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



**U.S. Citizenship  
and Immigration  
Services**

[Redacted]

B2

DATE:

APR 14 2011

Office:

[Redacted]

FILE:

[Redacted]

IN RE:

Petitioner:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, [REDACTED] 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.<sup>1</sup> The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

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

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). Counsel also refers to several unpublished decisions by the AAO sustaining appeals in the classification sought. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. In the instant matter, the petitioner's level of achievement is not commensurate with sustained national or international acclaim at the very top of the field. *See* 8 C.F.R. §§ 204.5(h)(2) and (3).

For the reasons discussed below, we uphold the director's decision.

## **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 --

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<sup>1</sup> According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on March 10, 2009 as an F-1 nonimmigrant student.

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

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

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

USCIS and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> 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 categories of evidence:

(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.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 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.<sup>2</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that 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 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 1122 (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 1119-1120.

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<sup>2</sup> 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).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In 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 *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

## II. Analysis

### A. Evidentiary Criteria

This petition, filed on April 17, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a musician (violinist). At the time of filing, the petitioner was pursuing a Doctor of Musical Arts degree at [REDACTED]. The petitioner earned an Associate of Arts degree from [REDACTED] (2004), a Bachelor of Music degree from the University of [REDACTED] (2005), and a Master of Music degree in Music Performance from [REDACTED] State University (2006). The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<sup>3</sup>

*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 November 7, 2008 letter from [REDACTED] Professor, Music Theory and Composition, [REDACTED] stating that the petitioner “was the winner in viola performance of the [REDACTED] 2002 Annual Concerto Competition, the highest award possible in the music division at the [REDACTED]. As such, he performed in an outstanding Concert featuring the winners as soloists with our orchestra.”<sup>4</sup> The record does not include documentary evidence indicating the eligibility requirements for the competition’s entrants or the selection criteria for its winners. The petitioner states that the “competition is open to any musician in the [REDACTED] area.” However, an unsigned October 16, 2008 letter from [REDACTED] Professor of Music, [REDACTED] submitted by the petitioner states that the Annual Concerto Competition “highlights the most outstanding soloists at [REDACTED] rather than being “open to any musician in the [REDACTED] area” as claimed by the petitioner. 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). Nevertheless, the petitioner did not

<sup>3</sup> The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

<sup>4</sup> [REDACTED] is an education partnership of [REDACTED] Public Schools, [REDACTED], and the University of [REDACTED].

submit evidence of the national or international *recognition* of his particular award. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the 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. The submitted documentation indicates that the petitioner's award from the [REDACTED] 2002 Annual Concerto Competition reflects local or institutional recognition from the petitioner's music school rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor.

The petitioner submitted recognition letters from [REDACTED] Cultural Director for the [REDACTED] Executive Director of the [REDACTED] Music Conservatory of [REDACTED] Director of the Municipal [REDACTED] of [REDACTED] and [REDACTED] Director of Cultural Promotion and Diffusion for the [REDACTED] thanking the petitioner for his support and involvement with various activities. There is no evidence showing that these letters constitute nationally or internationally recognized *prizes* or *awards* for excellence in the field of endeavor.

The petitioner submitted the following:

1. Certificate stating: "The Prefecture of the District of [REDACTED] the Present Recognition to [the petitioner] for his valuable contribution to culture, in favor of the development of the [REDACTED]" (2008);
2. Certificate stating: "The Mayor and General Commander of the [REDACTED] and the Secretary of the Department of Culture congratulate [the petitioner] for his participation at the 'First Conference of Artists During the 100<sup>th</sup> Year Anniversary of the [REDACTED] Conservatory of Music' and for his great contribution to the cultural development of the [REDACTED] and the entire country" (2007);
3. Certificate stating: "Honorable [REDACTED] Council, [REDACTED] . . . in the name of the Municipal Government confers the foregoing recognition to [the petitioner] [REDACTED] String Quartet for his excellent artistic skills and his participation at the [REDACTED] 2005";
4. Certificate from the Cultural Festival [REDACTED] in [REDACTED] in recognition of the petitioner's "outstanding participation and contribution to Art and Culture" (1998);
5. Certificate of Participation presented to the petitioner for his involvement in the IX International Music Festival in [REDACTED] (1998);
6. Certificate of Participation presented to the petitioner for his involvement in the VI International Music Festival in [REDACTED] (1996);
7. Certificate of Participation presented to the petitioner for his involvement in the Festival "Solo Mozart" at the [REDACTED] (1995); and
8. Certificate stating: "Prefecture of the Department of [REDACTED] offers the present certificate to [the petitioner] at the International Soloist – Encounter of Musicians for his extraordinary activities that are reflected in his interpretations as a soloist in Viola and the Centenary Orchestra of the [REDACTED] Conservatory of Music" (2007).

