

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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
and Immigration
Services**

B2

FILE: [REDACTED]
LIN 06 256 51548

OFFICE: NEBRASKA SERVICE CENTER Date: **APR 09 2010**

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal. The matter is now before the AAO on motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied. The AAO will also enter a separate administrative finding of willful material misrepresentation.

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 and the AAO determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

On motion, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). However, as shall be discussed, the evidence of record is simply not credible because of the petitioner's submission of demonstrably false evidence, including a letter with a false signature, falsified webpage materials, and three separate letters signed by the petitioner in which he falsely claims to have received a "second prize at 2nd International Piano Competition, Tbilisi Georgia 2001."

I. Law

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only

to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten criteria.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

II. Derogatory findings pertaining to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i)

On February 17, 2010, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he altered documents submitted in support of the petition and falsely claimed a prize that he did not receive. The notice specifically observed that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that “this petition and the evidence submitted with it are all true and correct.” As the derogatory findings relate to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), they are material to this proceeding. The AAO’s notice of derogatory information stated:

On appeal, you submitted a November 6, 2007 letter of support from [REDACTED] of Tel Aviv University. [REDACTED] letter states that he served on the jury of the “Fifth ‘Konzerteum’ International Piano Competition in Markopulon, Greece, in December 1999” and that you received fourth prize in “the adult category (till 32 years of age).” The AAO contacted [REDACTED] on March 10, 2009 and his e-mail response to the AAO’s inquiry stated that the signature on the preceding letter was not his. You also submitted a profile of [REDACTED] allegedly printed from his internet homepage. The version of [REDACTED]’s homepage that you submitted states: “Served on the juries of numerous international competitions: . . . the Konzertheum in Greece (1999, 2001, and 2002) jury president)” On March 10, 2009, this office accessed [REDACTED] homepage at [REDACTED] (copy attached to this notice and incorporated into the record of proceeding). Paragraph 8 from his actual homepage states: “Served on the juries of numerous international competitions: . . . the Konzertheum in Greece (2000, 2001, and 2002 jury president)” Thus, the altered version you submitted replaced the year “2000” with “1999” and included a parenthetical error not contained in the true version of [REDACTED] homepage.

In an August 4, 2007 letter responding to the director’s request for evidence, you state that you won “second prize at 2nd International Piano Competition, Tbilisi Georgia 2001.” You continue to make this claim on appeal and again on motion. On March 10, 2009, this office accessed the results for this competition at <http://www.alink-argerich.org/results2001.htm> (copy attached to this notice and incorporated into the record of proceeding).¹ According to the 2001 “Competition Results” from the Alink-Argerich Foundation, “Murad Adigezalzade” won second place at the 2nd International Piano Competition in Tbilisi, Georgia in October 2001. Moreover, the 2004 contestant biographies section of the “International piano-e-competition” of Minneapolis/St. Paul, Minnesota website, accessed on January 27, 2010 at http://www.piano-e-competition.com/contestantbios04/_muradadigezalzade.htm (copy attached to this notice and incorporated into the record of proceeding), confirms that Murad Adigezalzade won the 2nd Prize at the “2001 II International Piano Competition, Georgia.”

By submitting altered documents and by falsely claiming a prize that you did not receive, it appears you have sought to obtain a visa by . . . willful misrepresentation of a material fact.

¹ The Alink-Argerich Foundation is an “Independent Worldwide Information and Service Centre for Musicians and Competitions.” See <http://www.alink-argerich.org/>, accessed on January 27, 2010, copy incorporated into the record of proceeding.

With regard to the above findings, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Because you have submitted altered documentation and falsely claimed another pianist's prize as your own, we cannot accord any of your other claims any weight.

In response, the petitioner submitted a March 3, 2010 letter from counsel, a February 25, 2010 notarized letter from [REDACTED], and a March 3, 2010 affidavit from the petitioner. The petitioner's response does not contest the AAO's findings that the signature on the November 6, 2007 letter of support from [REDACTED] was not authentic, that the petitioner's appellate submission included a falsified version of [REDACTED] homepage, and that the record includes three separate letters signed by the petitioner in which he falsely claims to have received a "second prize at 2nd International Piano Competition, Tbilisi Georgia 2001."

In the March 3, 2010 letter, counsel argues that the required elements are not present to find the petitioner culpable of committing fraud and misrepresenting a material fact. Counsel cites to *Sergueeva v. Holder*, 324 Fed. Appx. 76 (2nd Cir. 2009), in which the court stated:

To constitute a fraud, an alien must have made a false representation of a material fact, with knowledge of its falsity and with an intent to deceive a government official, and the misrepresentation must have been believed and acted upon by the official. *Matter of GG-*, 7 I&N Dec. 161, 164 (B.I.A. 1956). A willful misrepresentation, however, only requires that the alien knowingly make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (B.I.A. 1975).

