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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: [REDACTED]
SRC 06 218 52502

Office: TEXAS SERVICE CENTER Date: MAR 27 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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).

Maui Plussou

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, 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 in the arts. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

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* 56 Fed. Reg. 60897, 60898-99 (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.

This petition, filed on July 10, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a violinist. The petitioner earned a Master of Music degree in Violin Performance from the

University of Massachusetts, Amherst in 2002. A January 24, 2006 letter from [REDACTED], Department of Music, State University of New York at Stony Brook, states: “[The petitioner] has been a student in the Department of Music at Stony Brook University since 2002, where she is completing degree work for the Doctor of Musical Arts degree.”

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, internationally recognized award). Barring the alien’s receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.¹

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

The petitioner submitted a June 3, 2004 letter from [REDACTED] Pro Musicis, stating that she was “selected as a finalist for the 2004 Pro Musicis International Award in New York City.” Mr. [REDACTED] letter further states:

The auditions – which are not open to the public – are scheduled for October 4, 2004 . . . at Carnegie Hall’s Weill Recital Hall. Each finalist will have 25 minutes.

* * *

There is no predetermined number of awards. The jury can select up to four artists from the finalists who audition in Paris and New York. Announcements will be made when both auditions are over.

There is no documentation showing the petitioner’s announcement as an award recipient. While it is certainly an honor to be selected as a finalist, the plain language of this regulatory criterion requires evidence of the petitioner’s receipt of a nationally or internationally recognized prize or award. In this instance, there is no evidence showing that the petitioner ultimately received a Pro Musicis award from the jury.

The petitioner submitted an April 1, 2003 letter to her from the Chairman of the Board of Directors of the Pacific Music Festival (PMF) Organizing Committee stating: “On behalf of the fourteenth

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Pacific Music Festival (PMF) Orchestral Academy faculty members, it is our great pleasure to inform you that you have been selected to be a Fellow of the PMF 2003 Academy.”² This congratulatory letter reflects the petitioner’s selection for participation and instruction at an international educational music festival rather than her receipt of a nationally or internationally recognized prize or award in the musical field. Further, there is no indication that the petitioner faced competition from throughout her field, rather than limited to her approximate age group within the field.

The petitioner submitted a May 15, 2002 letter from the Director of Admissions and Scholarships, University of Massachusetts, Amherst, congratulating her on receiving a “Julian Olevsky Scholarship.” This scholarship reflects institutional recognition from her university rather than a nationally or internationally recognized prize or award. Such an award may place the petitioner among the top music students at her university, but it offers no meaningful comparison between her and violinists who are already well established in the field.

The petitioner submitted an April 9, 2002 letter from the Director of Graduate Studies in the Department of Music at the State University of New York at Stony Brook offering her “a Full Tuition Scholarship for the 2002-2003 academic year.” The petitioner also submitted a July 15, 2004 letter to her from the Director of the Perlman Music Program stating: “Our Scholarship Committee has had an opportunity to evaluate your request for assistance, and we are pleased to inform you that a grant of \$1450 has been approved.”

With regard to the preceding scholarships, the petitioner’s receipt of financial assistance for university study does not constitute her receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. Receipt of the preceding scholarships is not an indication that the petitioner “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). We cannot ignore that competition for these scholarships was limited to other students. The petitioner’s receipt of such educational funding does not distinguish her from other musicians in the field who have long since completed their academic studies.

The petitioner submitted a July 27, 2004 letter to her from the Manager of Professional Workshops at the Weill Music Institute at Carnegie Hall stating:

Congratulations on your acceptance to *Tradition and Innovation: A Workshop with Yo-Yo Ma on Mentoring, Creating, and Communicating*. This serves as a Letter of Agreement between [the petitioner] (“Artist”) and the Carnegie Hall Corporation (“Corporation”).