9. Certificate of Recognition presented to the petitioner “for an outstanding performance at [REDACTED] (2003).

The preceding certificates (items 1 – 7) are local or regional honors rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. There is no evidence showing that the preceding certificates are nationally or internationally recognized prizes or awards for excellence, rather than simply acknowledgments of the petitioner’s participation in cultural events and festivals.

The petitioner submitted a February 26, 2007 letter from the Embassy of [REDACTED] in [REDACTED] stating:

The Embassy of the [REDACTED] cordially greets the [REDACTED] quartet, and extends an invitation to offer concerts in [REDACTED] from March 17 to the 22.

\* \* \*

We have also received information that all travel, lodging, food and representation costs will be paid by the University of [REDACTED] United States.

This letter constitutes an invitation to perform rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor.

Counsel asserts in his March 30, 2009 letter that the petitioner won the “[REDACTED] Competition” in 1998, but the petitioner did not submit documentary evidence of his prize or award. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii).

In response to the director’s request for evidence, the petitioner submitted a February 12, 2008 letter from [REDACTED] Executive Director of the [REDACTED] Chamber Music Foundation, stating that the [REDACTED] Quartet (including the petitioner) of the [REDACTED] “participated” in the “5<sup>th</sup> [REDACTED] International Chamber Music Competition & Festa in 2005.” [REDACTED] further states that the petitioner’s “quartet was selected from over 150 applicants from all over the world to *participate* in the Section I of the competition, which is for string

quartets, representing USA.”<sup>5</sup> [Emphasis added.] There is no evidence showing that the petitioner’s quartet received a nationally or internationally recognized prize or award at the 5<sup>th</sup> [REDACTED] International Chamber Music Competition & Festa. Rather, the letter from [REDACTED] is simply an acknowledgment of the [REDACTED] participation in the competition. Moreover, there is no documentation indicating that Section I of the competition was open to established veteran musicians rather than being limited only to younger musicians ages 16 to 35.

On appeal, the petitioner submits evidence of scholarships and graduate assistantships he received while attending [REDACTED] State University. These scholarships and graduate assistantships represent financial support for the petitioner’s graduate studies and music training rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. University study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and graduate assistantships cannot be considered prizes or awards in the petitioner’s field of endeavor. Moreover, competition for scholarships and graduate assistantships is limited to other students. Experienced professional musicians in the field do not apply for such educational funding. Finally, the petitioner did not submit evidence of the national or international *recognition* of his specific academic scholarships and graduate assistantships.

The petitioner’s appellate submission also includes an August 9, 2009 certificate from the [REDACTED] Government of [REDACTED] recognizing the petitioner for his work as a violist and his development of the culture of [REDACTED] from 2005 – 2009. The petitioner received this certificate 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. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, this certificate from the [REDACTED] Government of [REDACTED] is a local or regional honor rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor.

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

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<sup>5</sup> Information about the 7<sup>th</sup> [REDACTED] International Chamber Music Competition & Festa posted on the [REDACTED] Chamber Music Foundation’s website states:

1. Eligibility

Applicants for the Competition shall be ensembles of musicians of any nationality, whose members were born between May 18, 1975 and May 17, 1995. . . .

2. Duplicate Application

An ensemble may apply to only one category: Section I, Section II or the Festa. . . .

