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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services



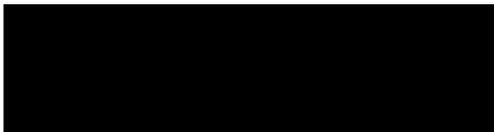
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DATE: **JAN 23 2012** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. On further review of the record, the director issued a notice of intent to revoke the approval of the petition (NOIR). The director, Nebraska Service Center, issued a second NOIR after determining that the initial NOIR did not adequately articulate the proposed grounds for revocation. In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner was prohibited from approval of the petition pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c) because she attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director also determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an

immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation at 8 C.F.R. § 204.2(a)(1)(ii) states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

The record reflects that [REDACTED] married the petitioner on November 12, 1998 in San Diego, California. [REDACTED] filed Form I-130, Petition for Alien Relative, on November 24, 1998, seeking to classify the petitioner as a spouse of a United States citizen pursuant to section 201(b) of the Act, 8 U.S.C. § 1151(b). On March 21, 2001, [REDACTED] pleaded guilty to naturalization fraud and immigration fraud in United States District Court for making false misrepresentations regarding a marriage to his previous spouse [REDACTED], a United States citizen. On July 23, 2001, the petitioner pleaded guilty to misprision of a felony based on her knowledge and concealment of [REDACTED] scheme to falsely obtain his U.S. citizenship. More specifically, the petitioner signed a false lease submitted by [REDACTED] to the U.S. Immigration and Naturalization Service (INS) misrepresenting that he was residing with [REDACTED]. The petitioner also provided false information regarding her address from November 1997 to October 1998 on her Form G-325A, Biographic Information that she submitted to INS in support of her Form I-485, Application to Register Permanent Residence of Adjust Status filed on November 24, 1998. On June 14, 2001, the petitioner requested that her Form I-485 application be withdrawn. The regulation at 8 C.F.R. § 103.2(b)(15) provides: "Withdrawal . . . shall not itself affect the new proceeding; *but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.*" (Emphasis added.)

The "Factual Basis" of [REDACTED]'s signed Plea Agreement states:

Defendant, [REDACTED] was born in Jordan and was a Jordanian citizen. He entered the United States as a visitor. On October 19, 1993, he married [REDACTED]. Huntley filed an immediate relative visa petition (form 1-130) on behalf of [REDACTED] on November 29, 1993. The couple was interviewed by an INS examiner on February 14, 1994. At the conclusion of the interview, the visa petition was approved and Khauli's adjustment of status application (form 1-485) was granted.

As a result, [REDACTED] was made a resident alien. Since they were married less than two years before resident alien status was granted, [REDACTED] status was conditional. Unless the couple filed a joint petition to remove that condition (form 1-751) 90 days before the second anniversary of [REDACTED] becoming a resident alien, the resident alien status would terminate.

[REDACTED] and [REDACTED] filed a timely joint petition in January 1996. The petition was granted in February 1996 and the condition was removed from [REDACTED] resident alien status.

In June 1997, [REDACTED] filed a [sic] application for naturalization (form N-400) with the INS Houston District Office. [REDACTED] requested naturalization under the special provision for aliens living in marital union with their United States citizen spouses for the three years prior to their application. This provision allows the alien to apply for naturalization after 3 years as a resident alien instead of waiting for after 5 years of resident alien status.

On June 10, 1998, [REDACTED] was examined for naturalization by INS District Adjudication Officer [REDACTED]. After being placed under oath, [REDACTED] was asked the questions on the N-400 form. He stated that he was married to [REDACTED] and that she lived with him at [REDACTED]. This statement was false. [REDACTED] never lived with [REDACTED] at that address because she had returned to her family home in Reno, Nevada in January 1997. Consequently, [REDACTED] was ineligible for naturalization because he was not living in marital union with his United States citizen spouse.

[REDACTED] then signed the N-400 before the examiner swearing that the contents of the application were true. The application was granted at the conclusion of the examination and [REDACTED] was scheduled for a Naturalization Oath Ceremony on July 24, 1998. He attended the ceremony, was sworn in as a United States citizen and received [REDACTED].

Also, on July 24, 1998, [REDACTED] submitted a "will call" application for a United States passport. He used the naturalization certificate to support this passport application. On or about July 27, 1998, [REDACTED] picked up his United States passport.

[REDACTED] filed a petition seeking a divorce from [REDACTED] on August 13, 1998. The divorce became final on October 13, 1998 and [REDACTED] married [the petitioner] on November 12, 1998.

The "Factual Basis" of the petitioner's signed Plea Agreement states:

On June 10, 1998, [REDACTED] was examined for naturalization by INS District Adjudication Officer [REDACTED]. After being placed under oath, [REDACTED]

was asked the questions on the N-400 form. He stated that he was married to Sabrina Huntley and that she lived with him at [REDACTED]. In support of this statement, he submitted a lease signed by defendant, [the petitioner], which indicated that [the petitioner] owned the property at [REDACTED] and she leased the premises to defendant [REDACTED] and [REDACTED]. [REDACTED]'s statement was false. The premises was, in fact, leased and occupied by defendant, [the petitioner] and defendant [REDACTED]. Consequently, [REDACTED] did not live [sic] in marital union with [REDACTED] during the three years prior to his naturalization. Therefore, [REDACTED] was ineligible for naturalization because he was not living in marital union with his United States citizen spouse for the required period.

[REDACTED] then signed the N-400 swearing that the contents of the application were true. The application was granted at the conclusion of the examination and [REDACTED] was scheduled for a Naturalization Oath Ceremony on July 24, 1998. He attended the ceremony, was sworn in as a United States citizen and received [REDACTED].

On or about August 13, 1998, defendant [REDACTED] filed a petition seeking a divorce from [REDACTED] which became final on October 13, 1998. [REDACTED] then married defendant, [the petitioner], on November 12, 1998. He then filed an immediate relative visa petition (form I-130) on behalf of defendant, [the petitioner], along with an application to adjust her immigration status to resident alien (form I-485). In support of the application to adjust her status, defendant, [the petitioner], submitted a Biographic Information form (form G-325A). On this form, defendant, [the petitioner], indicated she lived in Toronto, Ontario, Canada during the period from [sic] November 1997 to October 1998. This statement was false in that [the petitioner] actually lived with defendant [REDACTED] at [REDACTED] at that time.

