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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

DATE **JUL 26 2012**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

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:

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, Texas Service Center, denied the employment-based immigrant visa petition on May 18, 2011. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on June 20, 2011. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, specifically, as a musician, 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 appellate brief, 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 membership in associations which require outstanding achievements criterion under 8 C.F.R. § 204.5(h)(3)(ii), the published material about the alien criterion under 8 C.F.R. § 204.5(h)(3)(iii), 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), the leading or critical role for organizations or establishments criterion under 8 C.F.R. § 204(h)(3)(viii), and the commercial successes in the performing arts criterion under 8 C.F.R. § 204(h)(3)(x).

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:

- I. 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 her 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 at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and he 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 he “placed Third in the Second Annual Mandolin Festival and Second place the following year at the Third Annual Mandolin Festival.” Counsel also asserts that the petitioner “winning the opportunity to rise through the ranks of [the] esteemed [Miami Symphony] Orchestra is a prize in and of itself.” As supporting evidence, counsel points to (1) a June 10, 2011 statement from [REDACTED], (2) an undated document entitled [REDACTED]” and (3) a June 1, 2011 letter from [REDACTED].

First, based on the evidence in the record, the AAO concludes that the petitioner’s second and third place finishes at the Festival of the Mandolin do not constitute nationally or internationally recognized prizes or awards for excellence. According to [REDACTED], the petitioner achieved a second place finish in the [REDACTED]. The AAO notes that this information is inconsistent with the information provided in counsel’s appellate brief. Counsel states in his appellate brief that the petitioner first finished in the third place, then in the second place the following year. Moreover, according to the petitioner’s

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

curriculum vitae, he finished in the second place in both the [REDACTED]. As the petitioner has provided inconsistent documents, "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence.

[REDACTED] and even some regions of our neighboring country Colombia." According to [REDACTED] participants in each Category or Level," and that for the "Superior Academic Level," in which the petitioner competed, participants were "students and mandolin players that are about to finish their studies or those that have a high performance level of the instrument." Although the evidence shows that there were only two participants from each state for each competitive category, the evidence fails to show how the two participants were selected, the number of musicians eligible to be nominated as one of the two participants, whether the two participants were selected based on their ability to play the instrument, or who selected the two participants. Ultimately, the petitioner has not demonstrated that his second and/or third place finishes are recognized beyond the entity that organized the Festival of the Mandolin through objective or independent evidence such as but not limited to media coverage of the festival or award selections.

Second, the petitioner has not shown that his selection to the Miami Symphony Orchestra constitutes an award or prize. According to [REDACTED], the petitioner became the orchestra's acting assistant viola in 2006 after winning a competitive audition in Miami against violists from a number of countries, and he became the orchestra's assistant principal viola in 2010. The orchestra selecting the petitioner for various positions is akin to an employer selecting a job applicant from a pool of applicants. Although it may be considered a competitive process, in that the employer likely selects the most qualified applicant, such selection is not the same or substantially similar to granting the job applicant an award or prize for excellence. Moreover, the fact that the petitioner in 2006 was selected as an acting assistant viola from a pool of musicians from different countries does not qualify the selection as a nationally or internationally recognized prize or award for excellence.

Finally, although in his letter dated September 27, 2010 filed in support of the petition, counsel listed a number of the petitioner's other achievements, including acknowledgement and recognition letters from educational, musical and religious entities, on appeal, counsel has not continued to assert that those achievements constitute nationally or internationally recognized awards or prizes for excellence. As such, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

In short, the AAO cannot find that the petitioner has 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).

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. 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, counsel asserts that the petitioner meets this criterion because he is "a member of the Florida Viola Society, the American Viola Society and therefore the International Viola Society." As supporting evidence, counsel points to a June 11, 2011 letter from [REDACTED] the

[REDACTED] acknowledged, however, "it is true that performers of less credential can join this society."

The plain language of the criterion requires the petitioner to show that the associations, in which the petitioner is a member, require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Although [REDACTED] stated that he is aware of the petitioner's talent and listed the purposes of the International Viola Society, he did not provide any information on the membership requirements for the Florida Viola Society, the American Viola Society or the International Viola Society. Indeed, neither his June 2011 letter nor any other evidence in the record establishes that any of the societies in which the petitioner is a member requires "outstanding achievements" or that the "outstanding achievements" are judged by national or international experts in the relevant fields.