A. False Signature

With regard to the AAO's finding that the signature on the November 6, 2007 letter from [REDACTED] was not his, counsel states:

[The petitioner] did not commit fraud by submitting [REDACTED]'s letter to the Service because the content of the letter was true and there was no intent to deceive the Service. . . . [REDACTED] and [the petitioner] agreed that [REDACTED] would serve as reference for [the petitioner]. To that extent, [REDACTED] drafted the letter of reference and e-mailed it to [the petitioner]. Further, [REDACTED] directed [the petitioner] to sign the letter, if it was necessary.

The February 25, 2010 notarized letter from [REDACTED] to the petitioner states: "I confirm hereby in a telephone conversation between us I agreed that, if necessary, you sign for me the e-mail

letter I sent you.” Thus, the petitioner altered evidence submitted in support of his appeal with the permission of [REDACTED]. The petitioner does not provide any contemporaneous evidence of their exchanges, such as the e-mail draft of the letter. Nor does [REDACTED] or the petitioner explain why they believed that it would be appropriate to provide USCIS with a document containing a false signature rather than one with [REDACTED] original, valid signature. Like a delayed birth certificate, the explanation regarding the false signature, provided years after the transaction, raises serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

While all of the required elements for finding the petitioner culpable of committing fraud or misrepresenting a material fact as set forth in *Sergueeva v. Holder*, 324 Fed. Appx. 76 (2nd Cir. 2009) are not present with respect to the false signature on this letter, the false version of Professor Krasovsky’s signature on the November 6, 2007 letter seriously compromises the credibility of the petitioner and the authenticity of the remaining documentation submitted in support of the petition. *See Matter of Ho*, 19 I&N Dec. at 591. Moreover, we note that a petitioner cannot simply alter documents submitted in support of his petition to facilitate its approval. To hold otherwise would make a farce of the immigration system and the evidentiary requirements set up by statute and regulation.

B. Falsified Webpage

With regard to the AAO’s finding that that the petitioner’s appellate submission included a falsified version of [REDACTED] homepage, counsel states:

[REDACTED] was a judge on the Fifth Konzertrum International Piano Competition in Greece on [sic] December 1999. According to [REDACTED] [February 25, 2010] letter, he judged the Konzertrum in Greece in 1999, however, he failed to list the accolade on his website. Therefore, the fact that [REDACTED] judged the Konzertrum is the truth and not a misrepresentation.

The February 25, 2010 letter from [REDACTED] states: “I served on the jury of the Konzertrum Piano Competition in Greece in December, 1999. The years appearing on my Web site relate to the times I served as president of the jury, whereas in 1999, I was a member.” The letters from counsel and [REDACTED] do not dispute the fact that the petitioner’s appellate submission included a falsified version of [REDACTED] homepage in which the years of his jury service were deliberately altered to support the petitioner’s appeal. As indicated in the February 25, 2010 letter from [REDACTED], the true and official version of his website did not indicate that that he served on the jury of the Fifth Konzertrum International Piano Competition in Greece in December 1999. Rather, only his years as the president of the jury were listed on his homepage (“2000, 2001, and 2002 jury president”). While all of the required elements for finding the petitioner culpable of committing fraud or misrepresenting a material fact as set forth in *Sergueeva v. Holder*, 324 Fed. Appx. 76 (2nd Cir. 2009) are not present in with respect to the falsified webpage, the alteration of [REDACTED]’s homepage to include the year 1999 seriously compromises the

credibility of the petitioner and the authenticity of the remaining documentation submitted in support of the petition. *See Matter of Ho*, 19 I&N Dec. at 591. Once again, we note that a petitioner cannot simply alter documents submitted in support of his petition to facilitate its approval. To hold otherwise would make a farce of the immigration system and the evidentiary requirements set up by statute and regulation.

C. Repeated False Claims of a Second Place Prize

In addressing the AAO's finding that that the record includes three separate letters signed by the petitioner in which he falsely claimed to receive "second prize at 2nd International Piano Competition, Tbilisi Georgia 2001," counsel states:

The Service should not find [the petitioner] to have misrepresented a material fact in his petition for immigrant status as an alien of extraordinary ability because he did not knowingly misrepresent any statements. [The petitioner] is not fluent in the English language. Consequently, [the petitioner] relied on [REDACTED], a notario who practices immigration law without a license or other authorization, to submit his petition, appeals and other documents in support of his petition. [REDACTED] betrayed [the petitioner's] trust, and lied to the Service, by claiming that [the petitioner] won second place in the 2nd annual International Piano Competition in Tbilisi, Georgia. [The petitioner] was unaware of the lie and he never consented to its inclusion in the petition or any other document. The Service should not attribute [REDACTED]'s misrepresentation to [the petitioner] because [the petitioner] did not know the lie was promulgated.