The purpose of this false statement on the G-325A was to conceal defendant Khauli's naturalization fraud from detection by the INS. If the Service knew that Payne and Khauli were living together instead of [REDACTED] living with his United States citizen spouse, he would have been ineligible for naturalization at the time he received his citizenship.

On February 9, 2002, the District Director of the San Diego District Office denied the Form I-130 petition filed in the petitioner's behalf by [REDACTED]. The director's notice of denial stated:

On March 21, 2001, your husband, [REDACTED] received a final order vacating his July 24, 1998 order of admission to United States citizenship. This final order cancelled his Certificate of Naturalization, and any rights, privileges, and advantages that this status conveyed. Your husband was subsequently deported from the United States on April 2, 2001.

In view of the above mentioned facts, there is no longer a petitionable relationship between you and [REDACTED]. Therefore, your petition is hereby denied.

The AAO notes that the district director did not find that the petitioner had attempted or conspired to enter into a marriage with [REDACTED] for the purpose of evading the immigration laws. While the petitioner's misrepresentation of residence information on her signed Form G-325A dated November 17, 1998 indicates that she sought to procure a benefit provided under the Act through willful misrepresentation of a material fact, the evidence of record does not establish that her marriage to [REDACTED] was entered into fraudulently with the intent to evade the immigration laws.

A decision regarding section 204(c) of the Act is for the district director to make in prior collateral proceedings. He should reach his own independent conclusion based the evidence actually before him. *Matter of Rahmati*, 16 I&N Dec. 538 (BIA 1978); *Matter of F-*, 9 I&N Dec. 684 (BIA 1972). A finding that section 204(c) of the Act does apply to an alien must be based on evidence that is substantial and probative. *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990); *Matter of Agdianouy*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972). Once the Service has met this initial requirement, the burden shifts back to the petitioner, as part of his burden of proof in visa petition or revocation proceedings, to rebut the Government's evidence and establish that the prior marriage was bona fide and that section 204(c) of the Act should not apply. *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988).

In the present matter, the AAO finds that the evidence of record does not support a finding that the petitioner's marriage to [REDACTED] was a fraudulent or "sham" marriage. In addition, the record does not contain evidence that is substantial and probative of a marriage that was entered into for the sole purpose of evading the immigration laws. Therefore, the AAO withdraws the finding of the service center director regarding the issue of section 204(c) of the Act. However, the petitioner's willful material misrepresentation of her residence information on the Form G-325A should be considered in any future proceeding where admissibility is an issue.¹

Regarding the service center director's determination as it relates to the petitioner's eligibility under section 203(b)(1)(A) of the Act, 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.

¹ 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 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).

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 asserts that the petitioner is at the top of her field and that the evidence shows she meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the AAO will uphold the service center director's decision to revoke the approval of the I-140 petition.

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 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 (9th 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.² 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

² 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).

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 1119-20.

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 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).

II. Analysis

A. Evidentiary Criteria

This petition, filed on March 1, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a musician (classical flutist) and educator. The petitioner received her Doctor of Musical Arts degree from Rice University in 1996. At the time of filing, the petitioner was working as a “Lecturer and studio instructor in the areas of flute and music history” at San Diego State University (SDSU) School of Music and Dance. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).³

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

The petitioner initially submitted a May 29, 1986 letter addressed to her from [REDACTED], stating:

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

On behalf of the Graduate Council and upon the recommendation of the Shepherd School of Music, I am pleased to offer you admission to the Doctor of Musical Arts program as a full-time student, beginning in the fall semester 1986.

* * *

In addition to your admission, you are also being offered a Scholarship which will provide all of the \$4,400 tuition for the year. . . . Please note that continuance past 1986-87 is dependent upon satisfactory performance and the availability of funds.

The petitioner also submitted a July 11, 1986 letter addressed to her from [REDACTED] Dean, Shepherd School of Music, Rice University, stating:

I am pleased to write to let you know that the Financial Assistance Committee of the Shepherd School has named you to receive a Scholarship as described below in the Shepherd School for the 1986-1987 academic year. This scholarship award is made for the purpose of enabling you to further your education

* * *

Scholarship: This is to reaffirm the Graduate Studies offer of financial aid for 1986-1987. Tuition remission in the amount of \$4400, which will be applied toward you tuition and fees, one-half in each semester.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships do not constitute prizes or awards for excellence in the petitioner's field of endeavor. Moreover, competition for university scholarships is limited to other students seeking financial aid and tuition assistance. Experienced professionals in the field who have already completed their education do not seek such scholarships. In this instance, there is no documentary evidence demonstrating that the petitioner's Rice University scholarship was recognized beyond the university and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

The petitioner's initial submission also included a letter from [REDACTED] a renowned virtuoso flute player from Northern Ireland, stating:

[The petitioner] played for me some nine years ago in a class I was conducting in Aspen, Colorado. . . . In addition to playing in my Lucerne, Switzerland class in 1991, last year she won a place in a competition to play for me again in a class in Washington, DC, and again she stood out amongst some exceptionally fine players.

In response to the director's NOIR, the petitioner submitted a July 7, 2009 letter from [REDACTED] stating:

Because I do not teach private lessons, most learning takes place in the form of master classes or seminars, which interested entrants, must compete to win a place or be invited.

