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



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

B2

[Redacted]

DATE: Office: NEBRASKA SERVICE CENTER FILE: [Redacted]

JUL 11 2012
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition on January 6, 2011. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on February 8, 2011. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the field of music composition, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(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 submits a brief and a number of documents, most of which were previously submitted to the director. In his brief filed in support of the appeal, counsel asserts that the petitioner meets the nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv), the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), and the display at artistic exhibitions or showcases criterion under 8 C.F.R. § 204.5(h)(3)(vii). Counsel also claims that the petitioner has provided comparable evidence to establish his eligibility for the petition under 8 C.F.R. § 204.5(h)(4).

For the reasons discussed below, the AAO finds that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the AAO finds that the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the AAO finds that the petitioner has not demonstrated that he is one of the small percentage who are at the very top of the field and he has not sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner’s appeal.

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.

United States 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. 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien’s sustained acclaim and the recognition of his or his achievements in the field. Such acclaim must be established either through evidence of a one-time achievement, that is a major, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 the evidence submitted to meet a given evidentiary criterion.¹ 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.” *Kazarian*, 596 F.3d at 1121-22.

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

¹ 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 (vi).

to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).” *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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 this case, the AAO concurs with the director’s finding that the petitioner has not satisfied the antecedent regulatory requirement of presenting three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small percentage who are at the very top of the field or has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that his achievements have been recognized in the field of endeavor by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

On appeal, counsel asserts that the petitioner meets this criterion because “the petitioner has received many outstanding awards.” Specifically, counsel references the following achievements:

² The petitioner does not claim that the petitioner meets the regulatory categories of evidence not discussed in this decision.

Based on the evidence in the record, the AAO concurs with the director's finding that the petitioner has not met this criterion. First, the April 21, 2010 letter from [REDACTED], [REDACTED] states that "student participants" selected the petitioner's work, [REDACTED]

The petitioner has not provided sufficient evidence to show that an award selected by students constitutes a nationally or internationally recognized prize or award for excellence. Moreover, as the petitioner was selected to be a "runner-up," the AAO cannot conclude that the petitioner has received an award or prize for excellence, let alone a nationally or internationally recognized award or prize.

Second, although the petitioner has submitted a September 17, 2009 letter from ASCAPLUS, indicating that he was awarded \$250, he has submitted insufficient evidence showing that the award constitutes a nationally or internationally recognized award or prize for excellence. Specifically, the petitioner has not provided any evidence on how many people were eligible to apply for the award, how many people applied or how many people ultimately were selected for the award in 2009. The record is also devoid of evidence relating to the nomination or selection process of the award in 2009. Moreover, the AAO will not assign weight to information from a wikipedia.com article, entitled "American Society of Composers, Authors and Publishers," (ASCAP), as there are no assurances about the reliability of the content from wikipedia.com, an open, user-edited internet site.³ See *Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008). Ultimately, the petitioner has not demonstrated that the award is recognized beyond the organization that issues it, such as but not limited to media coverage of the award selections.

Third, although the petitioner has provided some evidence indicating that he is the winner of a composition fellowship in the [REDACTED], he has not provided any primary evidence of the award, such as a copy of the award or the letter to the petitioner regarding winning the award. As noted in the director's January 6, 2011 decision, the petitioner has not submitted a

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Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information.

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trophy, plaque or certificate corroborating his receipt of the award. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2).

Fourth, although the petitioner has provided an undated document, entitled [REDACTED] and a [REDACTED] both indicating that the petitioner was the [REDACTED], the petitioner has not provided any primary evidence of the award, i.e., a copy of the award, a photograph of the trophy or plaque, or the letter to the petitioner regarding winning the award. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). Moreover, although [REDACTED], the founding director of the [REDACTED] Festival stated in his June 15, 2010 letter that the “festival has served as a podium of distinction for distinguished performers and composers from throughout the world, and winners of [the] composition competitions are the most accomplished and recognized of composers,” neither the letter, nor any other evidence in the record, provides information relating to the nomination or selection process of the award, or the percentage of the festival participants who win an award. The record also lacks evidence of any recognition beyond the awarding authority, such as but not limited to media coverage of the award selections. The evidence is thus insufficient to show that the award constitutes a nationally or internationally recognized award or prize for excellence.

Fifth, although the petitioner has submitted an August 2, 2010 online printout from leonardbernstein.com, entitled [REDACTED] the document fails to establish that the award from the [REDACTED] constitutes a nationally or internationally recognized award or prize awards for excellence. According to the document, the fellowship was awarded to the petitioner and others “to help young artists obtain an education,” not as a recognition of the awardees’ excellence in the field of endeavor, as required under the plain language of the criterion. Moreover, the petitioner has provided no evidence on the nomination or selection process of the award. Furthermore, although the petitioner has presented an online printout on [REDACTED] composer who in 2008 was also awarded a fellowship by the [REDACTED] this evidence does not establish that the fellowship constitutes a national or internationally recognized award or prize for excellence. Rather, it shows the accomplishments of [REDACTED], which may or may not have anything to do with her receiving the fellowship in 2008.