3. Reapplication

Any ensemble that has previously won the first or gold prize in the [REDACTED] International Chamber Music Competition or Festa cannot apply for the same category.

*See* [REDACTED] accessed on March 21, 2011, copy incorporated into the record of proceeding.

*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.

The petitioner submitted an August 29, 2008 letter from [REDACTED] Camp Director, [REDACTED] Fine Arts Camp, thanking the petitioner for serving as a "faculty member" for the 2008 Summer Camp. [REDACTED] letter further states: "It is now time to begin planning for next summer. . . . Please direct all employment questions you may have to . . . our Personnel Department . . . . Best wishes for a successful year in your 'real' job! We . . . hope to see you again at camp in the future." The preceding letter is evidence of the petitioner's summer employment rather than documentation of his membership in an association in the field requiring outstanding achievement. There is no documentary evidence showing that the [REDACTED] Fine Arts Camp requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted an October 18, 2008 letter from the American Viola Society (AVS) indicating that the petitioner holds "\$21 Full-time Student Membership" in the AVS and "Chapter Membership" in the [REDACTED] Viola Society (FVS). There is no evidence of the membership requirements (such as bylaws or rules of admission) for the AVS and the FVS showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

In light of the above, the petitioner has not established that he 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. 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.<sup>6</sup>

The petitioner submitted an August 7, 2006 article in [REDACTED] (the [REDACTED] weekly classical music guide) stating:

Two of them once played together in [REDACTED] but the members of the [REDACTED] String Quartet – in residence at the [REDACTED] Music Festival and School this summer . . . – came together in the United States when they were all attending the [REDACTED] in [REDACTED]

\* \* \*

They began playing together right away – borrowing the name of their school for their ensemble – at the recommendation of a teacher, because “the school needed a quartet,” [REDACTED] says.

\* \* \*

This past year they received a full scholarship for graduate study at the University of [REDACTED] where they are currently in residence.

\* \* \*

The members of [REDACTED] have always wanted to come to the [REDACTED] [REDACTED] Music Festival and School], and this summer has reaped musical rewards for them, as they have worked extensively with director of the [REDACTED] as well as with members of visiting ensembles – such as the [REDACTED] quartets. They have also . . . done master classes, received coachings, and kept up a rigorous six-hour-a-day practice schedule.

They feel that it’s vital for them to express the depth and breadth of their cultures in their music, and the [REDACTED] Quartet in particular made a tremendous impact on them earlier this summer.

“Their concert changed our life, and showed us how to play,” [REDACTED] says. “We could not believe their level.”

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<sup>6</sup> 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.

Character and intensity are very import to the [REDACTED] members, too, as they launch their career.

This article only briefly mentions the petitioner and is primarily about the [REDACTED] quartet in general. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be “about the alien.”<sup>7</sup> Further, there is no evidence (such as circulation information) showing that [REDACTED] equates to a professional or major trade publication or some other form of major media.

The petitioner submitted an article in [REDACTED] entitled [REDACTED]. 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. The English language translation accompanying the preceding article was not certified by the translator as required by the regulation. Further, the date and author were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, there is no evidence showing that [REDACTED] [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted a two-sentence article in [REDACTED] entitled [REDACTED] Quartet in [REDACTED]. The English language translation accompanying the preceding article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the date and author of the material were not identified as required by 8 C.F.R. § 204.5(h)(3)(iii). Moreover, there is no evidence showing that [REDACTED] equates to a professional or major trade publication or some other form of major media.