² According to the PMF’s internet site, “103 young musicians from 30 countries and regions were selected among 1,096 applicants” for this educational opportunity. See <http://www.pmf.or.jp/en/about/history/index.html#2003>, accessed on March 13, 2009, copy incorporated into the record of proceeding.

Artist will participate as a performing student in *Tradition and Innovation: A Workshop with Yo-Yo Ma on Mentoring, Creating, and Communicating*, taking place September 7 – 20, 2004

This congratulatory letter reflects the petitioner's selection for participation and instruction in a music workshop with Yo-Yo Ma rather than her receipt of a nationally or internationally recognized prize or award in the musical field.

The petitioner submitted a March 31, 1992 letter from the [REDACTED] Poland stating:

[The petitioner], a Graduate of the Music School Complex of Wloclawek, I cordially congratulate you on behalf of the Municipal Government and in my own name on the occasion of your graduation from the Secondary School and the fact of being awarded the honors [sic] of the Most Distinguished Graduate of the School.

This congratulatory letter reflects local recognition from the petitioner's town and school rather a nationally or internationally recognized prize or award in the musical field.

In response to the director's request for evidence, the petitioner submitted a June 25, 1993 "Diploma of the Best Student of the School" issued to her by the "Educational Board of the High School named after St. Staszic." This student award from the petitioner's high school reflects local or institutional recognition rather than national or international recognition.

The petitioner submitted a January 24, 1995 "Diploma of a participant in The Macroregional Audition of violin and viola class students of secondary-level schools of music." There is no evidence showing that this participant's diploma is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of the petitioner's participation in a secondary-level school competition. Further, the term "Macroregional" indicates that the competition was regional rather than national or international in scope.

The petitioner also submitted an April 1994 "Laureate's Diploma" presented to her "for winning the III place in the II age group in the violin class at the Second Pomeranian Music Meetings." In response to the director's request for evidence, the petitioner submitted a September 18, 2006 certificate from the "Music School Complex named after Felix Nowowiejski in Szczecin" stating:

The Pomeranian Music Meetings is the national competition for instrumentalists, which took place every four years in Music Schools Complex in Szczecin in 1990, 1994 and 1998.

* * *

The competition was organized in cooperation with Ministry of Culture and Arts and with the Town Council of Szczecin. Because of the lack of funding our school stopped organizing the competition after 1998.

* * *

The competition was divided into two age groups / categories. One category was for student violinists ten to fifteen years of age, and the other category was for professional violinists ages sixteen to thirty

There is no supporting evidence showing that the petitioner's third place Laureate's Diploma from this age group competition commanded significant national or international recognition in her field. For example, there is no evidence showing that the first through third place winners were announced in major media or in some other manner consistent with national or international acclaim.

With regard to awards won by the petitioner in student or age group competitions, we do not find that such awards indicate that she "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced competition from throughout her field, rather than limited to her approximate age group within the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.³ Likewise, it does not follow that a musician who has had success in student or age-restricted competition should qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." Further, the plain language of this regulatory criterion requires "nationally or internationally recognized prizes or awards for excellence in the field of endeavor" and it is the petitioner's burden to establish every element of this criterion. In this case, the petitioner has not established that the competitive awards she won were nationally or internationally recognized and open to violinists of all ages in her field of endeavor rather than limited to young musicians or students at the early stages of their careers. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

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

³ While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

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

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

In response to the director's request for evidence, the petitioner submitted a November 13, 2006 letter from [REDACTED], Carnegie Hall, stating:

[The petitioner] has been invited by Carnegie Hall, The Weill Music Institute, the New York City Department of Education and The Juilliard School . . . to be a part of a new program in residence, "The Academy." This program brings together the very best young musicians in the field, to provide collaborative learning and performing opportunities, and to enrich New York City's music education by providing appearances in New York City public schools Of the sixteen musicians I selected in my capacity as the incoming Dean of the Juilliard School and the Senior Director and Artistic Advisor of Carnegie Hall, [the petitioner] was one of only two violinists selected for this program.