[The petitioner] won a place in my Aspen Music Festival master class in 1989 and she later attended my International Flute Master class in Switzerland in 1990 where we shared our association of both having had the precious gift of being taught by Marcel Moyse. In 1996 she won another competition to play for me in my Washington, DC class and we have had a professional relationship ever since.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the petitioner's receipt of "nationally or internationally recognized prizes or awards for excellence in the field of endeavor." In this instance, the petitioner did not submit documentary evidence of the "prizes or awards" won by the petitioner in 1989, 1990, or 1996. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. 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). The letter of support from Sir Galway does not comply with the preceding regulatory requirements. Regardless, the AAO notes that an invitation to attend a master class constitutes selection for advanced musical training rather than receipt of a nationally or internationally recognized prize or award in the field. Further, the petitioner did not submit evidence of the national or international *recognition* of her selection, such as national or widespread local coverage of her selection in professional or general media. The plain language of the regulation 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 her burden to establish every element of this criterion. There is no documentary evidence demonstrating that the petitioner's selection for advanced musical training sessions was recognized beyond the class organizer and therefore commensurate with her receipt of nationally or internationally recognized prizes or awards for excellence in the field.

In light of the above, the petitioner has not established that she meets this regulatory 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 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 documentation indicating that she is a member of the Marcel Moyse Society, the San Diego Flute Guild, the Society of Pi Kappa Lambda, and the Houston Professional Musicians Association. There is no documentary evidence (such as bylaws or rules of admission) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. Accordingly, the petitioner has not established that she meets this regulatory 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.⁴

The petitioner submitted a December 10, 1997 article entitled "[REDACTED] section of the [REDACTED]. The article includes only three sentences mentioning the petitioner and the author of the article was not identified as required by the plain language of this regulatory criterion. Further, there is no evidence showing that the local advertising supplement to the *Houston Chronicle* qualifies as a form of major media.

The petitioner submitted a February 21, 1998 "News Release" prepared by the "Office of Community and Resource Development" at Houston Community College announcing a faculty concert including the petitioner. According to the petitioner's resume, the petitioner worked at Houston Community College as an Adjunct Professor of Flute at that time. A news release is a written communication directed at the news media for the purpose of announcing information

⁴ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

claimed as having news value rather than “published material . . . in professional or major trade publications or other major media.” The AAO cannot conclude that a press release, which is not the result of independent media reportage and which is sent to journalists in order to encourage them to develop articles on a subject, meets the plain language requirements of this regulatory criterion.

The petitioner submitted a copy of the Winter 1984 issue of *Vibrations*, a newsletter of the Community Music Center of Boston. The newsletter lists the petitioner’s name among more than thirty staff members and faculty of the Community Music Center of Boston, but the newsletter does not include any articles about the petitioner. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien.” *See, e.g., Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1,*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Further, there is no evidence showing that this institutional newsletter qualifies as a professional or major trade publication or some other form of major media.

In light of the above, the petitioner has not established that she meets this regulatory 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 her talent as a flutist and discussing her activities in the field, training, education, and teaching positions. 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 her field.

initial letter states: “[The petitioner] has established herself as a first rate player and educator, highly thought of by her colleagues. She has a spark of originality among educators, which is hard to find in this overcrowded profession.” praises the petitioner’s skills as a flute player and music teacher, but he does not provides specific examples of how the petitioner’s original work has impacted the field beyond her immediate employers such that her work rises to the level of artistic contributions of major significance in the field.

, states:

[The petitioner] was selected for her position as Lecturer and studio instructor in the areas of flute and music history because of her superb academic background and demonstration of extraordinary talents as a performer.

She has been active as a performer, serving as a role model for our students and bringing performance expertise to her studio. Her specialty is the French Moyse School of Flute Playing which she expertly incorporates with the American school of playing.

discusses the petitioner's activities at SDSU, but he does not provide specific examples of how the petitioner's work there has influenced the field at large. There is no documentary evidence demonstrating that the petitioner's work at SDSU equates to original contributions of major significance in the field.

In her initial letter, Professor of Flute and Chamber Music, Rice University, states:

[The petitioner] studied flute with me during the 1983-84 academic year while completing her master's degree at Boston University.

* * *

[The petitioner] is one of the most gifted musicians I have ever had the pleasure to coach during 25 years of college teaching. After her master's recital, on which she gave a truly memorable performance of Debussy's sonata for flute, viola and harp, I told [the petitioner] that I would gladly have paid a high admission fee to have heard her recital. She is also one of the most imaginative and dedicated musicians I have taught, always seeking new or different ways of expressing her musical ideas.

One of [the petitioner's] greatest strengths as a flutist is her unusually broad spectrum of tone colors, which she uses with originality. Her stage presence exudes confidence and musical integrity, and she invariably brings a distinctly personal message to her audience. She also possesses a rich artistic intelligence, excellent verbal communication skills, and the ability to express herself very well in writing. I have read portions of her doctoral thesis (*Contemporary Canadian Flute Repertoire: An Analysis of Selected Works and Catalogue of Selected Genres*) and am struck by her thoroughness and creativity in treating historical and analytical issues.

The regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122. Thus, there is no presumption that every scholarly article is an original contribution of major significance in the field; rather, the petitioner must document the actual impact of her article. In the present matter, the petitioner failed to submit a citation history or other documentary evidence showing that her doctoral thesis is majorly significant to her field.

continues:

[The petitioner] has had a wide range of teaching experience in the Boston area, at Aspen and in Houston. I am particularly impressed by the outreach she has done in the greater Houston area, where she has directed the wind department at the Houston Conservatory, served [REDACTED] and was founder/director of Pilgrim Fine Arts Academy of Music. She has been highly active in the Houston Flute Club, has performed with a faculty woodwind quintet, presents solo recitals, and champions Canadian contemporary music in a flute and piano duo which she founded. She is very well respected as a pedagogue; her students have continually distinguished themselves in state and regional competitions and are visible in all three local youth orchestras.

[REDACTED] comments that the petitioner was the "founder/director of Pilgrim Fine Arts Academy of Music," but there is no evidence documenting the number of students enrolled in the academy, its profitability, its distinguished reputation, or the success of its students. The petitioner has not established that founding a local organization that offers private music lessons and teaching students who distinguish themselves in state or regional competitions (rather than in national or international competitions) constitutes original contributions of major significance in the field.

[REDACTED] states:

[The petitioner's] varied professional experiences of over 20 years have been honed through a hard working and diplomatic personality. These experiences include: private teaching, ensemble and solo performing, various teaching positions in American Music Schools and Academies such as: The Community Music School of Boston, both South and North Shore Conservatories of Boston, The Aspen Music School, Houston Independent School Districts, The Houston Music School and The Houston Conservatory of Music.