The petitioner submitted an August 29, 2006 article in [REDACTED] entitled [REDACTED] Quartet’ from the United States in two luxurious concerts at the [REDACTED]. This article only briefly mentions the petitioner and is primarily about the [REDACTED] quartet in general. Further, the author of the material was not identified as required by the plain language of this criterion. Moreover, there is no evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media. Finally, the English language translation accompanying the preceding article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner submitted an article entitled [REDACTED] Quartet in Concert,” but the article’s English language translation was incomplete and not certified by the translator as required by 8 C.F.R. § 103.2(b)(3). Further, the name of the publication, the date of the material, and the author were not identified as required by 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner submitted an article in [REDACTED] (a free supplement from the [REDACTED] government of [REDACTED]) entitled “The Symphony Orchestra of [REDACTED] and 4 connotes [sic] artists sold out in

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<sup>7</sup> See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

██████████ but the article's English language translation was incomplete and not certified by the translator as required by 8 C.F.R. § 103.2(b)(3). This article only briefly mentions the petitioner and is primarily about the concert in general. Further, the date and author of the material were not identified as required by 8 C.F.R. § 204.5(h)(3)(iii). Moreover, there is no evidence showing that ██████████ equates to a professional or major trade publication or some other form of major media.

The petitioner submitted articles in ██████████ dated August 29, 2006 and June 15, 1997. The English language translations accompanying the preceding articles were incomplete and not certified by the translator as required by 8 C.F.R. § 103.2(b)(3). Further, the articles' authors were not identified as required by 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the two articles only briefly mention the petitioner and were primarily about his music groups in general. Finally, there is no evidence showing that ██████████ qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted an article in ██████████ 2006, but the article only briefly mentions him. Further, the author of the material was not identified as required by the plain language of this criterion. Moreover, there is no evidence showing that the preceding publication equates to a professional or major trade publication or some other form of major media. Finally, the English language translation accompanying the preceding article was incomplete and not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner submitted articles in ██████████ dated June 5, 2008; October 19, 1997; and November 21, 1999. The English language translations accompanying the preceding articles were incomplete and not certified by the translator as required by 8 C.F.R. § 103.2(b)(3). Further, the articles' authors were not identified as required by 8 C.F.R. § 204.5(h)(3)(iii). Moreover, there is no evidence showing that ██████████ qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted articles in ██████████ dated May 24, 2006; October 16, 1997; July 6, 2002; and November 21, 1999. A fifth article in ██████████ did not include its date as required by 8 C.F.R. § 204.5(h)(3)(iii). The English language translations accompanying the preceding articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the author of the preceding articles was not identified as required by the plain language of this criterion. Moreover, there is no evidence showing that ██████████ equates to a professional or major trade publication or some other form of major media.

The petitioner submitted an October 2, 2007 article in ██████████ entitled "According to these musicians, leaving the country makes artists grow." The English language translation accompanying the preceding article was incomplete and not certified by the translator as required by 8 C.F.R. § 103.2(b)(3). Further, the author of the material was not identified as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, there is no evidence showing that ██████████ qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted a captioned photograph identifying him in [REDACTED]. The plain language of this criterion requires “published material about the alien” including “the title, date and author of the material.” The preceding material does not meet these requirements. Further, there is no evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted an article in the [REDACTED] School of the Arts Fall 2004 newsletter stating:

[REDACTED] accomplished college chamber music group – known as the [REDACTED] String Quartet – gave by all accounts the most impressive performance at the [REDACTED] Music Festival July 8-16 sponsored by the [REDACTED] University in [REDACTED]. During the festival, [REDACTED] and [the petitioner], practiced with [REDACTED] a cellist with the [REDACTED] Symphony Orchestra. . . . [REDACTED] coached them to play Mendelssohn’s String Quartet in A minor, Opus 13 and Bartok’s First Quartet.

This article only briefly mentions the petitioner and is primarily about the [REDACTED] quartet in general. Further, the author of the article is not identified and there is no evidence showing that the preceding school newsletter equates to a professional or major trade publication or some other form of major media.

The petitioner’s response also included brief articles in publications the petitioner identifies as the [REDACTED] Newspaper,” [REDACTED]. The preceding articles only briefly mention the petitioner and are primarily about the [REDACTED] quartet in general. Further, the authors of the articles were not identified as required by the plain language of this criterion. Moreover, there is no evidence showing that the preceding publications qualify as professional or major trade publications or other major media. Finally, the 2005 articles in [REDACTED] were unaccompanied by certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3).