In short, the AAO cannot find that the petitioner has presented documentation of his 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. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

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. 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, counsel asserts that the petitioner meets this criterion because he has been "referenced in numerous online and paper publications regarding not only his role in many performances but also his personal story." As supporting evidence, counsel points to (1) an April 22, 2011 *Magazine in the Diario* article, entitled [REDACTED] (2) a May 5, 2010 article entitled [REDACTED] [REDACTED] posted on miamiartzine.com, (3) a September 29, 2011 article entitled [REDACTED] posted on gableshomepage.com, (4) a December 19, [REDACTED] at the Higher Institute of Music of the State of Veracruz (ISMEV), the Quartets 104 and Amikoj are Participating," and (5) a March 25, 2011 [REDACTED]

The AAO concludes that none of the articles constitutes published material in a professional or major trade publication or other major media. In her March 23, 2011 intent to deny, the director informed the petitioner that the evidence in the record was insufficient to meet this criterion. Specially, the director noted:

To assist in determining that the publications qualify as professional or major trade publications or other major media, the petitioner may submit:

- Documentary evidence including:
 - The title, date, and author of the published material;
 - The circulation (online and/or in print); and
 - The intended audience of the publication.

Note: The evidence submitted should be specific to the media format in which it was published. If the material was published online, the evidence should relate to the website. If it was published in print, the evidence should relate to the printed publication.

In her May 18, 2011 decision, the director again noted, “the [petitioner] failed to provide information on the publications.” Notwithstanding the director’s notification, the petitioner has not provided any supporting evidence establishing that any of the articles were published in professional or major trade publications or other major media. Although counsel states in his appellate brief that *Diario de Las Americas* is “a Spanish language newspaper published out of Miami, Florida,” and that it “was published in not only the print copy but, also online,” counsel’s assertions are not sufficient to establish that the newspaper constitutes a professional or major trade publication or other major media. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1.3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, even assuming counsel’s assertions were true, they would be insufficient to show that *Diario de Las Americas* constitutes a professional or major trade publication or other major media.

Furthermore, at least two of the articles are not about the petitioner, relating to his work. Specially, both [REDACTED]

[REDACTED] are advertisements or announcements that describe upcoming performances aimed to attract patrons. The AAO concludes that they are not about the petitioner, relating to his work, as required under the plain language of the criterion.

In short, the AAO cannot find that the petitioner has presented published material about him in professional or major trade publications or other major media, relating to his work in the field for

which classification is sought. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

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).

In her May 18, 2011 decision, the director concluded that the "Cristo Rey" Private School Educational Unit Diploma establishes that the petitioner meets this criterion. The AAO disagrees. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). On appeal, counsel, pointing to the same document, continues to assert that the petitioner meets this criterion.

After a close review of the March 15, 1996 diploma, along with other evidence in the record, the AAO concludes that the petitioner has not met this criterion. Specifically, neither the diploma nor other evidence in the record shows that the petitioner judged "the work of others in the same or an allied field," as required by the plain language of the criterion. The diploma, issued by "Cristo Rey" Private School Educational Unit in San Cristobal, and signed by the school's principal, director and professor of music, indicates that the petitioner served as a "juror" of [REDACTED]. There is no evidence showing that the petitioner judged the work of other musicians in the festival. Rather, it appears that the petitioner may have judged the voice talents of a group of school-age children of unspecified age. The evidence in the record also fails to establish that the "Cristo Rey" Private School Educational Unit is a music school, such that its students may be considered members of the field of music. As the record lacks evidence on the participants of the festival, and the diploma indicates that the participants may not be musicians, the AAO finds that the diploma is insufficient evidence to show that the petitioner meets this criterion.