Most outstanding and to her credit has been the creation and growth of the Houston Conservatory's Chamber Music Program for all levels and Flute Choir Program. Through this ensemble, the HCM has showcased selected talented students from Junior and Senior High school levels in several Houston performing venues. Moreover, [the petitioner's] Flute Program boasts a Flute Camp for all levels of study. In addition to her duties as [REDACTED] [the petitioner] is qualified to teach Chamber Music, Music History and Baroque Flute. She has interviewed with the Toronto Conservatory of Music to glean ideas for HCM's expansion and uses several of their theory manuals to create her own theory programs here at HCM. These programs include Beginner and Intermediate Theory and a special course designed for ages 4-9, which combine music, art and motion.

Among her recent proposals for expanding the Conservatory's enrollment and revenue base for the fall semester is the addition of an Adult Flute Choir, weekend Flute Master Classes in collaboration with Houston Symphony flutists,

hosting a Flute Concerto Competition and an array of weekend Master Classes for various high school compulsory competitions.

* * *

Overall, [the petitioner] has been a valuable asset to the conservatory, helping to increase its revenue base, expand enrollment, while adding a fresh energetic atmosphere to the life of the conservatory.

While the petitioner's work at the Houston Conservatory of Music was important to its Chamber Music Program, there is no documentary evidence demonstrating that her work was recognized beyond the local Houston community such that her 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 petitioner's artistic contributions be "of major significance in the field" rather than limited to a particular music institution, locality, or employer.

[REDACTED], Director, Community Music Center of Boston, states:

I have been quite pleased to have [the petitioner] as a member of the faculty. Besides being a fine teacher, she is trained in the French style of solo and chamber flute performance. This school of training is not well represented in the States. It is rare to find a musician like [the petitioner] who is not only proficient in this technique but also a competent teacher to our students. Her continued association to the Center, compliments its educative mission and enhances the service it provides as Boston's oldest music school.

* * *

Her dedication as an artist, which led her to study with the likes of [REDACTED], ultimately brought her to Boston university. The significance of her work at Boston University is revealed by the fact that [REDACTED], perhaps the only surviving authority on the French style, joined the faculty, and brought her there as his private student. These credentials clearly establish [the petitioner] as a musician of distinguished merit and ability.

[REDACTED] states:

It is [the petitioner's] unusually diverse background that makes her a unique teacher and one whom I would like to see remain on the faculty for a long time. In my opinion it is her studies with some of the greatest flutists of our time that give her distinguished merit as a performer and teacher. Her proficiency in the French style of solo playing are unique in American Music Educational circles. She brings traditional and different interpretive concepts of flute literature to her students than do other teachers schooled in the more traditional American Orchestral approach, although she is well qualified in teaching this also.

both comment on the unique nature of the petitioner's training in the French style of solo flute performance. Assuming the petitioner's music skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Dep't. of Transp.*, 22 I. & N. Dec. 215, 221 (Comm'r 1998). The reference letters from do not provide examples indicating how the petitioner's work equates to original contributions of major significance in the field.

Professor Emeritus, Shepherd School of Music, Rice University, states:

[The petitioner] is well known to me as a skilled flutist of exceptional tonal quality, musicality and charm. She has had considerable professional experience as a recitalist, Chamber Music player and Orchestral flutist and demonstrates as well a natural empathy as a teacher. She is ambitious and thorough in pursuit of excellence and I can with confidence recommend her as a musician and attractive personality.

The preceding references do not explain how the petitioner's contributions as a flutist or teacher were original, nor do they provide specific examples of how her contributions have impacted the field beyond her employers and educational institutions such that her work constitutes original contributions of major significance in the field. It is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted her 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" in the field. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Thus, the AAO concurs with the director's determination that the reference letters initially submitted by the petitioner did not meet the elements of this regulatory criterion.

In response to the director's NOIR, the petitioner submitted additional letters of support from her personal and professional contacts.

In his second letter, states:

No better display of [the petitioner's] professionalism could be shown than that at the National Flute Association convention back in 1997, where I witnessed her demonstration of my tone development exercises, which flutists now use the world over.

As well as teaching the methods she learned directly from her and my former teacher, the late, great , as well as (her teacher during the summers in the South of France), [the petitioner] is also certified to

teach my Galway Method of Flute playing as well. This is something I would only allow a professional who is outstanding in their field to do, and whom I feel confident can deliver my Methodology in the same manner as I would wish it to be portrayed.

comments that the petitioner publically demonstrated his tone development exercises, that she learned teaching methods from [redacted] and [redacted], and that she is certified to teach the Galway Method of Flute playing. There is no documentary evidence indicating that the petitioner has developed comparable original teaching methodologies of her own, as opposed to utilizing methodologies passed down from her previous teachers such as [redacted] and [redacted].

continues:

[The petitioner] and my professional paths crossed again in 2003, when I came to San Diego to give a solo recital at Symphony Towers. At the time, she was still teaching flute at San Diego State and at several other area music colleges She had invited me to perform and give a class at San Diego State University where she teaches, but a last minute change in my tour schedule meant the need to take an earlier flight, so we set another date.

During her term as president of the San Diego Flute Guild, [the petitioner] hosted [redacted] which is an internationally recognized musical club, geared towards flutists of all levels, organized and operated by my wife [redacted] a recognized international flutist in her own right. [The petitioner] rehearsed the San Diego Chapter students and conducted the flute choir concert, of which I was a member, before I performed a solo recital that evening.

The preceding paragraphs in [redacted] letter discuss activities of the petitioner that post-date 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 (Reg'l Comm'r 1971). Accordingly, the AAO will not consider the petitioner's activities after March 1, 2001 in this proceeding.