The petitioner submitted information obtained online at www.gelanyusa.com for "IMACOM IN U.S.A. CORP Immigration [sic], Finance, Fax Consulting Service" listing [REDACTED] address as [REDACTED]. The petitioner also submitted a copy of a complaint he filed against [REDACTED] with the New York State Office of the Attorney General dated March 23, 2010.

In his March 3, 2010 affidavit, the petitioner states that he participated in the 2nd annual International Piano Competition in Georgia, but confirms he did not win. He further states:

In August of 2006, I hired [REDACTED] to assist me in filing a petition for immigrant status as an alien of extraordinary ability.

* * *

I signed the petition trusting that the petition and supporting statements and the information contained therein was true and correct. I am not fluent in English language so I could not confirm the facts contained in the petition.

As the numerous letters of recommendation written on my behalf attest, I am an ethical person without any personal blemish. I would have never participated in the dissemination of any lie, specially related to my professional work. Such actions would be particularly insulting to those that have deposited their trust in me.

We cannot ignore, however, that the petitioner's March 11, 2009 motion includes a recommendation letter from [REDACTED], Boston, stating: "[The petitioner] is a *major prize laureate* of several important competitions such as Second international Competition of Republic of Georgia" [Emphasis added.] Clearly, [REDACTED] is under the false impression that the petitioner won a prize at the 2nd International Piano Competition in Georgia. The preceding statement in [REDACTED] letter undermines the petitioner's assertion that he has not participated in the dissemination of misinformation relating to the falsely claimed prize. [REDACTED] is the petitioner's personal acquaintance.² There is no reason to believe that he mistakenly asserted the petitioner won a prize in the 2nd annual International Piano Competition in Georgia due to the misrepresentations of a *notario*. On the contrary, [REDACTED] would know of the petitioner's prior accomplishments either because of the petitioner's renown or because the petitioner provided [REDACTED] with the information, whether true or false. In short, [REDACTED]'s mention of the prize in his letter undermines the petitioner's credibility and his assertions of victimization. The letter disproves counsel's assertion that the petitioner "was unaware of the lie and he never consented to its inclusion in the petition *or any other document.*" [Emphasis added.]

Both counsel and the petitioner assert that the petitioner is not fluent in the English language and did not understand what he signed. While [REDACTED] may have helped the petitioner prepare the documentation submitted in support of the petition, we cannot ignore that the petitioner's address and signature (rather than those of than [REDACTED] appear on the August 4, 2007, November 15, 2007, and March 9, 2009 letters in which the petitioner claimed to have won the second prize at 2nd International Piano Competition in Tbilisi, Georgia in 2001. As previously stated, a willful misrepresentation only requires that the alien knowingly make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. at 289-90. In this case, the record includes three separate letters signed by the petitioner in which he falsely claimed to receive "second prize at 2nd International Piano Competition, Tbilisi Georgia 2001." As previously discussed, he also provided a letter from [REDACTED] which contains misrepresentations that could only have come from the petitioner.

Moreover, we cannot ignore that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct." Only in response to the AAO's February 17, 2010 notice has the petitioner acknowledged that the submitted documentation contained material misrepresentations regarding his winning second prize

² [REDACTED] speaks in glowing terms of the petitioner's performance at a Summer 2008 concert in New Paltz, and the petitioner provides a photograph of himself with [REDACTED] titled "[REDACTED] with [REDACTED] Exhibit 2-12.

at 2nd International Piano Competition in Tbilisi, Georgia. An alien's timely and voluntary retraction of his false statement may serve to excuse the misrepresentation, but the retraction may not simply be in response to the actual or imminent exposure of his falsehood. See *Rahman v. Mukasey*, 272 Fed. Appx. 35, 39 (2nd Cir. 2008) (unpublished) (citing *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973); *Matter of Ngan*, 10 I&N Dec. 725, 727 (BIA 1964); *Matter of M-*, 9 I&N Dec. 118, 119 (BIA 1960)). Until USCIS confronted the petitioner with the prize misrepresentation and altered documents, it appears that he would have been content to receive an approval of the petition based on the misrepresentations.