On appeal, the petitioner submits an article entitled “[The petitioner] tocara en [REDACTED] [REDACTED] but the article was unaccompanied by a certified English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the article’s author was not identified as required by 8 C.F.R. § 204.5(h)(3)(iii). Moreover, there is no evidence showing that the article was published in a professional or major trade publication or some other form of major media.

The petitioner also submits November 19, 2008 and September 28, 2005 articles in [REDACTED] but the English language translations accompanying the articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the author of the articles was not identified as required by this criterion. Moreover, there is no evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner's appellate submission also includes an April 8, 2007 article in [REDACTED] entitled "Quartet [REDACTED] in [REDACTED]". The article briefly mentions the petitioner and is primarily about the [REDACTED] quartet in general. Moreover, there is no evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media. Finally, the English language translation accompanying the preceding article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner submitted an April 10, 2007 online article entitled [REDACTED] and [REDACTED] organize concert of the String Quartet [REDACTED]". The article only briefly mentions the petitioner and is primarily about the [REDACTED] concert in general. Further, there is no evidence showing that the article was published in a professional or major trade publication or some other form of major media. Moreover, the English language translation accompanying the article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3).

In light of the above, the petitioner has not established that he 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 reference letters praising his talent as a violist and discussing his activities. Talent and the ability to secure employment in one's field, however, are not necessarily indicative of original artistic contributions of major significance in the musical field. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field.

[REDACTED] Past President, Board of Director's Member, and Director of Special Projects, [REDACTED] Orchestra, states:

[The petitioner] has been with the [REDACTED] Orchestra since the beginning of our 2008-2009 concert season which began in September 2008. To date, he has played all of our orchestra services, rehearsals and concerts, including 3 of our main stage Super Series Concerts, twenty-eight Young People's Concerts, several outdoor pops concerts and Focus Series Concerts.

[The petitioner] won our Principal Viola position at our auditions in September 2008.

\* \* \*

A delight to have in the orchestra, [the petitioner] has already demonstrated his ability to lead the viola section. He is also very conscientious in his effort to come to rehearsals extremely well prepared and show his ability to be part of the "team," both as a leader of his section and a contributor to keeping the artistic standards of the orchestra very high.

[REDACTED] Principal Flute, [REDACTED] Orchestra, states:

[The petitioner] joined the [redacted] in August of 2008 as a Principal Viola upon being named as winner of a national audition for the position. His contributions to the orchestra thus far cannot be measured in words. He is consistently prepared, well-disciplined, and is highly respected by and respectful of his fellow musicians. His leadership qualities in the viola section are outstanding; he is easy to follow, highly communicative, and sensitive to the musical goals of the conductor, while at the same time being extremely humble and approachable.

[redacted] Clarinetist, [redacted] Orchestra, states:

For the past two years of knowing [the petitioner], he has proven to be a highly acclaimed violist and an excellent colleague to work with. Playing together fulfilled my greatest expectations of a colleague. He is a very sensitive musician who always contributes greatly to everything he does.

I consider [the petitioner's] playing a real contribution to whomever he works with.

[redacted] Principal Second Violin, [redacted] Orchestra, states:

[The petitioner] has shown great interest in spreading his love of music and the viola to those in the [redacted] community. He has expressed a desire to participate in musical outreach programs to educate and entertain as many people as possible in the [redacted] area as well as any other place where opportunities may arise.

The preceding references do not explain how the petitioner's contributions to the [redacted] Orchestra were original, nor do they provide specific examples of how his contributions have impacted the field beyond his orchestra such that his work constitutes original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than a contribution consisting of work experience with a single organization or employer.

[redacted] Associate Professor of Conducting and Director of Orchestral Activities, [redacted] State University, states:

[The petitioner] is a doctoral candidate in music at the College of Music of the [redacted] State University.

\* \* \*

[The petitioner] is an exceptionally talented viola performer who has been an asset to our program. In addition to performing in our flagship ensemble, the [redacted] Orchestra, [the petitioner] also serves as a graduate teaching assistant for the viola studio.