In her second letter [redacted]

states:

[The petitioner] kept me apprised of her professional career . . . and when I joined the faculty at Rice University in 1997 she was coincidentally living and teaching in Houston, having earned a doctorate at Rice and decided to remain in Houston to continue teaching. We continued to maintain a collegial relationship during that time; in the greater Houston area she was known as an outstanding teacher. Her students won coveted positions in the Houston Youth Symphony, and even a concerto competition sponsored by the orchestra. Since Houston is the fourth

largest city in our country and boasts a very large talent pool, this is an obvious example of her effectiveness as a pedagogue.

* * *

Through the years I have valued our collegial relationship and have referred numerous students to [the petitioner]. One student whom we shared – [redacted] – is now associate principal flutist of the Cleveland Orchestra, one of the top five orchestras in the United States. [The petitioner's] former students have gone on to complete graduate studies at such renowned musical institutions as the [redacted]. These musicians are becoming a part of [the petitioner's] legacy as an extraordinary talent who has chosen to pass along her breadth and depth of musical knowledge through teaching career.

The record, however, does not include evidence showing that the petitioner's original instructional techniques have significantly impacted the field beyond the pupils under her immediate tutelage. As previously discussed, contributions limited to the institutions where the petitioner taught do not equate to original contributions of major significance to the field as a whole. Further, the petitioner has not established that teaching students who distinguished themselves in the Houston or San Diego areas (rather than in national or international music competitions) constitutes original contributions of major significance in the field. Moreover, while the petitioner may have previously taught the associate principal flutist of the Cleveland Orchestra and other students who have gone on to complete their graduate studies, there is no documentary evidence demonstrating that their success was primarily attributable to the petitioner or that her instructional methodologies equate to original contributions of major significance in the field.

[redacted] further states:

To offer background on the uniqueness and importance of [the petitioner's] pedagogy, flutists of her generation, approximately 15 years younger than I, represent the last direct living link to the tradition and teachings of the 20th century French pedagogues who were responsible for our instrument becoming as respected a solo instrument as the violin, piano, and cello have been for the past several centuries. The pioneers in passing along this tradition were [the petitioner's] and my teachers, the aforementioned [redacted] and Jean-Pierre Rampal, and it is critical that their teachings be passed on in the oral tradition.

As previously discussed, there is no evidence indicating that the petitioner has developed original pioneering teaching methodologies, as opposed to the methodologies passed down to her from her own tutelage as a flutist. Moreover, the issue of whether similarly-trained musicians are available in the United States is an issue under the jurisdiction of the Department of Labor. *New York State Dep't of Transp.*, 22 I&N Dec. at 221.

continues:

In addition to her immense contribution through pedagogy, [the petitioner] is making an invaluable contribution to the international musical community in another way. Currently she is undertaking a project with the Society to edit, translate, and re-record over 100 audio tapes of sessions with who coached chamber music at the world renowned Marlboro Festival in Vermont for many years in addition to teaching the flute. These compact discs will be deposited with the Society Library in the New York Public Library for future international use and study.

* * *

In addition she has served the flute community in the greater San Diego area by becoming president of the San Diego Events of the have been publicized not only statewide but also nationally in flute publications.

The preceding statements in letter discuss activities of the petitioner that post-date the petition's filing date. 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 the petitioner's activities after March 1, 2001 in this proceeding.

states:

[The petitioner] and I first met when we were both studying flute with the legendary French flutist, At the time we met, [the petitioner] was simultaneously studying with and his son, also a legendary figure in the flute world. I was present in studio in Brattleboro, Vermont when [the petitioner] had her first lesson with him. She played beautifully and clearly had an extraordinary musical gift.

* * *

In 1988, I began spearheading efforts to establish Archive Advisory Board. The charter member of this Board was , himself a student of . Over the years 1988-1990, we formed the Society, dedicated to the preservation of the legacy of In the late 1990's, I solicited [the petitioner] to be our Secretary because of her deep commitment to the French School and her understanding of its importance to future generations. She served ably in this office for two years.

[The petitioner] is now engaged in an exciting project that will be of great benefit to students, scholars, and professional flutists around the world. She is

cataloguing, transcribing, editing, and transferring to CD over 100 of her carefully taped lessons with [REDACTED]

* * *

Finally, I want to speak directly to [the petitioner's] extraordinary gifts. I remember once hearing [REDACTED] tell [the petitioner] that she was the next proponent of the French School, that she really understood these important teachings, and that it was up to her to keep this tradition alive. There is no question that she has done this, and is doing it, first through her performances and now through her teaching.

As previously discussed, the petitioner's current project to preserve her lessons with [REDACTED] post-dates the petition's filing date. Eligibility must be established 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 activities after March 1, 2001 in this proceeding. [REDACTED] does not provide specific examples of how the petitioner's original work has already significantly influenced the field. There is no documentary evidence demonstrating that the petitioner's work constitutes original contributions of major significance in the field.

[REDACTED], who met the petitioner at the second annual [REDACTED] [REDACTED] seminar in Switzerland, states: "As an internationally acclaimed flute soloist myself, (St. Petersburg, Russia, Wigmore Hall, London), I have always recognized [the petitioner's] great soloist *potential* and have always admired her organizational teaching and conducting skills." [Emphasis added.] [REDACTED] does not explain how the petitioner's work is original or of major significance in the field.

[REDACTED], states:

[The petitioner's] lessons and master classes with me starting in 1978 were very productive. Her hard practice and diligence brought a marked improvement from lesson to lesson. As I was a great admirer and student of the famed French flutist [REDACTED] it could well be that she moved to Brattleboro, Vermont in 1980 to work with him. And this she did with her usual fervor, taking 4 or 5 lessons a week and recording them all. . . . This learning experience was exceptional and is being passed on to another generation of flutists who are her students as well as actually being edited and digitally preserved for future generations. . . . It is invaluable work which needs to be completed as these tapes will be deposited in the [REDACTED] Archive in the New York City Public Library for all to access.

Once again, the petitioner's project to preserve her lessons with [REDACTED] post-dates the petition's filing date. Eligibility must be established 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 activities after March 1, 2001 in this proceeding. While the submitted

documentation indicates that the petitioner was a talented flute player and is passing on what she learned from [REDACTED] to her own students, there is documentary evidence demonstrating that that her work has impacted the field at a level indicative of original artistic contributions of major significance in the field.