Sixth, on appeal, the petitioner has submitted an uncertified translation of the award certificate for [REDACTED]. The document is insufficient, however, to show that the award constitutes a national or internationally recognized award. Initially, the AAO finds that the award certificate has not been properly translated according to the regulation at 8 C.F.R. § 103.2(b)(3), which provides that “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” On appeal, the translation provided for the award certificate lacks information on the identity or competency of the translator, or a certification that the translation is complete and accurate. The AAO notes that the same translation

was submitted when the petitioner initially filed his petition in August 2010. Included in the August 2010 submission was a Certificate of Accuracy, dated July 20, 2010, which indicates that the translator was [REDACTED]. This certificate, however, does not list the Chinese document(s) translated by the translator. This certificate also does not accompany the translation filed on appeal. As such, the AAO finds that the Certificate of Accuracy is insufficient to show that the award certificate was translated pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, similar to the petitioner's evidence relating to his other awards, the evidence relating to the [REDACTED] fails to include information on the nomination or selection process for the award in 2008. The record also lacks evidence of any recognition of the award beyond the issuing authority, such as but not limited to media coverage of the award selections.

The petitioner has also submitted other evidence to support his assertion that he meets this criterion. The evidence includes: (1) the petitioner's curriculum vitae, (2) a September 10, 2010 letter from ASCAP, (3) uncertified translations of awards presented by the Central Conservatory of Music in Beijing, China, (4) a January 24, 2011 email from [REDACTED], and (5) an online printout entitled, "Results of the International Music Prize for Excellence in Composition 2010."

The AAO finds that these documents, and other documents in the record, are insufficient to establish that the petitioner has met this criterion. First, the AAO concurs with the director's finding that any awards or prizes won after the petitioner filed the petition in August 2010 is not considered evidence in support of the petition. It is well established that the petitioner must demonstrate eligibility for the petition at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Second, the foreign language documentation of awards and prizes the petitioner received in China submitted for the first time on appeal have not been translated pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Specifically, the translations submitted on appeal are not certified and the previously submitted certificate of accuracy does not relate to them. As such, the AAO cannot afford them any evidentiary weight. Third, although the petitioner's curriculum vitae and [REDACTED] list a number of the petitioner's awards and prizes not discussed above, similar to the awards and prizes discussed above, the evidence in the record fails to show that the awards or prizes constitute nationally or internationally recognized awards or prizes of excellence. Specifically, the petitioner has not submitted evidence (such as official results) showing the number of participants in the contests in which he received awards, the standing or recognition of the other participants in the contest, the awards' nomination or selection process, or any other indication that the awards are nationally or internationally recognized awards for excellence in the field of music composition, including but not limited to media coverage of the events.

Accordingly, based on the petitioner's evidence, the AAO finds that he has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, for the first time, counsel asserts that the petitioner meets the participation as a judge criterion. As supporting evidence, the petitioner has provided a January 30, 2011 letter from [REDACTED] and an associate professor emeritus at the [REDACTED]. According to [REDACTED] the petitioner "was selected and did serve as one of the final four judges for the [REDACTED]." The letter further provides that "the adjudication process took place during the month of April 2010." Although the petitioner has provided no explanation as to his failure to raise this issue before the appeal, based on the evidence submitted on appeal, the AAO concludes that the petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(iv).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

On appeal, counsel asserts that the petitioner meets this criterion, because "[t]he petitioner's music composition were [sic] performed by world renowned artists at famous concert halls and music events and collaboration with well[-]known musicians," and "[t]he petitioner's music compositions were commissioned by well[-]known organizations and artists and performed by world renowned artists." The petitioner has provided a number of supporting documents, including (1) his curriculum vitae, (2) an online document entitled [REDACTED] (3) email correspondence in January 2011 between [REDACTED] and the petitioner, (4) a February 3, 2011 email from [REDACTED] an assistant professor and [REDACTED] (5) copies of performance programs and/or fliers of the petitioner's work, (6) an undated description of the Tanglewood Music Center where "young musicians come to study, perform and create [music]," (7) an undated document, entitled "Thoughts from the Artistic Director," (8) a February 2, 2006 [REDACTED]

[REDACTED], as Acclaimed Orchestra Performs his Work,” (9) an incomplete copy of a document entitled [REDACTED] (10) 2010 online printouts from thebarnettfoundation.org, (11) an October 2010 letter from [REDACTED] (12) documents relating to Orpheus Chamber Orchestra’s Project 440, indicating that the petitioner was one of thirty composers selected to advance to the second round, and (13) an online biography from uchicago.edu of [REDACTED] the petitioner’s student.

