Peace Accords ending the war, publicly available at <http://www.state.gov/www/regions/eur/bosnia/bosagree.html> (accessed June 16, 2009, first page incorporated into the record of proceedings), were signed on December 14, 1995.

For the reasons discussed below, we concur with the director that the petitioner has not established by a preponderance of the evidence that she is eligible for the exclusive classification sought. Significantly, at no point has counsel attempted to rebut the director's finding that the record does not demonstrate that the petitioner "sustained" any recognition she may have enjoyed up to February 2005.

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.

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

At the outset, the AAO notes that from March 13, 2007 until September 12, 2007, the petitioner was granted P-3 nonimmigrant status, a visa classification that requires the alien to perform as a performer or entertainer at an internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such a performer or entertainer." *See* section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B). The current record is devoid of any evidence to indicate that the petitioner is performing as a performer or entertainer at an internationally recognized level or that she is in the United States "temporarily and solely" for the purpose of performing as such a performer or entertainer.

While USCIS approved at least one P-3 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. It must be noted that 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). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, 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, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090.

Furthermore, the AAO's 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 had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

This petition seeks to classify the petitioner as an alien with extraordinary ability as a singer. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).³

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.

Initially, counsel asserted that the petitioner meets this criterion through her membership in the Association of Entertainers in Bosnia. Counsel discusses the petitioner's role with the association and concludes that it is the most "prestigious organization of Musicians and Performers in Bosnia, thereby meeting the nationally recognized standard intended by Congress." Counsel then cites *Buletini v. INS*,

³ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

860 F. Supp. 1222 (E.D. Mich. 1994). First, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, *Buletini* does not address this criterion.

The petitioner submitted a certificate from ██████████ President of the Association of Entertainers and Stage Artists, Republika Srpska based in Banja Luka. We note that Republika Srpska is one of two regional subdivisions of Bosnia Herzegovina.⁴ ██████████ asserts that the petitioner "was an active member and was one of the founding members of this association." ██████████, a musician and music director, also affirms that the petitioner was elected in 2004 as one of the founding members of the "Association of Entertainers in Bosnia and Herzegovina." ██████████ does not explain his own affiliation with the association. Neither letter discusses either the membership criteria for the association or who judges membership eligibility.

The petitioner also submitted a membership certificate verifying her membership in the Records and Stage Management Music Company "Renome" as a singer since April 2000. The record does not include any membership criteria for this "membership."

In a request for evidence (RFE) dated January 2, 2008, the director advised that the record did not establish that the petitioner's memberships required outstanding achievements. In response, counsel asserted: "Through its reputation, those who are members, and specifically those who hold leadership roles, are recognized as outstanding by the association." The plain language of the criterion, however, does not suggest that the petitioner need only demonstrate the reputation of the association of which she is a member. Significantly, some associations may have a very distinguished reputation based on their large professional memberships without having the exclusive membership criteria required to meet this criterion. At issue to meet this criterion are the membership criteria and who judges prospective members for membership.

██████████ submits a new letter asserting that the Association of Entertainers and Stage Artists "in Bosnia" is comprised of known entertainers and artists in Bosnia. He also discusses the petitioner's role with the association, which is not relevant to this criterion. ██████████, a former president of the Union of Show Business Music Artists in Serbia, asserts that the association is "the equivalent" of the union, which is "exclusive to artists who are nationally recognized."

The director concluded that the petitioner had not demonstrated that the association requires outstanding achievements of its members. On motion, counsel conceded that membership in the association may not require outstanding achievement, but maintains that election to the board of the association does. The petitioner submitted a new letter from ██████████ asserting for the first time that

⁴ See <https://www.cia.gov/library/publications/the-world-factbook/geos/BK.html> (accessed June 16, 2009 and incorporated into the record of proceeding).

the petitioner is a member of the Union of Music Professionals, RS, which appears to stand for Republika Srpska. He asserts that the union “has well known professionals.”