[REDACTED], a European-trained flutist and music teacher, and founder of the Music West School for children, states:

I first met [the petitioner] at San Diego State University in her packed [REDACTED] [REDACTED] in April 1999.

* * *

Since that time (1999) both our personal and professional relationship has formed a strong bond which resulted in co-founding our music school, Music West. This special collaboration has made its mark in San Diego through specialized pedagogical classes not offered by other teachers or schools here. From the bi-monthly master classes on the interpretation of [REDACTED] books (founder of the French school) to our [REDACTED] [REDACTED] to our regular summer musical performance trips to Prague with our students, it is a school unlike any other in Southern California.

The petitioner's initial evidence included a Music West Summer – July 2000 Music & Art Academy Brochure. The brochure states that [REDACTED] [REDACTED]. The brochure includes the petitioner's biography and identifies her as a flute instructor, but she is not identified as the school's co-founder. Regardless, 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 limited to a particular music school or region. [REDACTED] [REDACTED] does not provide specific examples of how the petitioner's original work has influenced the field at large or otherwise constitutes original contributions of major significance in the field.

[REDACTED] Principal Flute, Houston Symphony, states:

I met [the petitioner] . . . when she came to Houston to study at the Shepherd School of Music with (the late) [REDACTED], with whom I was well acquainted. [REDACTED] was a well-known and highly respected flute teacher. [The petitioner's] beautiful playing quickly established her as one of his most prominent pupils and one of the best freelance flutists in town. [The petitioner] . . . was eager to take some lessons with me and talk about my experience with orchestral playing.

* * *

When [REDACTED] retired from the Shepherd School in 1990, I was asked to join the faculty, so I became [the petitioner's] teacher at the Shepherd school for the

next few years. I won the Principal Flute position with the Houston Symphony during this time.

* * *

[The petitioner] is now an active professional musician and has become a valuable historical resource for flutists today. Her own gifts for music are combined with a wealth of knowledge from teachers like [REDACTED]. She is a sought after teacher in the San Diego area.

[REDACTED] describes the petitioner as a knowledgeable and sought after teacher in the San Diego area, but she does not provide examples indicating how the petitioner's work is "original" or how it equates to artistic contributions of major significance to the field.

[REDACTED], states that he has known the petitioner since 1987 when they studied toward their Doctoral Degree of Musical Arts at Rice University. [REDACTED] further states:

[REDACTED] is a fascinating flutist and passionate teacher. Her involvement with classical music ranges from performing, teaching, and to presenting/organizing concerts. Already during the graduate music classes at Rice University which we both attended, she exhibited a keen understanding of all types of music and presented lectures and assignments of flute-related topics with thorough knowledge and passion.

There are many flutists well-qualified as performers and/or professors: what sets [the petitioner] apart is her ability to communicate her musical and pedagogical intentions, especially in the French Style of flute playing, which she has become sought after for, due to her direct musical relationship with [REDACTED] who has been coined by musicians as "The Father of the French School of Flute Playing."

While [REDACTED] describes the petitioner as a knowledgeable teacher in the area of French style flute playing, there is no documentary evidence demonstrating that her work equates to original contributions of major significance in the field.

[REDACTED], a San Diego area bassoonist and teacher at Point Loma Nazarene University and MiraCosta College, states:

[The petitioner] and I . . . taught together at the California Institute of Music. This extraordinary after-school orchestral training program was started and administered by [REDACTED] – world renowned violin teachers. They invited only the highest caliber teachers to the faculty.

In that capacity, I observed [the petitioner] conducting and rehearsing the orchestra numerous times in Mr. Tseitlin's absence, with exemplary results. She also coached chamber music, for which I was her substitute on several occasions. The students were extremely well-coached and informed, and their performances of the highest caliber – a testament to her effectiveness. I also heard her outstanding flute students at the California Institute of Music, and know that many went on to prestigious music colleges.

The petitioner taught at the California Institute of Music subsequent to the petition's filing date. 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 the petitioner's activities at the California Institute of Music in this proceeding.

[REDACTED] continues:

Because of my duties within the Music Teachers Association of California, I am very familiar with all of her students. Her direct link to the legacies of Jean-[REDACTED] and the French style is most evident; and moreover critical.

I'm also aware of some significant and important changes to the performance program that [the petitioner] implemented as a faculty member at San Diego State University which are still in effect. She has also served as the president of the San Diego Flute Guild, and as such, brought some extraordinary master class artists to San Diego – educating not just flutists, but professional musicians of all instruments.

Finally, as performers, [the petitioner] and I performed nearly one hundred local concerts with [REDACTED]. We provided an extraordinary service to the San Diego Community, performing for audiences from all walks of life. The mission: keeping classical music alive. We not only encouraged young people to begin an instrument or remain in music by dazzling them with exceptional concerts – but we also demonstrated the science of our instruments. Her work in the quintet was outstanding, as well was her rapport with the public.

While [REDACTED] indicates that the petitioner's teaching and performances have benefited the San Diego area, [REDACTED] does not provide specific examples of how the petitioner's original work has notably influenced the field in general or otherwise equates to contributions of major significance in the classical music field.

[REDACTED], a renowned jazz saxophonist, states:

I first met [the petitioner] when I invited her graduate students from San Diego State University in the summer of 2007 to my house for a flute master class. As an internationally famed jazz saxophonist for over 63 years, I also have recorded

and received great praise as a brilliant artist on the flute. As a performer and flute teacher with European instruction, [the petitioner] impressed me by her artistry and ability to teach combinations of the French School with that of other acceptable schools of playing. Her many years of study and connections with persons of the French School of Flute (most notably [redacted]) make her one of the few left who is credible and authorized to teach this style. In addition, she has been authorized by [redacted] to teach his methods, which she shares with all her students at her school Music West Institute. Although I am highly acclaimed as a flutist and have won many awards as a flutist, there is always room for improvement and [the petitioner] is the one I have chosen to instruct me on improving my flute skills.