The petitioner has also provided a number of reference letters, including (1) a July 7, 2010 letter from [REDACTED], a professor of [REDACTED] at the [REDACTED], (2) a June 30, 2010 letter from [REDACTED] a professor at the [REDACTED], (3) a May 31, 2010 letter from [REDACTED], a professor of music and the humanities at the [REDACTED], (4) a June 28, 2010 letter from [REDACTED] a professor at the [REDACTED] (5) an undated letter from [REDACTED], (6) a June 9, 2010 letter from [REDACTED], a professor of [REDACTED], and a classical music correspondent of National Public Radio’s program “Fresh Air,” (7) a June 12, 2010 letter from [REDACTED], an assistant professor of [REDACTED] (8) a June 27, 2010 letter from [REDACTED], an associate professor of [REDACTED] (9) a June 18, 2010 letter from [REDACTED], a classical Chinese musician, (10) a June 15, 2010 letter from [REDACTED] (11) a July 7, 2010 letter from [REDACTED] (12) a July 7, 2010 letter from [REDACTED], an assistant professor of [REDACTED] (13) a July 3, 2010 letter from [REDACTED] (14) a July 15, 2010 letter from [REDACTED] and (15) an October 10, 2010 letter from [REDACTED], a composer and [REDACTED]

Based on the evidence in the record, the AAO finds that the petitioner has not shown that he meets this criterion. First, although the evidence shows that the petitioner’s compositions have been performed by musicians and/or orchestras, including the [REDACTED], the petitioner has not provided any independent and objective evidence indicating how these performances establish that his compositions constitute contributions of major significance in the field of music composition. The fact that the petitioner is able to compose compositions that orchestras find worth performing does not demonstrate his impact on the field of music composition.

Second, although the petitioner has presented evidence that organizations, such as [REDACTED], have commissioned him to compose music, he has not shown that the resulting compositions constitute contributions of major significance. Again, the petitioner’s evidence shows that his

composition was performed by other musicians, but as discussed, this alone is insufficient to show that his work constitutes contributions of major significance, as all compositions are meant to be performed by musicians. In other words, a composer must successfully secure performances of his compositions in order to make a living in that occupation; not every composition accepted for performance is a contribution of major significance.

Third, although counsel asserts on appeal that the petitioner's work will be performed by the [REDACTED] [REDACTED], "one of the Western Hemisphere's finest chamber ensembles," in 2011 and his music will be performed in March 2011 at the [REDACTED], the AAO will not consider this evidence, or any other evidence relating to the petitioner's accomplishments after August 2010, when he filed the petition. As noted above, it is well established that the petitioner must demonstrate eligibility for the petition at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Fourth, the reference letters submitted on the petitioner's behalf also fail to show that the petitioner meets this criterion. [REDACTED] stated in her letter that the petitioner "is one of the most extraordinary, naturally gifted composers [she has] come across in recent years" and that she "rate[s] the petitioner] in the top 5% of composers of his generation in contemporary Western and Eastern fusion music." These board statements, however, are not supported by the information provided in the letter. Specifically, although [REDACTED] praised the petitioner's talent and quality of work, she did not compare the petitioner's work to any other composer's work or explain how the petitioner's work has influenced and impacted other composers. As such, the AAO is without sufficient evidence to conclude, as [REDACTED] did, that the petitioner is "most extraordinary" or is in "the top 5% of composers." Moreover, the letter does not specifically state or provide support for the AAO to find that any of the petitioner's composition constitutes contributions of major significance in the field of music composition. Finally, [REDACTED] speculation or prediction that the petitioner, "[f]illed with talent, motivation and charisma, [] is someone who *should* go very far" in the music world, is insufficient to show that the petitioner's work constitutes contributions of major significance in the field of music composition. (Emphasis added.)

[REDACTED] praised the petitioner in her letter, stating that the petitioner "has grown to [be] one of the best [REDACTED] composers today in the world" and his "music has been performed by the finest musicians and orchestras in the world." [REDACTED] letter, however, does not specifically provide that the petitioner's work constitutes contributions of major significance in the field of music composition. In addition, it is unclear from this letter, and other evidence in the record, how frequently musicians and/or orchestras should perform a composer's work for it to constitute major significance in the field, and whether the performance frequency of the petitioner's work fits within these relevant parameters. Moreover, [REDACTED] concluded her letter with the speculation or prediction that "[the petitioner's] musical art *will* contribute more and more to the American Contemporary music and culture." (Emphasis added.) Prediction or speculation of the petitioner's future success or potential contributions is insufficient to establish his current work constitutes contributions of major significance.