The director reaffirmed that the record does not establish the membership criteria of the association or the “union” membership. On appeal, counsel once again concedes that general membership in the association does not require outstanding achievement, but reasserts that the petitioner’s election as a board member is sufficient.

We will consider the petitioner’s election to the board below as it relates to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii). At issue for this criterion, however, are the membership criteria for the association. As conceded by counsel, the record does not reflect that the Association of Entertainers and Stage Artists or the Union of Music Professionals requires outstanding achievements of their members. Moreover, both the association and the union appear to be either Republika Srpska chapters of a greater national association or simply limited to that region. Thus, membership in the association and the union cannot establish national acclaim. Moreover, it is not clear that membership is judged by nationally recognized experts if these are only regional associations.

In light of the above, the petitioner has not established 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.

As noted by the director, counsel asserted that the petitioner “has been the subject of hundreds of articles in newspapers, art magazines and news magazines, throughout Bosnia.” Counsel further asserted that while most of this evidence was destroyed during the war, the petitioner was able to collect a few articles. As noted above, the war in Bosnia ended in 1995. It is the petitioner’s burden to establish why materials published after that date were destroyed or are otherwise unavailable. Moreover, any published materials destroyed during the war would predate the filing of the petition by more than 11 years and, thus, would not be evidence of sustained acclaim when the petition was filed. Thus, even if we accepted that the petitioner was heavily covered in the media before or during the war and that these materials were destroyed in the war, it is her burden to demonstrate that she has sustained that acclaim.

The petitioner submitted the following articles:

1. A January 2002 article in *Mira* noting that the petitioner was putting out a second album, “Crazy Heart,” and was in the process of promoting the album.
2. A March 2003 article in *Express* reporting that the petitioner was preparing her third album and had received three marriage proposals in a single night. The article also

stresses that all that is need for a folk singer is to be pretty and “at the end to have little bit of a voice.”

3. A March 2003 article in *Svet* covering a restaurant event where the petitioner, in addition to several other singers, performed.
4. A letter dated March 15, 2006 expressing appreciation to the petitioner for being a guest on Bosnian “Radio 202” in New Hartford, New York, to promote her compact disc.
5. A letter dated June 8, 2006 from [REDACTED], Director of TV 42 Chicago, confirming that the petitioner was a guest on his program and had a commercial on the station in April 2006.

The director’s RFE advised that the record lacked evidence that the above publications were major media and noted that the evidence did not demonstrate *sustained* national or international acclaim in 2007 when the petition was filed.

In response to the director’s request for additional evidence, the petitioner submitted material from *Svet*’s website asserting that it is the “most popular magazine in the former Yugoslav republics.” The magazine publishes eight regional editions of the magazine. The petitioner submitted three articles published in *Svet* in 2002, 2004 and 2005. The two most recent articles appear to have been published in the Republika Srpska edition. The 2002 article, appearing in the Bosnia Herzegovina edition, is an interview with the petitioner where she discusses her music and the affections of a father and son. The introduction asserts that the petitioner is “continuously popular” and that her recent song “is a hit on the area’s radio station.” The 2004 article reports that the petitioner, upon returning from a U.S. tour, discovered her boyfriend living with another woman. The 2005 article is about the petitioner’s car accident while attempting to pass her driver’s test.

The director concluded that some of the published material did not relate to the petitioner’s work and that, because the material all predated the petition by several years, it could not serve as evidence of *sustained* national or international acclaim. On motion, the petitioner submitted letters from journalists in Bosnia attesting to her talent and ability to cooperate with the media. They do not assert that they have covered the petitioner since 2005, the most recent article in the record. The director concluded that the material was more “sensationalistic” than articles relating to her work and reiterated that the published material ended in 2005, two years before the petition was filed.

On appeal, counsel asserts that the petitioner submitted evidence that it was “more likely than not” that the petitioner was the subject of major media coverage. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be about the alien relating to her work. The material must also appear in professional or major trade journals or other major media.

