



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 15 2013**

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A) as a Maskanda musician and an arts and culture educator. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

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

On appeal, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(iii) – (v), (vii), and (viii). The AAO acknowledges that the standard of proof is preponderance of the evidence, as noted by counsel on appeal. The “preponderance of the evidence” standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements of the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. 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)(2) and (3). The most recent precedent decision related to the preponderance of the evidence standard of proof is *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). This decision, and this standard, focuses on the factual nature of a claim; not whether a claim satisfies a regulatory requirement. *Id.* at 376. The preponderance of the evidence standard does not preclude USCIS from evaluating the evidence. The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* The *Chawathe* decision also stated:

[T]he “preponderance of the evidence” standard does not relieve the petitioner or applicant from satisfying the basic evidentiary requirements set by regulation. There are no regulations relating to a corporation’s eligibility as an “American firm or corporation” under section 316(b) of the Act. Had the regulations required specific evidence, the applicant would have been required to submit that evidence. *Cf.* 8 C.F.R. § 204.5(h)(3) (2006) (requiring that specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability).

25 I&N Dec. at 375 n.7. The final determination of whether the evidence meets the plain language requirements of a regulation lies with USCIS, not with counsel. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988) (finding that the appropriate entity to determine eligibility is USCIS in a scenario whereby an advisory opinion or statement is not consistent with other information that is part of the record). The documentation submitted by the petitioner fails to demonstrate by a preponderance of the evidence that 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 director's decision.

## I. LAW

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

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

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

(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. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 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 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 at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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*, 580 F.3d 1030 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

The court stated that the AAO’s evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that “the proper procedure is to count the types of evidence provided (which the AAO did),” and if the petitioner failed to submit sufficient evidence, “the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).” *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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 matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

*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.*

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. 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 court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO). 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.*

The petitioner submitted a July 22, 2005 article entitled “Sharon Katz Steams Back” and a July 12, 2007 article entitled “Zulu Jazz Lounge” posted at [www.artsmart.co.za](http://www.artsmart.co.za), but the author of the articles was not identified as required by the plain language of this regulatory criterion. In addition, the articles are not about the petitioner. Instead, the July 22, 2005 article focuses on Sharon Katz and the July 12, 2007 article lists multiple music acts performing at the Zulu Jazz Lounge from July 12 - 21, 2007. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published

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<sup>2</sup> On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

material be “about the alien . . . relating to the alien’s work in the field.” Thus, an article that mentions the petitioner but is “about” someone or something else cannot qualify under the plain language of this regulation. *See Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at \*1, \*9 (S.D.N.Y. Nov. 14, 2012); also see generally *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 or a character within a show are not about the performer). Moreover, there is no objective readership data showing that [www.](http://www.) qualifies as a major trade publication or some other form of major media.

The petitioner submitted a July 7, 2005 article about herself entitled posted at but there is no documentary evidence showing that the preceding website is a major trade publication or some other form of major media.

The petitioner submitted an article about from the online encyclopedia *Wikipedia*. The article lists more than twenty including the petitioner. The article is not about the petitioner and its author was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, with regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>3</sup> *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source.

The petitioner submitted a March 2007 article in newspaper produced by the Department of Journalism. The article, entitled “” is not about the petitioner. Instead, the article focuses on the music group and the. In addition, there is no documentary evidence demonstrating that qualifies as a major trade publication or some other form of major media.

The petitioner submitted an online article entitled that was posted at. The conclusion of the article states: “Published on the web by on August 5, 2005.” There is no evidence showing that the article appeared in the print version of the newspaper; only that the article was “[p]ublished on the web.” While the petitioner’s appellate submission includes 2009-2011

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<sup>3</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *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. . . . **Wikipedia cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

*See* [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on March 29, 2013, copy incorporated into the record of proceeding.

readership statistics for the [REDACTED] from the [REDACTED], there is no documentary evidence showing that the online "web" version of the [REDACTED] qualified as a form of major media in 2005.

The petitioner submitted an article entitled: "[REDACTED]" but the title of the publication and the date of the material were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, there is no documentary evidence showing that the article was in a professional or major trade publication or some other form of major media.

The petitioner submitted an article entitled "[REDACTED]" but the article was unaccompanied by an English translation as required by this regulatory criterion and the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.* In addition, the title of the publication, the date of the material, and its author were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, there is no documentary evidence showing that the article was in a professional or major trade publication or some other form of major media.