Despite counsel's assertion that the petitioner "did not knowingly misrepresent any statements," the petitioner has failed to establish that he had no knowledge of the falsely claimed prize. We once more note that the letter submitted on motion from [REDACTED] states that the petitioner "is a major prize laureate of several important competitions such as Second international Competition of Republic of Georgia" Further, as previously stated, petitioner's address and signature (rather than those of than [REDACTED]) appear on the August 4, 2007, November 15, 2007, and March 9, 2009 letters in which the petitioner claimed to have won the second prize at 2nd International Piano Competition in Tbilisi, Georgia. Moreover, the petitioner signed the Form I-140 on August 8, 2006 under penalty of perjury. The regulation at 8 C.F.R. § 102.2(a)(2) provides that "[b]y signing the application or petition, the applicant or petitioner...certifies under penalty of perjury that the application or petition, and all evidence submitted with, either at the time of filing or thereafter, is true and correct." (Emphasis added). The actual signature portion of the Form I-140 at part 8 requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." On that basis alone, the petitioner must be held responsible for any material misrepresentations contained within the record of proceeding.

If the petitioner was unaware of the documents and information submitted in support of his own petition, then this failure to apprise himself constitutes deliberate avoidance and does not absolve him of responsibility for the content of his petition or the materials submitted in support. See *Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6th Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. See *Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993). To find otherwise would have serious negative consequences for USCIS and the administration of the nation's immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution.

In addition, the Department of Justice and USCIS frequently prosecute employment-based fraud based on a petitioner's forged signature on the employment-based petition. We note prior examples where

attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms for which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, [REDACTED] (E.D. Va. December 11, 2002). In contrast to those cases, the petitioner does not contest that he signed the Form I-140, and his initial contact with [REDACTED], for instance, indicates that he was an active participant in the preparation of his supporting documentation.

As immigration officers USCIS Citizenship and Immigration Appeals Officers and Immigration Services Officers possess the full scope of authority accorded to officers by the relevant statutes, regulations, and the Secretary of Homeland Security's delegation of authority. See sections 101(a)(18), 103(a), and 287(b) of the Act; 8 C.F.R. §§ 103.1(b), 287.5(a); DHS Delegation Number 0150.1 (effective March 1, 2003).

With regard to immigration fraud or material misrepresentation, the Act provides immigration officers with the authority to administer oaths, consider evidence, and further provides that any person who knowingly or willfully gives false evidence or swears to any false statement shall be guilty of perjury. Section 287(b) of the Act, 8 U.S.C. § 1357(b). Additionally, the Secretary of Homeland Security has delegated to USCIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud, make recommendations for prosecution, and take other "appropriate action." DHS Delegation Number 0150.1 at para. (2)(I).

In the course of performing their duties under the immigration laws and the Administrative Procedure Act (APA), immigration officers are charged with reviewing evidence and making factual determinations or "findings" related to the adjudication of immigration benefits. Under section 557 of the APA, immigration officers are obligated to ensure that all decisions are a part of the administrative record and that the decisions include "a statement of . . . findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record" 5 U.S.C. § 557(c)(3).

As an issue of fact that is material to an alien's eligibility for the requested immigration benefit or that alien's subsequent admissibility to the United States, the administrative findings in an immigration proceeding must include specific findings of fraud or material misrepresentation. Within the adjudication of the visa petition, a finding of fraud or material misrepresentation will undermine the probative value of the evidence and lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. at 591.

Outside of the basic adjudication of visa eligibility, there are many critical functions of the Department of Homeland Security that hinge on a finding of fraud or material misrepresentation. For example, the Act provides that an alien is inadmissible to the United States if that alien seeks to procure, has sought to procure, or has procured a visa, admission, or other immigration benefits by fraud or willfully misrepresenting a material fact. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182. Additionally, the regulations state that the willful failure to provide full and truthful information requested by USCIS constitutes a failure to maintain nonimmigrant status. 8 C.F.R. § 214.1(f). For

these provisions to be effective, USCIS is required to enter a factual finding of fraud or material misrepresentation into the administrative record.³

With regard to the current proceeding, section 204(b) of the Act states, in pertinent part, that:

After an investigation of the facts in each case . . . the [Secretary of Homeland Security] shall, if he determines that the facts stated in the petition are true and that the alien . . . in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition

Pursuant to section 204(b) of the Act, USCIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. In the present matter, we find that the petitioner submitted three different letters on three separate occasions falsely claiming a prize that he did not receive, a finding that the petitioner does not challenge in his response to the AAO's February 17, 2010 notice.