The petitioner has not established that a Bosnian New York Radio Station constitutes major media. Similarly, a local television station is not major media. Moreover, a paid commercial is not published material about the petitioner.

The 2004 and 2005 articles are both about the petitioner, but do not relate to her work. Regardless, the published material in major media submitted by the petitioner ended in 2005, two years before the petition was filed. Thus, we concur with the director that the evidence relating to this criterion is not indicative of or consistent with *sustained* national or international acclaim. As noted above, the war in Bosnia ended 11 years before the petition was filed. Thus, any materials indicative of or consistent with sustained acclaim would not have been destroyed in that war.

In light of the above, the petitioner has not submitted sufficient evidence of *sustained* national or international acclaim to meet this criterion. For the reasons discussed above and below, the evidence submitted under the other criteria also fails to establish any acclaim proximate to the date of filing. Even if we concluded that the petitioner did meet this criterion based on the evidence from 2002 through 2005, for the reasons discussed above and below, she has not established that she meets any other 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 initially claim to meet this criterion. In response to the director's RFE, counsel asserted that the petitioner meets this criterion by having served as an honorary judge for a "New Star" competition for young singers. The petitioner submitted a letter from ██████████ President of Music Art Box (MAB) in the United States. ██████████ asserts that MAB sponsored the "New Star" competition for young singers and that, in August 2005, the petitioner was selected as the honorary judge "by fellow singers and representatives from countries of the former Yugoslavia."

The director concluded that the petitioner had not demonstrated whether this competition is local, regional or national and noted that the contestants were "young singers" who had yet to start a career as a singer. Thus, the director concluded that the petitioner's service as a judge for this competition was not indicative of or consistent with national or international acclaim. On motion, counsel asserted that the evidence shows that it is "more likely than not" that the petitioner served as a judge of the work of others and that she was selected by fellow singers and representatives from countries of the former Yugoslavia. The director reaffirmed that the record lacks information about the significance of this competition. The director noted that the competition was held by a U.S. company and, as such, evidence of the significance of the event should be available.

On appeal, the petitioner submits a letter from ██████████, "stage owner of MAB productions," asserting that the competition "was kept on the state level" and limited to people from the former Yugoslavian countries. He further asserts that there was "a lot" of media coverage and that it was "watched all over the former Yugoslavia." 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)). The record contains no media coverage of the event or television guides from various former Yugoslavian countries confirming that it was broadcast in those countries.

While *Buletini*, 860 F. Supp. at 1231, concluded that the petitioner need not demonstrate that the alien was selected as a judge because of the alien's national or international acclaim, that case does not stand for the proposition that USCIS is precluded from evaluating the significance of the alien's judging services. Rather, the evidence submitted to meet this criterion must be indicative of or consistent with national or international acclaim. *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

██████████ concedes that the competition was limited to a single U.S. state and further to residents of former Yugoslavian countries in that state. We cannot conclude that the petitioner's service as a judge in this competition is indicative of or consistent with her national acclaim in either the United States or Bosnia. Rather, it is only consistent with her recognition among the population from the former Yugoslavia residing in Illinois. Thus, the petitioner has not established that she meets this criterion.

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

Initially, counsel asserted that the petitioner was submitting letters demonstrating that she "has shown true quality of music and dedication" and "honest[y], fairness and responsibility in a business where this is not the standard." Counsel does not explain how these traits constitute a contribution of major significance to the field of folk singing.

President of *Ogledalo*, asserts that the petitioner has been "extremely well known," but does not explain how she has impacted the field. A Note of Appreciation from the Association of Mothers and Widows of Fallen Serbian Soldiers expresses appreciation for the petitioner's "help and cooperation" at an annual meeting in December 1996. ██████████ a "Journalist and TV Personality" for an unidentified media outlet, asserts that the petitioner is skilled and dedicated, "very successful," and honest and responsible. ██████████ does not explain how the petitioner has impacted the field of folk singing as a whole.