In short, the AAO cannot find that the petitioner has presented evidence of his participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. The petitioner has not 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 "numerous testimonial letters from esteemed individuals were provided to vouch for the importance of [the petitioner] to his field." Specifically, counsel points to the following reference letters: (1) a May 14, 2010 letter from [REDACTED] the Naples Philharmonic Orchestra Concertmaster and University of Miami's [REDACTED] (2) an April 20, 2011 letter from [REDACTED] (3) an April 17, 2011 letter from [REDACTED]

and (4) an April 20, 2011 letter from

After a close review of the reference letters and other evidence in the record, the AAO concludes that the petitioner has not shown any original artistic contributions of major significance in the field. Indeed, none of the reference letters even mentions the petitioner making original contributions in the field, let alone original contributions of major significance. According to Professor Basham, the petitioner "is a sensitive musician with an ability to work well with a group." Although stated that the petitioner "has the ability to produce the strong, powerful sounds along with the delicate tones necessary to create the dramatic dynamic changes required of an orchestral player." did not claim to have ever seen or heard of the petitioner's performances. In fact, as noted in the director's May 18, 2011 decision, letter does not specify that he is familiar with the petitioner's work, other than that he has "reviewed [the petitioner's] background, resume and qualifications." Moreover, Professor Basham failed to indicate in his letter that the petitioner has made any artistic contributions of major significance in his field, which is required under the plain language of the criterion. Finally, notwithstanding opinion that the petitioner "clearly ranks among that small percentage who have risen to the top of his field," the AAO finds that the information provided in letter does not support the broad statement. Specifically, although discussed the petitioner's achievements in the letter, he did not compare the achievements against others in the petitioner's field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. See *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. See *1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, (D.C. Dist. 1990).

According to's letter, the petitioner is "an exceptional Violist . . . [and] and he "has added considerably to the cultural life of South Florida with his many appearances as a solo performer, chamber musician and orchestral musician." Although indicated in his letter that the petitioner is "a seasoned performer . . . [and] a fine teacher," he failed to establish, or even assert, that the petitioner has made any artistic contributions of major significance in his field, as required under the plain language of the criterion.

According to, the petitioner's work is "outstandingly effective in concert and rehearsal situation" and he has "a rare gift combining both gentleness and authority." reference letter suffers the same deficiency as the abovementioned reference letters. Specifically, letter fails to demonstrate, or even allege, that the petitioner has made any artistic contributions of major significance in his field, as required under the plain language of the criterion.

According to, the petitioner has been teaching youth string classes at the Deering Estate at Cutler GMYS. stated that she cannot run the program, offered by the GMYS preparatory department, "without the expertise and help of [the petitioner, who] has proven to be the most valuable teacher [she has] had in [the] program and the students and parents are delighted with

his classes.” Although she praised the petitioner’s ability to teach string classes, she failed to mention that the petitioner has made any original artistic contributions of major significance in the field, as required under the plain language of the criterion.

The record contains reference letters in addition to those discussed above. None of them, however, establishes that the petitioner meets this criterion. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.³ *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int’l*, 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, as this decision has done, evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795; *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”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also 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’l Comm’r 1972)).

The reference letters in the record primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. As stated above, merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *Avyr Associates, Inc.*, 1997 WL 188942 at *5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15. The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

In short, the AAO cannot find that the petitioner has presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 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).

In her May 18, 2011 decision, the director found that the petitioner has met this criterion. The AAO concurs. In short, the AAO find that the petitioner has presented evidence of the display of his work

³ In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

in the field at artistic exhibitions or showcases. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(vii).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, counsel asserts that the petitioner meets this criterion because he is currently the assistant principal viola for the Miami Symphony Orchestra and has at times performed as the principal viola, and because he has “recently [started as] the string teacher for the Deering [E]state.” The supporting documents in the record include: (1) the petitioner’s curriculum vitae, (2) the Letter of Agreement between the petitioner and the Miami Symphony Orchestra, dated September 2010, (3) an April 17, 2011 letter from [REDACTED] the Miami Symphony Orchestra’s Music [REDACTED] and (4) an April 20, 2011 letter from [REDACTED] the Deering Estate at Cutler GMYS [REDACTED]

A leading role should be evident based not only on the petitioner’s title but his duties associated with the position. A critical role should be apparent from the petitioner’s impact on the organization or establishment as a whole. To show his role in an organization or establishment, the petitioner may submit an organization chart demonstrating how his role fits within the hierarchy of the organization or establishment.