She made such a positive impression with me that at the class at my house with the ability to improve my sound, especially the bottom notes so quickly, that I asked her to come back again and share musical ideas. We did so for over an hour and she brought her [redacted] and [redacted] methods that she is qualified to teach because of her lifetime exposure and studies with the famed [redacted] and other teachers of the French school.

The petitioner's collaboration with [redacted] in 2007 post-dates the petition's filing date. 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 the petitioner's activities with [redacted] in this proceeding. Regardless, [redacted] comments do not indicate that the petitioner has developed her own original teaching methodologies, as opposed to utilizing methodologies passed down from her previous teachers such as [redacted]. Further, there is no evidence showing that the petitioner's instructional techniques have significantly impacted the field beyond the pupils under her immediate tutelage.

[redacted] states:

During my tenure, this department has had several music majors who have had the Classical Flute as their primary instrument. One of these students, Miss [redacted], chose [the petitioner] as her private instructor upon the recommendation of several of the most accomplished flautists in the greater San Diego area. It is notable that [the petitioner] would not accept any compensation for her teaching.

The progress shown by this student under the tutelage of [the petitioner] was remarkable, and she went on to acquire an advanced degree in flute performance at a major conservatory of music.

It is my opinion that [the petitioner] possesses a rare and special talent to teach flute to young people. It is also clear to me that there is a demand for her abilities because the flautists we consulted, some belonging to the San Diego Symphony

Orchestra, trusted her with our music student. This institution will certainly continue to recommend her as an instructor for our music majors who play classical flute

does not identify the dates of 's tutelage by the petitioner. 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. Regardless, does not explain how the petitioner's instruction of is indicative of an original contribution of major significance in the classical music field.

The preceding reference letters submitted by the petitioner discuss her talent as a flutist, musical performances, activities with various organizations as an educator of young musicians, and musical training, but they do not specify exactly what her "original" contributions in the field of music have been. Nor do they provide specific examples indicating how any such original contributions were of major significance in the field (such as through the widespread adoption of her original methods of instruction). Mastering and subsequently teaching a playing style developed by others is not demonstrative of an "original" contribution to the field. While the petitioner has earned the admiration of her references as a talented flutist and educator, the record not establish that she 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 professional flutists working in the field at the time of filing, nor does it show that the field has specifically changed as a result of her 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 flutist or music teacher 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 her field, the AAO cannot conclude that she meets this regulatory criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner's initial documentation included evidence of two *Houston Flute Club Newsletter* articles authored by the petitioner entitled with [the petitioner]" and " . The plain language of the regulation at

8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of *scholarly articles* in the field, in professional or major trade publications or other major media” [emphasis added]. Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this instance, the record lacks evidence demonstrating that the preceding articles were peer-reviewed, contain any references to sources, or were otherwise considered “scholarly.” Moreover, there is no circulation evidence showing that the *Houston Flute Club Newsletter* is a professional or major trade publication or some other form of major media.

The petitioner also submitted reference letters that briefly mention her doctoral thesis. For example, [REDACTED] June 25, 2009 letter states that the petitioner’s [REDACTED] [REDACTED] was the first ever catalogue of Canadian flute music and is housed both in the Library of Congress and with UMI’s Dissertation Abstracts data base (number [REDACTED], a widely used international resource.” The record, however, does not include a copy of the petitioner’s doctoral thesis, or evidence of its inclusion in the Library of Congress or the UMI Dissertation Abstracts database. 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. 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). Further, there is no evidence showing that a professional or major trade publication or some other form of major media published the petitioner’s doctoral thesis.

Aside from the preceding deficiencies, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the petitioner’s “authorship of *scholarly articles* in the field, in professional or major trade *publications* or other major *media*” [emphasis added] in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that her doctoral thesis meets the elements of this regulatory criterion, which it does not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of the petitioner’s authorship of *scholarly articles* in more than one major publication.

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

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

Roles performed by the petitioner after the date of filing will not be considered in this proceeding. 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. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; see also *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Accordingly, the AAO will not consider roles performed by the petitioner after March 1, 2001 in this proceeding.

On appeal, counsel does not point to specific documentary evidence that meets the elements of this regulatory criterion. The petitioner submitted reference letters and other documentation indicating that she worked as [REDACTED], and Houston Community College. The AAO notes that an adjunct professor is a part-time professor who does not hold a permanent position at that particular academic institution. While the petitioner has performed admirably as a music teacher at the preceding schools, there is no evidence showing that her part-time roles were leading or critical for the preceding educational institutions. For example, there is no organizational chart or other evidence documenting how the petitioner's positions fell within the general hierarchy of her colleges and university. The petitioner's evidence does not demonstrate how her part-time positions differentiated her from the other full-time music teachers employed by the preceding institutions, let alone their tenured faculty and department chairs. The documentation submitted by the petitioner does not establish that she was responsible for the preceding institutions' success or standing to a degree consistent with the meaning of "leading or critical role." Further, there is no documentary evidence showing that the preceding institutions have distinguished reputation in the field of classical music. 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.

[REDACTED] states that the petitioner was the [REDACTED] but there is no evidence documenting the number of students enrolled in the academy, its profitability, the success of its students, or any other documentary evidence of its distinguished reputation in the music field. Similarly, [REDACTED] states that the petitioner co-founded Music West School for Children. The petitioner's initial evidence included a Music West Summer – July 2000 Music & Art Academy Brochure. The brochure states that [REDACTED] "is Director and founder of Music West School for children." The brochure includes the petitioner's biography and identifies her as a flute instructor, but she is not identified as the school's co-founder. Further, the Music West brochure is not sufficient to demonstrate that the school has a distinguished reputation. USCIS need not rely on self-promotional material. See

Braga v. Poulos, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

The petitioner submitted event programs and reference letters indicating that she performed with various opera companies, orchestras, and quintets, but the record lacks documentary evidence demonstrating that the petitioner's role for these music groups was leading or critical. Further, there is no documentary evidence showing that they have a distinguished reputation when compared to other successful music groups and orchestras.⁵ 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.