The director's RFE advises that the record did not demonstrate the petitioner's impact on the field as a whole. In response, the petitioner submitted additional letters. ██████████ Vice President of RTV BN, asserts that the petitioner was and continues to be "one of the 'stars'" of BN Television, a national network in Bosnia. The petitioner submitted foreign language Internet materials about the RTV BN, which include a link for Republika Srpska in the top menu bar. The petitioner did not submit a translation, certified or otherwise. ██████████ praises her talent and asserts that she was selected to perform on television weekly for a year, but does not identify the year. He also asserts that her songs "have been at the top of the ratings charts in Bosnia" and that one of her songs was "number one on the

chart for an entire month.” [REDACTED] host of the television show “Svijet Renomea” affirms that the petitioner was a frequent guest on that show. Once again, he does not indicate when the petitioner appeared as a guest on his show. [REDACTED] asserts that the petitioner was a guest on several of her shows, with listeners and viewers “all around the world.” Other material in the record indicates [REDACTED] is the host of “Svijet Renomea.” [REDACTED] further asserts that the petitioner’s greatest success was “Crazy Heart” and that she is “very popular, full of charm and very successful.”

The record also includes the second letter from [REDACTED] discussed above. [REDACTED] asserts that the petitioner was one of those who dedicated her time and energy to rebuild the spirit of the Bosnian people after the war in Bosnia and that she worked to establish the association to bring the arts back to Bosnia “in a time when it was needed most.” He further notes that she raised money for those in financial need after the war, especially widows and mothers of soldiers who were killed. A letter from [REDACTED] of City Hall Janja confirms that in October 2004, the petitioner participated in a humanitarian concert and the grand opening of the City Hall.

The director concluded that the letters did not establish that the petitioner had made contributions of major significance to her field and that humanitarian work, while commendable, was not a contribution of major significance to the field of singing. On motion, counsel asserted that the petitioner submitted “relevant, probative and credible evidence” to “lead the director to believe that the claim is ‘probably true’ or ‘more likely than not.’” The director concluded that creating original music was not, by itself, an original contribution of *major significance*.

On appeal, counsel asserts that the petitioner submitted evidence of original contributions and a “degree of recognition.” Thus, counsel concludes, it is more likely than not that she has made contributions of major significance. Counsel is not persuasive. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the alien’s contribution must be a contribution in the field. Thus, we concur with the director that humanitarian contributions, while commendable, are not contributions to the field of music. The same regulation provides that an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of music, the contribution must be demonstrably influential in the field of music.

The regulations contain a separate criterion for commercial success in the performing arts, set forth at 8 C.F.R. § 204.5(h)(3)(x). Thus, even if we concluded that the petitioner had established her popularity, popularity and commercial success alone are insufficient to constitute a contribution of major significance. None of the letters explain specifically how the petitioner has influenced other folk musicians or folk music in general. Broad assertions that the petitioner contributed to the resurgence of music after the war in Bosnia are insufficient. The record also lacks objective evidence of such an influence. Thus, the petitioner has not established that she meets this criterion.

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

Counsel initially asserted that the petitioner meets this criterion through her stage and television performances and the fact that radio stations in Bosnia play her music. As noted above, the record includes an article about her performance at a restaurant along with several other singers. The petitioner also submitted a letter from _____ Vice President of RTV-BN confirming that the petitioner “was part of our music program at BN TV during the period of 2002.”⁵ _____ President of *Ogledalo*, a Serbian-American newspaper, asserts that the petitioner has performed in Serbia and Montenegro and other European countries. _____ asserts that he organized a concert for the petitioner in Germany in 2001 which had “very good attendance.”

The director’s RFE requested evidence of the significance of the venues where the petitioner performed.