[redacted] states:

[The petitioner] studied music theory under my instruction at [redacted] of the [redacted] from 2001-2005. I enjoyed seeing [the petitioner's] performance ability improve in leaps and bounds under the study of Professor [redacted] [The petitioner] played in numerous orchestral concerts during his tenure at [redacted] including many of our new music concerts.

[redacted] describe the petitioner's activities at their universities, but they do not provide specific examples of how the petitioner's work there has influenced the field at large. There is no evidence demonstrating that the petitioner's work at [redacted] State University or the University of [redacted] equates to original contributions of major significance in the field.

[redacted] Violinist, [redacted] Orchestra, states:

I first met [the petitioner] at the [redacted] Festival in [redacted] in July 2003. As the violinist in the [redacted] String Quartet, a group I coached every day for two weeks, he displayed a mastery of ensemble playing. This was especially true in front of an audience. His playing captivated the public that summer, and his leadership in the Quartet inspired the other participants in the festival.

In response to the director's request for evidence, the petitioner submitted information from the [redacted] Festival's website stating:

The [redacted] Music Festival offers *aspiring young artists* a unique opportunity to enhance their skills through the intensive study of chamber music with some of the world's leading concert artists. Each year, 20 *pre-professional stringed instrumentalists* and pianists are selected to participate in the two-week Festival, hosted on the campus of [redacted] [redacted] University] in [redacted]

[Emphasis added.]

While the petitioner benefited from the tutelage of [redacted] a professional violinist, there is no evidence showing that the petitioner's studies at the [redacted] festival as a "pre-professional" instrumentalist constitute original contributions of major significance in the field.

On appeal, counsel argues that "being one of the few who are invited to participate" in music festivals (such as [redacted] and [redacted]) is a contribution of major significance in the field. The petitioner's response to the director's request for evidence included an April 2, 2007 music program describing the petitioner's studies at the [redacted] Music Festival as a member of [redacted]

During the summer of 2006, the quartet was one of three ensembles selected worldwide to participate as a fellowship quartet at the Centre for Advanced Quartet Studies at [redacted] Music Festival. The program offered nine weeks of intensive study devoted exclusively to quartet repertoire and performance practice. Instructors and coaches included members of the world's most prestigious string quartets: [redacted] string quartets.

We cannot conclude that undertaking a program of music study or receiving an invitation to participate in a music festival is indicative of an original contribution of major significance in the field. Counsel does not provide examples indicating how the petitioner's work at these festivals was "original" or how it specifically impacted others in the field.

Assistant Professor of Flute, University of of Music, states:

I have know [sic] [the petitioner] since 2007 as a professional colleague at Fine Arts Camp. We performed together in a Broad Cast [sic] Concert with the String Quartet (2007), and in the Festival Orchestra and Festival Opera. [The petitioner] is a phenomenal musician, with a superb combination of musicality and technique. He is a much beloved teacher by his students at the Fine Arts Camp.

There is no evidence showing that the petitioner's work at this summer music camp equates to original contributions of major significance in the field.

The preceding reference letters submitted by the petitioner discuss his talent as a violist, musical performances, activities with various organizations (such as teaching young musicians), and educational training, but they do not specify exactly what his original contributions in the field of music have been, nor is there an explanation indicating how any such contributions were of major significance in his field. It is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. 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 with whom he has studied and worked, there is no evidence demonstrating that he has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other violists working in the field, nor does it show that the field has specifically changed as a result of his work.

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of 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 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the 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 that one would expect of a violist or music instructor who has

made original contributions of major significance. Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in his field, we cannot conclude that he meets this criterion.

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

The petitioner submitted documentation indicating that he has performed as a soloist in concerts with the [REDACTED] National Symphony Orchestra, the [REDACTED] Symphony Orchestra, the [REDACTED] Orchestra, the International Festival Orchestra in [REDACTED], the Festival [REDACTED] Orchestra, and the [REDACTED] School of the Arts Symphony Orchestra. The petitioner's documentation also included evidence showing that he was the [REDACTED] Cultural Ambassador with the [REDACTED] Orchestra at the [REDACTED] Concert in November 1999 at [REDACTED] Center. Accordingly, the petitioner's evidence meets this criterion.