Even if the petitioner had established that [REDACTED] was responsible for the material misrepresentation regarding the second prize at 2nd International Piano Competition in Tbilisi and that the petitioner was somehow unaware of this misrepresentation, this fact would not relieve the petitioner from the obligation of ensuring that all of the representations and evidence were true and correct. *See Hanna v. Gonzales*, 128 Fed. Appx. at 480; *Bautista v. Star Cruises*, 396 F.3d at 1301; *United States v. Puente*, 982 F.2d at 159. As previously noted, the petitioner signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct." *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

In this case, with regard to the falsely claimed prize, we find that there is sufficient evidence in the form of three signed letters to establish that the petitioner knowingly misrepresented a material fact in support of his petition for classification as an alien of extraordinary ability. The petitioner falsely claimed the prize in signed letters submitted in response to the director's request for evidence, on appeal, and again on motion. Moreover, the falsely claimed prize is mentioned in the letter submitted on motion from [REDACTED]. Finally, the petitioner signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct." Given the preceding facts, we find it implausible for counsel to argue that the petitioner "did not misrepresent any facts concerning . . . the 2nd International Piano Competition, Tbilisi, Georgia."

Section 212(a)(6)(C) of the Act provides:

³ It is important to note that while it may present the opportunity to enter an administrative finding of fraud, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. *See* sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

By filing the instant petition and falsely claiming a prize that he did not receive, the petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he falsely claimed receipt of a second prize at 2nd International Piano Competition in Tbilisi, we affirm our finding of willful material misrepresentation. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

III. Analysis of the arguments and evidence submitted on motion

Regarding the instant petition, the petitioner’s failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and the remaining documentation. As stated above, doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. at 591. Moreover, the petitioner’s statement in his March 3, 2010 affidavit that he “could not confirm the facts contained in the petition” provides a sound basis for upholding the director’s denial of the petition, affirming the AAO’s decision dismissing his appeal, and dismissing the instant motion. Nevertheless, we will address the arguments and evidence submitted in support of the petitioner’s motion to reopen below.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification, *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO’s decision to deny the petition, the court took issue with the AAO’s evaluation of evidence submitted to meet a given evidentiary criterion.⁴ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.*

The court stated that the AAO’s evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that “the proper procedure is to count the types of evidence provided (which the AAO did),” and if the petitioner

⁴ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

failed to submit sufficient evidence, “the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).” *Id.* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the “final merits determination” as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2), and “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered “sustained national or international acclaim” are eligible for an “extraordinary ability” visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

A. Evidentiary Criteria

This petition, filed on August 16, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a pianist. The petitioner has submitted evidence on motion pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).⁶

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

In finding that the petitioner’s evidence did not satisfy this criterion, the AAO’s appellate decision stated:

The petitioner’s August 4, 2007 letter states that he “was the recipient of President’s scholarship.” In support of his statement, the petitioner submitted a 2001 certificate stating: “[The petitioner] is an Exhibitioner of the President of Georgia.” The record does not include information regarding the significance of the “President’s scholarship” or being an “Exhibitioner of the President.” There is no evidence showing that the petitioner’s certificate

⁶ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

is a nationally or internationally recognized prize or award for excellence in his field of endeavor.

On motion, the petitioner submits a March 1, 2009 letter from [REDACTED], Vano Sarajishvili Tbilisi State Conservatoire, stating:

The Directorate of the Vano Sarajishvili Tbilisi State Conservatoire is pleased to inform you that during the academic year of 2000-2001 the Conservatoire was attended by a total of 521 students.

We are hereby pleased to inform you, that in 2001 as a result of a rather strict selection process, the [REDACTED] was awarded to only 2 musician performers. One of the grantees was [the petitioner] a young musician-performer . . . and the intern of the same Conservatoire.

According to the preceding information from [REDACTED] the petitioner received this stipend as a "student" while attending the Vano Sarajishvili Tbilisi State Conservatoire. The petitioner's motion also includes "General Rules and Regulations" concerning the "President's Stipend and Grant designated for children and youth who demonstrate special talents in art, science, medicine, inventions, as well as in other spheres." Section II, "President's Stipend," of the "General Rules and Regulations" states that "[t]he award of stipend of Georgian President to gifted children and youth is intended for growth of their intellectual and/or performing potential." While this stipend is administered by the Ministry of Georgian Culture, Monument Presentation and Sports, we cannot conclude that a stipend intended to foster "performing potential" in "children and youth" equates to a nationally or internationally recognized prize or award for excellence *in the field of endeavor*. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner's student stipend is recognized beyond the presenting body and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field of music.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The petitioner submitted a February 12, 2007 letter from the Chairman of the Georgian Composers' Union stating that the petitioner was a member of the organization from 1999 to

2006. The record, however, does not include evidence (such as membership bylaws or official admission requirements) showing that this organization requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one. As such, the petitioner has not established that he meets this criterion.