In response, as stated above, the petitioner submitted letters attesting to her weekly television performances during an unidentified year, her appearances as a guest and on the television show “Svijet Renomea.” In addition, _____, the host of BN Koktel, asserts that he “hosted” a concert in Jacksonville⁶ “in the U.S.A.” where the petitioner was a guest. He further states that the audience for the event was “huge.” He does not, however, provide any information about the venue or give even an approximation of the number of people in the audience. He also does not indicate how many other performers were at this concert. As stated above, _____ confirms that the petitioner participated in a humanitarian concert and the opening of City Hall in Janja.

The director noted that performing is inherent to the performing arts and concluded that the petitioner had not demonstrated that her performances were commensurate with sustained acclaim in the field. On motion, counsel asserted that the petitioner meets this criterion based on her invitations to appear on “the most popular national programs.” The director concluded that the petitioner had still not demonstrated that the television performances were showcases of her art.

On appeal, counsel asserts that the petitioner was invited to perform as a guest on the most popular music programs and concerts. The petitioner submits a new letter from _____ asserting that the petitioner performed in a commercial on RTV BN television and was a “frequent guest.”

This criterion applies primarily to the visual arts. In order to constitute comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4), the petitioner cannot rely simply on performing, which is inherent to the field of performing arts. Rather, the petitioner must demonstrate that she performed at a showcase or exhibit of her art. Moreover, radio play is more comparable to commercial success and will not be considered under this criterion. Even assuming that the petitioner’s television appearances in 2002 and 2003 were exhibitions of her art, the record lacks evidence of significant performances proximate to the date of filing in July 2007 when the petition was filed. Thus, the evidence submitted

⁵ The original foreign language document includes the year 2003, not 2002.

⁶ While _____ does not identify which U.S. city named Jacksonville he means, we note that there is a Jacksonville in Illinois where the petitioner resides.

to meet this criterion is not indicative of or consistent with national or international acclaim. Without evidence more proximate to the date of filing in this criterion or other criteria, the petitioner cannot establish eligibility for the classification sought.

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

Counsel initially asserted that the petitioner meets this criterion based on her election to the "Board who founded the Association of Entertainers in Bosnia." Counsel further asserts that the petitioner meets this criterion through her humanitarian efforts.

As stated above, the record contains confirmation of the petitioner's founding membership in the Association of Entertainers and Stage Artists, Republika Srpska, and a Note of Appreciation from the Association of Mothers and Widows of Fallen Serbian Soldiers for the petitioner's "help and cooperation" at an annual meeting in December 1996.

The director's RFE requested evidence of the nature of the petitioner's role with the above associations and their reputations.

In response, the petitioner submits the new letter from [REDACTED], discussed above. Specifically, Mr. [REDACTED] asserts that the petitioner worked to reestablish the arts after the war ended, was a founding member and was subsequently elected to the association's board. As stated above, [REDACTED] confirms that the petitioner performed at a humanitarian concert and the opening of city Hall in Janja.

The director concluded that the petitioner had not established the nature of her role with the association or the reputation of the association. On motion, counsel asserted that the petitioner established that her efforts were crucial to building the association after the war in Bosnia. The director concluded that the petitioner had provided insufficient evidence of her role with the association or its reputation nationally.

On appeal, counsel asserts that the petitioner's election to the board of the association in 2004 was a leading or critical role for the association, which is "considered a distinguished professional organization that meets, discusses, and decides upon different agendas for events in Bosnia."

As discussed above, the association appears to be regional. The petitioner has not provided evidence of the association's reputation outside of the Republika Srpska region. The record does not establish the number of board members. Even if we were to conclude that the petitioner performed in a leading or critical role for the association, the petitioner has not demonstrated that it enjoys a distinguished reputation throughout Bosnia, including beyond the Republika Srpska region. Moreover, it is not clear how active the petitioner's role with the association has been since 2005 when she came to the United States. As such, it is not clear that the evidence submitted to meet this criterion is indicative of or consistent with *sustained* national or international acclaim in 2007 when the petition was filed.