The petitioner's response also included a document entitled "THE ACADEMY: A Program of Carnegie Hall, The Juilliard School, and the Weill Music Institute" stating:

The Academy – A Program of Carnegie Hall, The Juilliard School, and the Weill Music Institute is a two year, post-graduate residency that provides the finest U.S.-based young musicians with advanced performance training, intensive teaching experience, and the skills and values leading to careers combining musical excellence with education and community outreach.

* * *

By invitation only: 16 musicians in 2007.

* * *

Fellows may elect to participate in the 2007-2008 season at a full-year stipend and with additional opportunities for performance and private instruction.

The document further states that fellows receive “[c]oachings with Juilliard Faculty and Carnegie Hall artists,” “[u]p to five individual private lessons with any instructor,” and a “[w]eekly education training class.”

The petitioner’s participation in this advanced educational training and instructional program offered by The Academy post-dates the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, we concur with the director’s finding that the petitioner’s fellowship with The Academy constitutes a two-year post-graduate residency rather than her membership in an association in the field requiring outstanding achievements of its members, as judged by recognized national or international experts.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication or from a publication printed in a language that the vast majority of the country’s population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁴

The petitioner submitted a September 15, 2005 article in the *Village Times Herald* entitled “Emerson Quartet to headline Katrina benefit concert: Expect Gilbert Kalish, Roy Anderson and Christina Dahl to perform.” There is no evidence (such as circulation statistics) showing that this local newspaper qualifies as a form of major media.

The petitioner submitted an article entitled “Tales from the river bank” in the April 2004 issue of *The Strad*. This article discusses [REDACTED] organization of the “String Academy of the Rhine” and its educational activities. The article only briefly mentions the petitioner’s participation as a student and is not primarily about her. The plain language of this regulatory criterion, however, requires that the published material be “about the alien.” The petitioner’s evidence does not meet this requirement. Further, the author of the material was not identified as required by this regulatory criterion.

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

The petitioner submitted a September 19, 2004 transcript from National Public Radio's (NPR) "All Things Considered" news program that profiled Yo-Yo Ma's Silk Road Ensemble's educational workshop. The transcript states:

How do you get to Carnegie Hall besides practice, practice, practice? Well, you could hook up with Yo-Yo Ma. That's what 16 young musicians did for the last week and a half at Tanglewood, the western Massachusetts home of the Boston Symphony. Ma's Silk Road Ensemble, a group that mixes Eastern and Western music, tried to teach younger players how to hear music in a different way. This weekend they've taken what they've learned to Carnegie Hall for a series of performances with the Silk Road Ensemble. [REDACTED] of member station WFCR reports.

* * *

The students ranged in age from 18 to 30 years and came from eight different countries.

The petitioner, one of sixteen students participating in Yo-Yo Ma's instructional workshop, was quoted during the program about her learning experience. This material does not portray the petitioner as being "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 evidence demonstrates that Yo-Yo Ma and his instructional workshop were the primary focus of the radio program rather than the petitioner and her achievements. Further, the plain language of this regulatory criterion requires "published" material rather than a radio broadcast. The remaining language of this regulatory criterion also refers to the "title" and "author" of the material which both relate to written material. Accordingly, we cannot conclude that the evidence submitted by the petitioner meets the requirements of this criterion.

The petitioner submitted information printed from the Mannes College of Music's internet site discussing the 2004 Institute and Festival for Contemporary Performance (IFCP). This article only mentions the petitioner's name in passing and is about the IFCP and its activities rather than the petitioner. Further, there is no evidence showing that this internet site qualifies as a form of major media.

The petitioner submitted a March 23, 1995 article about her in *Zdroj Ciechocinski* entitled "Talents from Staszic High School," but there is no evidence showing that this newspaper qualifies as form of major media.