In light of the above, the petitioner has not established that she meets this regulatory 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 reference letters indicating that she gave musical performances as a flutist, but there is no evidence in the form of sales or receipts showing that her concerts or music recordings were commercially successful. 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 as a flutist in concerts or in educational settings 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 her. Further, there is no evidence showing, for example, that the petitioner's musical recordings have generated substantial sales revenue. Accordingly, the petitioner has not established that she meets this regulatory criterion.

Summary

The AAO concurs with the director's determination that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she 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). Therefore, as the documentation submitted by the petitioner does not meet the minimum eligibility

⁵ 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 January 13, 2012, copy incorporated into the record of proceeding.

requirements for the classification sought, the AAO finds that the petition was clearly approved in error and that the director had good and sufficient cause for revoking the approval the petition. *See Matter of Ho*, 19 I&N Dec. at 590.

B. Final Merits Determination

The AAO 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 1119-20. 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), (vi), (viii), and (x).

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the documentation submitted by the petitioner does not rise to the level of nationally or internationally recognized prizes or awards for excellence in the field. Moreover, the petitioner has failed to establish her receipt of “prizes or awards” that are indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field. Regarding the petitioner’s Rice University scholarship and master class training sessions under the instruction of Sir Galway, the AAO finds that they fail to demonstrate the petitioner “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). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow that receiving a university scholarship or attending a master class to further one’s musical training should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. The AAO notes 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.

The court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. 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.”

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), there is no evidence showing that the petitioner's memberships in the [REDACTED]

[REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts in the field. Further, the petitioner has not established that her memberships are indicative of or consistent with sustained national or international acclaim, or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), all of the petitioner's submissions were deficient in at least one of the regulatory requirements such as not including an author, not being about the petitioner, or not being accompanied by evidence that they were published in major media. The petitioner has failed to demonstrate that the published material about her is indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

In regard to the evidence submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), there is no documentary evidence demonstrating that the petitioner's work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. Aside from the petitioner's failure to submit evidence demonstrating that she has made original artistic contributions of major significance in the field, the AAO notes that the petitioner's claim is based partly on recommendation letters. The letters of support, while indicating that the petitioner is a talented flutist and educator, do not consistently establish her sustained national or international acclaim at the very top of the field. Talent alone is not the statutory standard for the classification sought. Rather, Congress mandated that eligibility would be established by extensive evidence of national or international acclaim. Section 203(b)(1)(A)(i) of the Act. Congress expressed its intent that this classification be limited to those who could demonstrate a one-time achievement (not claimed in this case) or a career of acclaimed work. H.R. Rep. No. 101-273, 59 (Sept. 19, 1990). The AAO notes [REDACTED] comment that he has "recognized [the petitioner's] great soloist *potential*" (emphasis added). Such a characterization is not indicative of or consistent with a conclusion that the petitioner is already one of the small percentage at the very top of her field. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for flutists or music teachers progressing toward the top at some unspecified future time.

While reference letters can provide important details about the petitioner's music experience and activities in the field, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate personal and professional contacts. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of

extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required for lesser classifications. 56 Fed. Reg. 30703-30704 (July 5, 1991). Even when written by recognized experts such as [REDACTED] and [REDACTED] 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 flutist or an educator who has sustained national or international acclaim at the very top of the field. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of his field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), as previously discussed, the petitioner has not established that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. For instance, the evidence submitted by the petitioner does not establish that her adjunct professorships were leading or critical to her educational institutions, or otherwise commensurate with sustained national or international acclaim at the very top of her field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(x), the failed to submit documentary evidence of "sales" or "receipts" showing that she achieved commercial successes in the performing arts. The evidence submitted by the petitioner is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.

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. The petitioner, an adjunct flute professor since the late 1990s, relies heavily on her past tutelage by [REDACTED] in the early 1980s and her participation in master classes given by [REDACTED] in 1989, 1990, and 1996. While this may distinguish the petitioner from other student flutists, the AAO will not narrow her field to those in the training phase of their musical career.

The AAO notes that the petitioner's references' credentials are far more impressive. For example, the petitioner submitted a biography for [REDACTED] stating:

[REDACTED] is the [REDACTED]. In 1993 she relinquished her position with the Boston Symphony Orchestra to pursue a more active teaching and solo career after 22 years as an orchestral musician. Acting principal flutist of the BSO during her last three years in Boston, she was invited by [REDACTED] to join the orchestra in 1983 as assistant principal flutist and principal flutist of the [REDACTED]. Previously she served as assistant principal flutist of the San Francisco Symphony and played solo piccolo and second flute with [REDACTED].

The only American finalist in the 1969 Geneva International Flute Competition, [REDACTED] has appeared as soloist with [REDACTED] the

Boston Symphony, the Boston Pops, the San Francisco Symphony, the Utah Symphony, the Rochester Philharmonic, and the New Hampshire Music Festival, of which she was principal flutist for ten years. She has performed with the Boston Symphony Chamber Players throughout Europe and Japan, with the Tokyo, Juilliard, Brentano, and Muir String Quartets, the Boston Musica Viva, Da Camera of Houston, and in recital with [REDACTED]. [REDACTED] has also been a guest artist on the National Arts Centre Orchestra's chamber series in Ottawa. Summer festival appearances include Aspen, Sarasota, Norfolk, Orcas Island, Domaine Forget (Quebec), Sitka, Maui, Steamboat Springs, Park City (Utah), Aria International Summer Academy, the Ithaca Flute Institute, the Lake Placid Institute, and the Youth Orchestra of the Americas. With her husband, clarinetist [REDACTED], she performs in the Webster Trio and the [REDACTED].

[REDACTED]

The petitioner also submitted information about [REDACTED] indicating that he released more than thirty albums, that he regularly performed as a concert soloist, and that "he became widely known through television appearances, an international concert schedule, and recordings ranging from classical and popular music to jazz and folk music."

In this matter, the petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim as musician or educator, or being among that small percentage at the very top of the field of endeavor. The submitted evidence 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). The conclusion the AAO reaches 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).

IV. Conclusion

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. at 452 n.1; and *Matter of Ho*, 19 I&N Dec. at 589.

ORDER: The appeal is dismissed.