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

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

Counsel initially asserted that as “primary evidence” of the petitioner’s commercial success, she was submitting records and compact discs. Counsel asserts that the petitioner sold “hundreds of thousands of copies” of her music and has enjoyed a lucrative career as a performer. Counsel does not explain how the submission of compact discs is “primary evidence” of their commercial success.

As stated above, _____ asserts that the petitioner’s 2001 concert in Germany had “very good attendance.”

The director’s RFE requested evidence of the commercial success of the petitioner’s compact discs, such as sales data, chart placement or other documentation. In response, the petitioner submitted the 2002 article in *Svet* claiming that the petitioner’s recent song, “‘Da, da, da,’ is a hit on the area’s radio station.” _____ asserted that the petitioner’s song “Crazy Heart” was number one on “the chart” for one month. _____, Director of DAS radio in Bosnia, asserts that the petitioner made frequent guest appearances on the station and that “Crazy Heart” topped “the charts” for one month. _____ of Radio SKALA provides a similar letter, asserting that the station continues to advertise and promote the petitioner’s music. As stated above, _____, the host of BN Koktel, asserts that he “hosted” a concert in Jacksonville where the petitioner was a guest and for which the audience was “huge.” He does not provide any numbers.

The director concluded that the petitioner had submitted insufficient objective evidence of how her albums had sold or charted and that the evidence submitted was not indicative of *sustained* acclaim in 2007 when the petition was filed. On motion, counsel asserted that evidence of compact disc sales and chart placement “are simply not available in a third world country such as Bosnia” and that the petitioner has established that it is more likely than not that she has enjoyed commercial success. The director reaffirmed that the petitioner had not documented her compact disc sales or chart listings and concluded that the petitioner had not established the non-existence of such evidence or submitted secondary evidence or affidavits.

On appeal, counsel asserts that evidence of compact disc sales and chart placement is “simply not available in a third world country such as Bosnia.” The petitioner submits a personal statement asserting that production houses in Bosnia will not provide sales information on her compact discs “because of taxes involved on such a huge quantities sold.” In addition, _____ asserts that the petitioner’s song “Ludo Srce” was “most listened to in 2002 and was the number 1 hit not only on our RTV BN but also on all other RTV all over BIH.” _____ Owner and Chief of Radio Nostalgiga Romski Dukat, asserts that the petitioner “is very well listened to on the airwaves of my radio station for she is very popular here in the U.S.A.” He further asserts that she is always “wanted

for appearances” at concerts in the United States. The petitioner submits a similar letter from [REDACTED] Director and Leader of Radio Zapadna Bosna.

As stated above, the unavailability or nonexistence of required initial evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). In order for the petitioner to rely on secondary evidence, such as the newspaper article mentioned above, she must establish that such evidence does not exist. The petitioner’s personal statement that Bosnian production houses will not provide sales data is insufficient.

The only secondary evidence submitted is a single news article from 2002 asserting that one of the petitioner’s songs is “a hit” on the area’s radio station. This article provides no information regarding sales numbers or chart placement and does not even state that the song was a radio hit nationally.

The letters regarding the petitioner’s chart placements are insufficient. First, none of the letters identify which “chart” the petitioner topped. A local or even Republika Srpska regional chart would not demonstrate the petitioner’s national acclaim. Moreover, the petitioner has not provided evidence that additional secondary evidence, such as newspaper articles, are unavailable or nonexistent. As discussed repeatedly above, the war in Bosnia ended in 1995 and, thus, newspaper articles published after that date cannot be presumed to have been destroyed.

Even if we accepted that primary and secondary evidence were unavailable in Bosnia and Herzegovina, the petitioner has not explained the absence of ticket sales from her 2001 concert in Germany or evidence of ticket sales, album sales or chart placement in the United States despite assertions of her popularity in the United States.

In light of the above, the petitioner has not demonstrated any commercial success, especially within four years of filing the petition in 2007. As such, we cannot conclude that she meets this criterion.

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.

Review of the record, however, does not establish that the petitioner has distinguished herself as a folk singer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a folk singer, but is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.