On motion, the petitioner submits a document entitled "Regulations of the Georgia's Composers' Creative Union." Part 3 of this document, "Membership of the Union," states:

3.1. A professional composer or musician-performer can become the member of the Union, if his/her intellectual-creative work solely results in creation of the piece of art, or establishment of its performing interpretation. In addition the person has to adopt the Regulations of the Union, ensuring an important contribution to the development of the Georgian culture and have a minimum 3 years of professional work experience.

3.2. The Union is composed of individual and honorable members.

3.3. The acceptance of individual members to the Union is guided by provisions of the admission commissions, approved by the management of the Union.

3.4. Applications on the memberships of the Union is discussed by the admission commission, decisions on admissions are made by voting from the management of the Union.

The preceding guidelines indicate that an individual may become a member through creating a piece of art and having a minimum of three years of professional work experience. We cannot conclude that the preceding requirements equate to "outstanding achievements" in music or composition. Moreover, there is no evidence indicating that the "management of the Union" is comprised of recognized national or international experts. Accordingly, the petitioner has not established that the Georgian Composers' Union requires outstanding achievements of its members, as judged by recognized national or international experts in his field or an allied one.

The petitioner also submits a January 9, 2007 letter from [REDACTED] of the Chopin Society of New York, stating that the petitioner has been a member of the society since January 2007. The petitioner became a member of this society subsequent to the petition's August 16, 2006 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. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, there is no evidence (such as membership rules or bylaws) showing that this local society requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet 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 finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The petitioner submitted a 1999 article in *Musika* entitled "Yesterday, Today, Tomorrow. . ." The English language translation of this article was incomplete. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Without a full English language translation of the article, it cannot be determined that the article was about the petitioner. The plain language of this regulatory criterion requires that the published material be "about the alien" relating to his work in the field. An article that only mentions the petitioner's name in passing does not meet this requirement. The petitioner also submitted an English language translation for a March 31, 1988 article in *Sakhalkho Ganatleba*, but a copy of the original article was not submitted. There is no indication that the English language translation of the article was complete as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, according to the English language translation submitted by the petitioner, the article was about a "Music Week of Children and Youth" held by his school rather than being primarily about him. The petitioner also submitted an article about him in *Dro* entitled "Discovery. . ." The date of this article was not provided as required by the plain language of this regulatory criterion. Further, there is no evidence (such as circulation statistics) showing that *Musika*, *Sakhalkho Ganatleba*, and *Dro* qualify as professional or major trade publications or some other form of major media.

On appeal, the petitioner submits a March 2, 2009 letter from the Chief Editor of *Dro* stating that the "newspaper was issued in years 1989-2008" and that it "was spread either in the capital, throughout the whole country and outside it." The self-serving assertion from the Chief Editor of *Dro* regarding the newspaper's distribution is not sufficient to demonstrate the publication qualifies as a form of major media. Aside from the date of the article in *Dro* not being provided, the record lacks evidence (such as objective circulation information from an independent source) showing the distribution of the preceding publication relative to other national media to demonstrate that the submitted article was published in a professional or major trade publication or some other form of major media.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

On motion, the petitioner submits letters of recommendation praising his talent as a pianist and teacher. 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 his field.

[REDACTED], DePaul University, states:

I have worked with [the petitioner] on several occasions and can speak of his professional accomplishments in the highest terms. With tremendous success, he played in my piano masterclasses and was selected as one of the best participant to perform Chopin's Polonaise in A-flat Major, Op. 53, in the final piano gala concert at Klavierhaus in New York City. As a result, I have recommended him to apply as a participant to the International Festival-Institute at Round Top, Texas, where I serve as an artist-faculty. I have plans to include [the petitioner] in some future artistic/educational endeavors of my AmerKlavier project, as it is my sincere belief that he would be a great addition to our program. [The petitioner] is an exceptional musician of the highest caliber and will be a valuable asset to the musical community of our country.

[REDACTED] states:

[The petitioner] is regarded as one of the best musicians of his generation. He is simply brilliant. There is no person in the audience who will leave his concert without having said that it was one of the most unforgettable experiences of their life. His playing uniquely embraces subtle sophistication and wild excitement – win-win combination. In Summer 2008 his performance of Liszt's Mephisto Waltz at Nadia and Max Shepard Hall at SUNY New Paltz during Piano Summer Institute brought him a major ovation and admiration of the students and faculty. Soon after this memorable performance [the petitioner] was invited to take part in a gala concert in prestigious Steinway Hall in New York City, where he brilliantly performed two Etude-tableaus by Sergei Rachmaninoff following long ovation from the audience.