The petitioner's other references also praised his talent and work. For example, [REDACTED] who is the petitioner's "mentor and professional colleague," stated in her letter that the petitioner "is definitely one of the best composers of the contemporary Eastern-Western fusion music in the U.S., if not the world" and that the petitioner "has grown to [be] one of the best [REDACTED] composers today in the world" – a verbatim statement, including the typographic error, made in [REDACTED] letter. Both [REDACTED] and [REDACTED]; made the virtually verbatim statement in their letters that the petitioner "is among the top US-based composers (top 5% in the US) whose music is deeply rooted in the music traditions of the East and the West, as well as the contemporary fusing of the two." [REDACTED] stated in his letter that the petitioner "is in a small group (the top 5%) of all composers in terms of his skill, poetry and point of view." [REDACTED] stated in his letter that he "become[s] increasingly impressed by [the petitioner's] technical mastery, emotional honesty and complexity, and his high artistic level." [REDACTED] stated that the petitioner "is often listed in groups of up and coming composers to keep an eye on." [REDACTED] stated in his letter that the petitioner "is truly a rising musical star in the U.S." [REDACTED] stated in his letter that the petitioner's music is "deeply rooted in the musical traditions of both the East and the West, and most remarkably, reveals a truly unique and contemporary fusing of those two traditions." [REDACTED] stated in his letter that the petitioner "is an extremely hard-working and talented composer, ranking amongst the top composers in today's contemporary music scene." While [REDACTED] expresses pleasure that the petitioner is teaching and concludes that "young composers will learn his techniques and be opened up to new ideas of music-making in today's globally-oriented society," he provides no specific examples of how the petitioner has already impacted the field of music composition.

[REDACTED] speculated in his letter that the petitioner's "work on the fusion of Chinese and Western music will be a valuable contribution to a field of growing interest." [REDACTED] stated in his letter that the petitioner "has already belonged to the top (5%) composers of his generation that creates contemporary fusion music of the Western and the Eastern." [REDACTED] stated that the petitioner "has risen to the very top of the field as a young and remarkable composer in the international scene of contemporary music." [REDACTED] speculated in his letter that the petitioner is "an outstandingly talented young man who has the gifts to make a formidable contribution to the musical lift of the USA."

The AAO has reviewed the reference letters and other evidence in the record closely, and concludes that the petitioner has not shown his work constitutes contributions of major significance in the field of music composition. Although the references praise the petitioner, many claiming the petitioner to be in the top 5% of the field, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at *5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The AAO finds that the references' opinion of the petitioner is not supported by any objective and independent evidence in the record. Moreover, the references did not discuss how the petitioner's work has impacted other composers. As such, the AAO concludes

that the references have not provided sufficient support for a conclusion that the petitioner has made contributions of major significance in the field.

Accordingly, based on the petitioner's evidence, the AAO finds that he has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of music composition. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, counsel stated that “[t]he [d]irector is incorrect to contend that the evidence does not meet this criterion” and presents two pages of arguments on the issue. In fact, in her January 6, 2011 decision, the director found that based on the evidence in the record, the petitioner has met this criterion. The AAO concurs with the director's finding. In short, the petitioner has met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4).

On appeal, counsel asserts that the reference letters constitute comparable evidence demonstrating the petitioner's eligibility for the petition. Based on the evidence in the record, the AAO concludes that the petitioner has not shown that the ten categories of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the petitioner's occupation as a music composer. Specifically, counsel asserts on page 12 of the appellate brief that “only 3” of the regulatory criteria are readily applicable to the petitioner's occupation, presumably the awards criterion, the contributions criterion and the display criterion addressed on earlier pages of the brief. Counsel goes on, however, to claim on page 16 that the petitioner also meets the judging criterion. Thus, counsel appears to concede that at least four criteria apply to the petitioner's occupation and has not established why none of the other criteria apply.

Indeed, the AAO finds that the petitioner meets the participation as a judge criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv), and concurs with the director's finding that the petitioner meets the display at artistic exhibitions or showcases criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Moreover, counsel has not explained how the necessarily subjective letters are comparable to any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) and, as discussed, the AAO has considered all the evidence in the record, including the reference letters under the criteria they address. Accordingly, under the plain language of the regulation, the petitioner has not shown that he may submit or has submitted comparable evidence to show eligibility for the petition.

III. 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 have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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 field of endeavor,” and (2) “that the alien has sustained national or international acclaim and that his or his achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁵ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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

ORDER: The appeal is dismissed.

⁵ The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).