Based on the evidence in the record, the AAO concludes that the petitioner has not shown that he has performed a leading or critical role for either the Miami Symphony Orchestra or the Deering Estate at Cutler GMYS. First, neither [REDACTED] nor any other evidence in the record indicates that the petitioner has a leadership role in the Miami Symphony Orchestra. Although [REDACTED] stated that the petitioner is a “musical leader,” he failed to explain the term “musical leader,” or explain the petitioner’s duties in the orchestra, such that the AAO may conclude that the petitioner has a leadership role in the organization or establishment. Also, although [REDACTED] the Brasil [REDACTED] stated in his letter that the petitioner “performed a vital role managing the overall [co-]production” between [REDACTED] Orchestra, he provided no specific information as to what the petitioner did. Moreover, “perform[ing] a vital role” in one production does not constitute performing a leading or critical role for the orchestra as a whole. Similarly, although [REDACTED] stated that the petitioner “is a major asset and a key factor in the present artistic development of [t]he Miami Symphony Orchestra,” [REDACTED] failed to indicate what the petitioner does in the orchestra other than performing as a musician. [REDACTED] also failed to indicate that the petitioner’s role as an assistant principal viola is so critical that that his impact on the orchestra is apparent. Notably, Clause 3.5 of the Letter of Agreement states that “[t]he Orchestra management may in their absolute discretion . . . omit the [petitioner] from any performance.”

Second, the evidence shows that, as a string class teacher, the petitioner does not have a leadership role in the Deering Estate at Cutler GMYS. Although [REDACTED] stated that the petitioner is “the most valuable teacher” in the GMYS preparatory department, and that she could not run the

preparatory program without the petitioner's expertise and help, she did not state that the petitioner has performed a critical role for the Deering Estate at Cutler GMYS as a whole, which likely is an organization with a number of departments and/or programs. Moreover, the petitioner has not provided an organizational chart showing how his role as a teacher fits within the hierarchy of the entire organization. Finally, Ms. Wilcox described the nature and the goals of GMYS preparatory department, neither she nor any other evidence in the record establishes that the organization has a distinguished reputation.

Finally, although the petitioner has also submitted evidence showing that he has performed with the [REDACTED] the Symphony of the Americas, the [REDACTED] and other musical groups, he has failed to show that he has performed a leading or critical role for these organizations or establishments, or that these organizations or establishments have a distinguished reputation.

In short, the AAO cannot find that the petitioner has presented evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(viii).

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x).

On appeal, counsel asserts that the petitioner meets this criterion because he performed on viola during a living recording of Dios de Pactos, and that the recording sold over 258,000 copies and won [REDACTED]. As supporting evidence, counsel points to a June 2, 2011 letter from [REDACTED].

Based on the evidence in the record, the AAO finds that the petitioner has not met this criterion. First, it is unclear from the record what position [REDACTED] holds, if any, in Grupo Canzion. The record also contains no information on [REDACTED] a company located in Houston, Texas, or information on the company's association with the live recording of Dios de Pactos in Miami, Florida. As such, the AAO lacks sufficient evidence to assess the reliability of [REDACTED] June 2, 2011 letter. Second, although the letter states that the petitioner "participated in the recording as a member of the orchestra New World School of Arts," the letter does not specify the total number of participants from the school or that the petitioner's name was released to the public, such that the people who purchased the recording or awarded the Latin Grammy were aware of the petitioner's participation in the recording. Thus, the petitioner has not established that any commercial success can be considered that of the petitioner. Third, the petitioner has not presented any evidence to support a finding that selling over 258,000 copies of a live recording constitutes evidence of commercial success.

Finally, although counsel has previously asserted that the petitioner meets this criterion based on documents relating to the selling of compact discs of the [REDACTED] on appeal, counsel has failed to continue to assert that these documents constitute evidence

of commercial successes. As such, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

In short, the AAO cannot find that the petitioner has presented evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(x).

B. Summary

The AAO concurs with the director's finding that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence in the field of endeavor, as required under the regulation at 8 C.F.R. § 204.5(h)(3).

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 [] 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.⁴ 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.

⁴ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. Dep't of Justice*, 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).

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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.