The petitioner submitted a February 13, 2003 article about her in *Nowy Dziennik* entitled "Dreams Came True," but there is no evidence showing that this Polish language newspaper published in New York qualifies as form of major media. Further, the author of the material was not identified.

The petitioner submitted a brief mention of her in the January 2004 issue of the *Music@Menlo Newsletter*, but the article is more of an announcement regarding her participation in a workshop rather than material written about her. Further, the author of the material was not identified and there is no

evidence showing that the newsletter from this San Francisco chamber music festival and institute qualifies as a major publication.

In response to the director's request for evidence, the petitioner submitted August 2003 material from the Music@Menlo internet site. We cannot ignore that the single sentence mentioning the petitioner was included in the "Up and coming performers" section rather than the "Established performers" section. Nevertheless, the Music@Menlo internet material submitted by the petitioner includes the works of multiple musicians and is not primarily about her. Further, there is no evidence showing that this internet site qualifies as a form of major media.

The petitioner's response included an August 19, 2003 festival review posted on the *San Francisco Classical Voice's* internet site discussing the Music@Menlo festival's inaugural season. We note that the petitioner omitted pages 2, 4, 5, and 6 of the review. Accordingly, we cannot conclude that this limited material containing only a single mention of the petitioner is primarily about her. Further, there is no evidence showing that this online publication covering the San Francisco Bay Area music scene qualifies as a form of major media.

The petitioner also submitted a September 14, 2005 article in the *Stony Brook Independent* and an article in the Summer 2005 issue of *The Graduate Review* (The Newsletter of the Stony Brook University Graduate School). These articles contain a brief mention of the petitioner's upcoming performance at a benefit concert for Hurricane Katrina victims at Stony Brook University. Aside from the two articles not being primarily about the petitioner, there is no evidence showing that the school newspapers in which they appeared qualify as major media.

The petitioner's response included an October 3, 2006 article and photograph of her in *Gazeta Kujawska* entitled "Ciechocinek. History and present time of High School. Sixty year old Staszic High School." This article is primarily about a school reunion rather than the petitioner and her musical achievements. On appeal, the petitioner submits September 15, 2007 and September 29, 2007 articles in *Kurier Plus*, a Polish language weekly magazine distributed in New York, Pennsylvania, Connecticut, New Jersey, and Massachusetts. There is no evidence showing that this regional publication qualifies as a form of major media. The petitioner also submits an article about her Academy residency program in the November 2007 issue of *Strings*. The preceding articles were all published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the October 3, 2006 article in *Gazeta Kujawska*, the November 2007 article in *Strings*, and the September 15, 2007 and September 29, 2007 articles in *Kurier Plus* in this proceeding.

In light of the above, the petitioner has not established 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). For example, judging a national competition for top musicians is of far greater probative value than judging one’s students or a regional youth competition.

The November 13, 2006 letter from _____ states that the petitioner has judged the work of others by teaching violin to undergraduate students at the State University of New York at Stony Brook and by instructing students at the Huntington Music Academy. We cannot conclude that evaluating one’s students, who have not yet begun working in the field, constitutes participation, either individually or on a panel, as a judge of the work of others in the field. In an occupation where “judging” the work of others is an inherent duty of the occupation, such as a music instructor, teacher, manager, coach, professor or editor, simply performing one’s job related duties demonstrates competency, and is not evidence of national or international acclaim. While a music teacher does evaluate the work of her pupils, this evaluation process is inherent to the position. Without evidence showing, for example, that the petitioner’s activities involved judging top musicians in national level competition or were otherwise consistent with sustained national or international acclaim at the very top level of her field, we cannot conclude that she meets this criterion.

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

The petitioner submitted several letters of recommendation praising her talent as a violinist. We cite representative examples here. Talent in one’s field, however, is not necessarily indicative of artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted her field.