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

The petitioner submitted reference letters and other documentation indicating that he performed as a principal violist for the [REDACTED] National Symphony Orchestra, the [REDACTED] Conservatory of Music Orchestra ([REDACTED]), the [REDACTED] Symphony Orchestra, [REDACTED] School of the Arts Symphony Orchestra, University Symphony Orchestra of [REDACTED] and the [REDACTED] Orchestra. The petitioner also submitted evidence of his performances with the [REDACTED] String Quartet of the [REDACTED] School of the Arts. In response to the director's request for evidence, the petitioner submitted a May 13, 2009 letter from [REDACTED] General Manager and Principal Horn, [REDACTED] Orchestra, stating:

In [the petitioner's] role as Principal Violist, he is considered a Principal Musician in the "inner circle" of string players that includes the Concertmaster, Principal Second Violin, Principal Viola, Principal Cello and Principal Contra-bass. As Principal of the viola section in the orchestra, [the petitioner] oversees the artistic integrity of the entire viola section, as many as ten fellow musicians in their preparation, rehearsal and performance of orchestral repertoire.

\* \* \*

In addition to his role in the orchestra, [the petitioner] is an integral member of the [REDACTED] String Quartet which has performed to critical acclaim as a featured ensemble of the [REDACTED]

The record, however, does not include documentary evidence of the [REDACTED] String Quartet's "critical acclaim." As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. While the petitioner's role for the preceding orchestras and quartets appears to be leading or critical, there is no evidence showing that they have

a distinguished reputation when compared to other symphony orchestras and string quartets.<sup>8</sup> We note that the petitioner submitted documentation indentifying the [REDACTED] string quartets as “prestigious string quartets.” The documentation submitted by the petitioner does not establish that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In light of the above, the petitioner has not established that he 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.*

The petitioner submitted event programs and compact disc recordings from his concerts, but there is no evidence in the form of sales or receipts showing that his concerts or music recordings were commercially successful. In his May 13, 2009 letter submitted in response to the director’s request for evidence [REDACTED] states:

As is the case with most professional orchestras, repertoire and featured soloists are selected as far as eighteen months in advance of the dates of the concerts. Thus, [the petitioner] has not yet served in the capacity as a featured soloist. That said, there is no doubt that [the petitioner] will be asked to serve in that capacity in future seasons . . . .

\* \* \*

The petitioner’s appointment as Principal Violist with the [REDACTED] is crucial to the artistic development of the orchestra . . . . As the orchestra has grown artistically, ticket sales (subscriptions) have also grown significantly in the 2008/09 season, a trend that is expected to continue in the 2009/10 season.

As previously discussed, eligibility must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. In this instance, there is no evidence showing that the petitioner himself achieved commercial successes or significantly impacted the ticket sales of the Orlando Philharmonic as of the petition’s April 17, 2009 filing date.

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<sup>8</sup> For comparison, some examples of orchestras with distinguished reputations include the Berlin Philharmonic, London Symphony Orchestra, Vienna Philharmonic, Chicago Symphony Orchestra, the Boston Symphony Orchestra, and the New York Philharmonic. See article entitled “Chicago Symphony Tops U.S. Orchestras” at <http://www.npr.org/templates/story/story.php?%20storyId=97291390>, accessed on March 25, 2011, copy incorporated into the record of proceeding.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of commercial successes in the form of “sales” or “receipts;” simply submitting documentation indicating that the petitioner performed in concerts does not meet the requirements of this regulatory criterion. The record does not include evidence of documented “sales” or “receipts” showing that the petitioner has achieved commercial successes in the performing arts. For instance, 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 him. Further, there is no evidence showing, for example, that the petitioner’s musical recordings have generated substantial national or international sales. Accordingly, the petitioner has not established that he meets this criterion.