[REDACTED], New York Conservatory of Music, states that he has worked with the petitioner "since September 2007." [REDACTED] further states:

[The petitioner's] professional input proved highly productive and profitable to our school over the past years. His work ethic and sense of responsibility are impressive and that has ultimately led to his outstanding success in career. It took only a few years for [the petitioner] to establish a class that stands out not only within The New York Conservatory of Music but also everywhere else. His students participate in annual recitals and master classes. His student performances at prestigious venues such as The Steinway Hall of New York evoke sheer delight. Request for admission into his classes are continuously increasing.

* * *

[The petitioner] is extraordinarily productive, his repertoire includes technically virtuosi masterpieces. His approach to the performance of these pieces were vividly demonstrated

during master classes he gave at The New York Conservatory of Music. [The petitioner] has received a lot of praise from experts in his field. He is preparing a solo concert organized by The New York Conservatory of Music at Steinway Hall in September 2009.

The letters of support from [redacted] and [redacted] discuss activities of the petitioner that post-date the filing of the petition. As previously discussed, a petitioner 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 subsequent developments in the petitioner's career in this proceeding.

The letters of recommendation submitted by the petitioner discuss his talent as a pianist, musical performances, and teaching activities, but they do not specify exactly what the petitioner's original contributions in music have been, nor is there an explanation indicating how any such contributions were of major significance in his field. 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 earned the admiration of those offering letters of support, there is no evidence demonstrating that his work equates to original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other pianists nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner 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 pianist who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

On motion, the petitioner submits event programs, concert flyers, and photographs from various music performances. For example, the petitioner submits a flyer for a "class concert" given by his

students at the Gezi-Georgian Cultural Center on January 19, 2008. The petitioner also submits an event program reflecting his participation as a “student” in the “PianoSummer 2008 Student Recital” on July 24, 2008. The preceding performances post-date the filing of the petition. As previously discussed, a petitioner 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 is not required to consider subsequent developments in the petitioner’s career in this proceeding. Nevertheless, the plain language of this regulatory criterion indicates that it is for visual artists (such as sculptors and painters) rather than for pianists such as the petitioner. In the performing arts, national or international acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial national or international 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) and will be addressed there. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner’s evidence did not satisfy this criterion, the AAO’s appellate decision stated:

The petitioner submitted a letter from the QNYSM stating that he has worked there as a piano teacher since June 2007. As discussed, the petitioner’s employment with the QNYSM 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. at 49. Accordingly, the AAO will not consider the petitioner’s role for the QNYSM in this proceeding.

The petitioner submitted a letter from [REDACTED], Tbilisi Centre of Music and Culture, stating:

This is given to a young Georgian pianist [the petitioner] to certify that in 2001-2006 he was a soloist of the Tbilisi Centre of Music and Culture. He was delivering concerts together with the Tbilisi symphony orchestra under leadership of a prominent Georgian conductor [REDACTED] and was performing famous works of the world piano classical music in both the symphonic and solo programs.

The staff of the Tbilisi Centre of Music and Culture strongly believes in his creative potential....

The record does not include supporting evidence showing that the Tbilisi Centre of Music and Culture and the music schools for which the petitioner has worked (such as the Z. Paliashvili 2nd Music College) have a distinguished reputation. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting

the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165 Nor is there evidence demonstrating how the petitioner's role differentiated him from the other musicians and faculty members employed by the preceding organizations. The petitioner has not established that he was responsible for his employers' success or standing to a degree consistent with the meaning of "leading or critical role". . . .

On motion, the petitioner does not address the AAO's findings directly. Rather, the petitioner submits event programs, concert flyers, and photographs for various music performances. These materials indicate that the petitioner participated in the performances, but they are not sufficient to demonstrate that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. Accordingly, we reaffirm our appellate finding that the petitioner does not meet 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 music programs 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. For example, there is no indication that the petitioner's performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Moreover, there is no evidence showing, for instance, that the petitioner's musical recordings have generated substantial national or international sales. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

In this case, we concur with the director's determination and our appellate findings that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 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). See also *Kazarian*, 2010 WL 725317 at *3.

In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our appellate decision and in the preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

With regard to the evidence submitted for the prizes and awards criterion at 8 C.F.R. § 204.5(h)(3)(i), we cannot conclude that prizes won by the petitioner in age-restricted or “student” competition indicate that he “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 his field, rather than limited to his 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 60899.⁷ Likewise, it does not follow that a musician who has had success in competition restricted to pianists age 35 and under should necessarily 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.”