_____, a recipient of multiple Grammy Awards and an internationally acclaimed cellist, states:

[The petitioner] is an enormously skilled violinist whose technical and musical skills place her at the very apex among contemporaries. Rarely have I met someone who combines great talent with such ferocious enthusiasm – she has an irrepressible passion for musical experimentation and discovery. In any collaborative music setting, [the petitioner] demonstrates the qualities of . . . a consummate chamber musician, playing, listening and facilitating music among her partners. She excels in orchestral settings, having been repeatedly chosen to lead as concertmaster or assistant concertmaster, as well as in chamber music, one of the most delicate and personal of musical fields. [The petitioner] has not only

an extraordinary talent, but also a warmth and generosity of spirit that brings a composers work to life. She is set apart from her peers by the complete “life and death” quality of her playing – she is fearless and bold and demonstrates in each performance the ability to express herself in the deepest personal sense through her music.

[REDACTED] a renowned composer, states:

In all my years as a composer, I have never encountered a musician more gifted, more able, or more committed to contemporary American musical expression than [the petitioner]. In [the petitioner’s] hands my work as a composer DOES become a true artistic contribution because of her extraordinarily quick grasp of difficult stylistic, technical, and expressive norms on any level conceivable.

[REDACTED] an internationally acclaimed violin virtuoso, states:

[The petitioner] is a violinist of extraordinary note and abilities, including a beautifully balanced demeanor, performance range and stage presence. She has been and continues to be engaged by the foremost, prestigious orchestras as their soloist in venues including Carnegie Hall in New York City. She has participated in festivals including The Perlman Music Program and the Aspen Music Festival as well as other international programs.

[The petitioner] is a superb musician, a premier player on an international level and an accomplished chamber music player as well.

[REDACTED], Emerson String Quartet, and full tenured professor at the State University of New York at Stony Brook, states: “[The petitioner’s] rare genius in performing world music has made her one of the most in-demand musicians for the top composers in the world.”

[REDACTED], State University of New York at Stony Brook, states:

As President of Stony Brook University, I have had first-hand experience of [the petitioner’s] exceptional music ability. Her concert performances struck me as among the most proficient and moving I have attended, and I am sure she will continue to develop as an artist in future years.

[The petitioner’s] teachers at Stony Brook have been deeply impressed by her technical expertise and gifts of interpretation; she has also proved to be a fine instructor while at this University.

In his initial November 17, 2005 letter, [REDACTED] states: “[The petitioner] has begun to emerge as a major young violinist on the international music scene. [The petitioner] is one of the most promising artists I have encountered and is well on her way to a distinguished career.” Similarly, [REDACTED], a professional violinist, describes the petitioner as a “promising artist.” [REDACTED], Artist in Residence and Director of Chamber Music, Stanford University, states:

“[The petitioner] has all the skills necessary to have a very successful career in the United States.” In addition, [REDACTED] Music and Dance Department, University of Massachusetts, Amherst, states: “As she continues her work towards artistic perfection, [the petitioner] will be increasingly in demand as a solo violinist.” Such statements indicate that the very top of the petitioner’s field is a level above her present level of achievement.

[REDACTED] further states: “I am certain [the petitioner] will make a very significant contribution to musical life in the United States.” In the same manner as [REDACTED] of the Minnesota Orchestra, and [REDACTED] critic and chamber music coach, state:

We came to know [the petitioner] at the internationally renowned Music@Menlo Festival in 2003, where she participated as a violinist and we worked with her in various capacities as mentors, teachers, and coaches, as well as watching her play in concert. [The petitioner] struck us as a young musician of uncommon talent, impressively skilled in her handling of her instrument, and musically understanding.

* * *

She is a good musical citizen, and we are confident that she can make a positive and valuable contribution to the musical life of this country.

With regard to the witnesses of record, many of them they discuss what may, might, or could one day result from the petitioner’s work, rather than how her past musical achievements already qualify as contributions of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 45, 49.