### *Summary*

In this case, we concur with the director’s determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence 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 will 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.” Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), (v), (vii), (viii), and (x).

With regard to the evidence submitted for 8 C.F.R. § 204.5(h)(3)(i) and the petitioner’s selection for training fellowships at the Aspen and Mimir music festivals, we note that awards, scholarships, and fellowships limited to graduate students or young musicians do not establish that the petitioner is one of the very few at the top of his field. *See* 8 C.F.R. § 204.5(h)(2). Experienced professional instrumentalists do not compete for graduate scholarships and training fellowships. Further, we note that the petitioner’s string quartet participated in Section I of the competition at 5<sup>th</sup> Osaka International Chamber Music Competition & Festa, a competitive section limited to young musicians ages 16 to 35. 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.<sup>9</sup> Likewise, it

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<sup>9</sup> 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:

does not follow that receipt of an award which excludes veteran artists and professionals in the field from consideration should necessarily qualify a musician 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.”

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(iii), the record of proceeding reflects uncertified translations, partial translations, and foreign language documents without any English translations. Furthermore, the petitioner failed to comply with the basic regulatory requirements such as providing the author of the published material as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, there is no evidence demonstrating that the newspapers in which the material was published qualify as major trade publications or other major media. We cannot ignore that many of the articles refer to the petitioner as a “young musical talent” or musician in training rather than an established professional violist. For example, the August 7, 2006 article in [REDACTED] specifically refers to [REDACTED] members as being in a stage in their development where “they launch their career.” The submitted published material is not indicative of a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Further, although the petitioner has been studying and playing in the United States since the early 2000s, there is no evidence indicating that he has been the subject of major media coverage in this country. The statute and regulations require the petitioner to demonstrate that his national or international acclaim has been *sustained*. 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).

While the petitioner demonstrated the display of his work at artistic exhibitions pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), the documentation submitted by the petitioner fails to establish the requisite sustained national or international acclaim. Although the petitioner established that he has performed as a soloist with several symphony orchestras, we note that the submitted evidence fails to demonstrate a level of distinction that sets the petitioner among “that small percentage who have risen to the very top of the field.”

In this matter, the evidence of record falls short of demonstrating petitioner’s sustained national or international acclaim as a violist or music instructor. The conclusion we reach by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate 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).

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[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.

We note that the petitioner's references' credentials are more impressive. For example, [REDACTED] is a Professor of Music at the [REDACTED] School of the Arts. The petitioner submitted an online copy of [REDACTED] biography which states:

As soloist on both the viola and viola d'amore, [REDACTED] has appeared with the [REDACTED] of [REDACTED] the [REDACTED] Orchestra in [REDACTED] the [REDACTED] Symphony Orchestra, the [REDACTED] the [REDACTED], the [REDACTED] Singers, the [REDACTED] Concerto Orchestra, the [REDACTED] Symphony Orchestra . . . [REDACTED] is the long-time principal violist of the [REDACTED] Opera Orchestra . . . From 1990 – 1995 he was a member of the [REDACTED] Symphony, touring [REDACTED] and the United States. . . . Since 2005, he has been a frequent guest principal violist with the [REDACTED] Philharmonic . . . . He has given master classes at conservatories in [REDACTED] and at universities throughout the United States. He is also an active recording artist, having collaborated with artists such as [REDACTED]. He also participated in the [REDACTED] Symphony's recordings on [REDACTED] between 1990-1995. . . . [REDACTED] has collaborated with many great performers in both classical and pop music. The list includes: [REDACTED]

[REDACTED] letter states:

I am a violinist with the [REDACTED] Symphony Orchestra, and with that ensemble I perform roughly 125 concerts a year in the U.S., [REDACTED] I have also served as a guest concertmaster for the symphonies of [REDACTED]. I am on the violin faculty at [REDACTED] University, and I direct the [REDACTED] Music Festival of [REDACTED]

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained. 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 this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim as a violist or music teacher, or that he was among that small percentage at the very top of the field of endeavor.

### 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 and 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 appeal is dismissed.