Moreover, a comparison of the petitioner’s accomplishments with those of his references indicates that the very top of his field is a level above his present level of achievement. For example, the biography accompanying [REDACTED] letter states:

[REDACTED] has performed on the world’s most prestigious concert stages in solo and collaborative recitals, and as a guest soloist with major orchestras, including London Symphony, Monte-Carlo Philharmonic, Montreal Symphony, Moscow Virtuosi, Russian State Symphony, Moscow Radio Symphony, St. Petersburg Philharmonic, and Georgian Symphony, under the baton of [REDACTED]

and many others. . . . In 1985, she made a historic appearance with Beijing and Shanghai Philharmonic symphony orchestras as the first Soviet artist to tour China following the renewal of the cultural exchange.

[REDACTED] discography is released on Naxos, Marco Polo, and Melodiya labels, featuring works of Scarlatti, Bach, Liszt, Reger, Tchaikovsky, Rachmaninoff, Scriabin, Lyapunov, Rebikov, Prokofiev, Anderson, Confrey. Her album of Zez Confrey’s Piano Music on Naxos American Classics Series received 42nd Grammy Awards nomination in the

⁷ 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.

category “Best Classical Instrumental Soloist Performance w/o Orchestra,” and her recording of [REDACTED] Piano Music, Vol. 1, was nominated for Deutsche Schallplattenpries. Her live performances are frequently broadcast on various tele- and radio programs in the USA and worldwide.

* * *

[REDACTED] has served as Professor of Piano and Head of the Keyboard Programs at DePaul University School of Music in Chicago, Illinois, and taught at the Moscow and Tbilisi State Conservatoires, and the State University of New York. Her summer appointments as an artist-faculty have included International Keyboard Festival and Institute, New York City, International Festival-Institute at Round Top, Texas, PianoSummer at New Paltz, New York, Masterclasses International, Los Angeles, and Festival International de Colmar, France. She returns annually to present masterclasses as a guest faculty at Mannes College Yearlong Festival, New York City, and Tbilisi Sarajishvili State Conservatoire, Georgia.

We cannot ignore that while [REDACTED] held an artist-faculty appointment at PianoSummer, the petitioner participated in that program as a “student” as recently as 2008.

For further comparison, the biography accompanying [REDACTED] letter states:

[REDACTED] has performed as soloist with orchestras throughout the Americas, Europe and Asia. Recent engagements have included a televised performance of Rachmaninov’s *Piano Concerto No. 3* at the White Nights Festival in St. Petersburg; performances at the Stresa Festival in Italy under the baton of Yuri Bashmet; in the Newport, Tanglewood, Vancouver, Gilmore festivals; with the symphony orchestras of Louisville, Brazil, Bogota, Jerusalem and the City of Birmingham, the Georgian State Orchestra, the Kirov Orchestra, the Israel Chamber Orchestra and others.

* * *

As a very important part of his schedule, [REDACTED] appears frequently in his homeland of Georgia in concerts, on television and radio. In January 2003, Georgian National TV released a full-length documentary about him and in February 2004 he performed at the inauguration of President Saakashvili. This season [REDACTED] returns to Israel for the concerts with Israel Philharmonic Orchestra and Rafael de Burgos to perform Second Concerto by Brahms and Beethoven’s “Emperor” and with Israel Chamber Orchestra for Beethoven’s Fourth concerto and E flat major concerto . . . He is also appearing in concerts with the Quebec City Symphony Orchestra, Georgian State Orchestra, Moscow Symphony Orchestra, Kirov Orchestra with Nosedá, recitals and chamber music concerts at the Barge Festival, New York, Boston, Tel-Aviv, Glasgow, Calgary, Toulouse and Noeburg and Nice among others.

An award-winning pianist [REDACTED] received First prize and Gold Medal of the Arthur Rubinstein Piano Master Competition and First Prize at the Sydney International Piano Competition. In 1999, to show appreciation for his efforts and contributions to the arts in Georgia, [REDACTED] was awarded with one of the most prestigious national awards, the Medal of Honor, bestowed on him by then-Georgian President [REDACTED]

In this case, the accomplishments of [REDACTED] and [REDACTED] indicate that the top of the petitioner's field is significantly higher than the level he has attained at this point in his musical career. Moreover, the submitted evidence does not establish that the petitioner has sustained national or international acclaim as a musician as of the petition's filing date. 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. The conclusion we reach by considering the evidence to meet each criterion at 8 C.F.R. § 204.5(h)(3) 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).

III. Conclusion

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

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The AAO's February 9, 2009 decision dismissing the appeal is affirmed. The petition will remain denied and the AAO will enter a separate finding of willful misrepresentation of a material fact.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false claims in an effort to mislead USCIS on elements material to his eligibility for a benefit sought under the immigration laws of the United States.