The letters of recommendation submitted by the petitioner discuss her talent as a violinist, musical performances, tutelage by recognized experts, and educational training, but they fail to demonstrate that she has made contributions of major significance in her field. These letters do not include a substantive discussion as to which of the petitioner’s specific achievements constitute original artistic contributions of major significance in the field of music. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), 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. While the petitioner has excelled as a student and earned the respect of impressive experts in her field of endeavor, there is nothing to demonstrate that her work has had major significance in the field. For example, the record does not indicate the extent of the petitioner’s influence on other violinists nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

In this case, the petitioner has submitted letters from impressive experts whose opinions are important in the field of music. The letters of recommendation submitted by the petitioner, however, are not sufficient to meet this criterion. The opinions of experts in the field, while not without

weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 (Commr. 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 evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the experts' 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 of original contributions of major significance that one would expect of a musician who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

The petitioner submitted evidence of her concert performances in a university setting and in conjunction with various workshops such as the Silk Road Project. There is no evidence showing that these performances were consistent with sustained national or international acclaim at the very top of her field. Nevertheless, the plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for instrumentalists such as the petitioner. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's musical performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x).

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

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The petitioner submitted evidence showing that she was a violinist and assistant concertmaster for the American Academy of Conducting at Aspen Orchestra. The program for the American Academy of Conducting at Aspen states:

The Academy provides to young conductors that scarcest and most valuable of resources – an orchestra.

* * *

The Academy creates an orchestra dedicated to training conductors. Conductors comprise over one third of the orchestra's players, making it an orchestra of conductors and instrumentalists playing for conductors, all learning together, both on the podium and in the orchestra.

On appeal, the petitioner submits information from the Aspen Music Festival's internet site stating: "The Academy brings to each participant the national attention that is critical to establishing a career. Established conductors, orchestra managers, artist managers, music critics, and other music executives may come to Aspen each summer to spotlight the brightest emerging talent."

The documentation submitted by the petitioner does not establish that American Academy of Conducting at Aspen training orchestra has a distinguished reputation other than for training "emerging" conductors who are seeking to establish their careers. Further, while the petitioner may have served in a leading role as assistant concertmaster for the Academy's training orchestra during its summer program, there is no evidence showing that her role was leading or critical to the Academy as a whole.

On appeal, counsel asserts that the petitioner has performed in a leading role for "the Jeunesses Musicales Symphony Orchestra, New World Symphony Orchestra, European String Academy Chamber Orchestra, and Carnegie Hall Tilton Thomas Chamber Orchestra." The record lacks objective evidence showing that these orchestras have a distinguished reputation. With regard to the petitioner's role for these orchestras, there is no evidence showing that her name frequently received top billing or that their popularity increased when she was known to be performing. Nor is there evidence demonstrating how the petitioner's role differentiated her from the other musicians in these orchestras (such as their principal musicians and soloists). Accordingly, the petitioner has not established that she was responsible for their success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim at the very top of her field.

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.

This regulatory criterion calls for evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner participated in various concerts or workshop performances cannot meet the plain language of this criterion. The record does not include evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in

the performing arts in a manner consistent with sustained national or international acclaim at the very top of her field. For example, there is no evidence showing that performances headlined by the petitioner consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature her. Nor is there evidence showing, for example, that the petitioner's musical recordings have generated substantial national or international sales.

In this case, the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). We acknowledge that the petitioner has submitted letters of praise from internationally recognized experts in her field such as [REDACTED] and [REDACTED] however, reputation by association cannot establish that the petitioner herself has sustained national or international acclaim. While the petitioner has attracted the favorable attention of these world-renowned musicians, a comparison of their achievements with those of the petitioner shows that she has not amassed a record of accomplishment which places her among that small percentage at the very top of her field. We agree with the renowned experts' assertions that the petitioner possesses great talent as a violinist, but the evidence of record does not establish that she has sustained national or international acclaim at this stage of her musical career.

While recommendation letters from recognized experts in the field can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provides 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 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from individuals who have instructed or mentored the petitioner.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. 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.