The petitioner submitted an article entitled "[REDACTED]" but the title of the publication, the date of the material, and its author were not identified as required by the plain language of this regulatory criterion. Further, there is no documentary evidence showing that the article was in a professional or major trade publication or some other form of major media.

The petitioner submitted a September 19, 2010 article entitled "[REDACTED]" posted on an online blog written by Dr. [REDACTED]. The article is about Dr. [REDACTED] experiences on an excursion to South Africa; it is not about the petitioner. In addition, there is no documentary evidence showing that Dr. [REDACTED] internet blog is a professional or major trade publication or some other form of major media.

In response to the director's request for evidence, the petitioner submitted a captioned photograph (four sentences) in the September 26, 2010 issue of [REDACTED] entitled "[REDACTED]". The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "published material about the alien" including "the title, date and author of the material." The captioned photograph does not meet these requirements. The petitioner also submitted an August 29, 2010 article about herself in [REDACTED] entitled "[REDACTED]". On appeal, the petitioner submits objective evidence from the [REDACTED] demonstrating that [REDACTED] is a major newspaper in South Africa. While [REDACTED] qualifies as a major medium, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material about the alien "in professional or major trade publications or other major media" 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 \*1, \*12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*1, \*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(1)(2) requires a single degree rather than a combination of academic credentials). Therefore, qualifying published material limited to only one major medium, [REDACTED] does not meet the plain language requirements of this regulatory criterion.

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

*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.*

The AAO affirms the director's finding that the petitioner's evidence meets this regulatory criterion.

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

In the director's decision, he determined that the petitioner failed to establish eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original scholarly or artistic contributions "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 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

The petitioner submitted letters of support discussing her work.

[REDACTED] Associate Professor of Music and Music Education Coordinator at [REDACTED] states:

I became aware of the musical talents and abilities of [the petitioner] last year, when a colleague recommended that I listen to her CD. Upon doing so, I realized that [the petitioner] is a mature and accomplished musician, whose traditional songs and modern style of presentation are combined as a new voice of celebration for South Africa's reconstruction. Her pride in her Zulu heritage resonates throughout her music and provides an excellent role model for both her own countrymen and Americans from diverse backgrounds.

The clarity and power in [the petitioner's] vocal work is unique, and the combination of African messages with western musical genres makes her music stand out, as she stands out above her musical peers. Her involvement in the works of many well known South African musicians, speaks to her level of excellence in performance, and she is also well versed in the teaching of arts and cultural skills representative of South Africa.

█ comments that the petitioner "is a mature and accomplished musician," but she fails to provide specific examples regarding how the petitioner's work has significantly impacted the field or otherwise equates to original artistic contributions of major significance in the field. █ also asserts that the petitioner's "vocal work is unique" and that she is "well versed in the teaching of arts and cultural skills." The AAO notes that having a diverse or unique skill set is not a scholarly or artistic contribution of major significance. Rather, the record must be supported by evidence that the petitioner has already used her unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's 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 labor certification process. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998).

█, Vice President for Student Life and Professor of Practice in the Department of the Arts at █ states:

[The petitioner] is clearly a jewel and needs to have the opportunity to shine in America. Earlier this year [the petitioner] sent me two of her CDs as well as a video of one of her performances. I have reviewed all of [the petitioner's] materials and am extremely impressed with her extraordinary talent as a musician.

The number and caliber of artists from whom she has letters of support is remarkable. The South African artists who have given [the petitioner] recommendations are some of the top musical artists in her home country and some are known throughout the world. For example, █ has sold over 500,000 copies and the group won three South African traditional Music Awards and two South African Music Awards (SAMA), the equivalent of the Grammy.

█ sold over one million copies of his 23 albums, won a SAMA in █ and earned several SAMA nominations, including Best Male artist in █ before he passed away, █ in █ South Africa.

\* \* \*

Of all the artists from whom [the petitioner] has letters of recommendations, the best known in the United States is █ of █ The band █ gained worldwide fame through █ produced the band's █ album which won a Grammy for Best Traditional Folk Recording in █ and another in for Best Traditional World Music Recording in █ The group also won SAMAs in █ and again in █ earned a SAMA nomination for his solo work with his own band in █

\* \* \*

The artists who consider [the petitioner] their peer are musicians at the pinnacle of the music industry in South Africa. . . . Based on her unique skills and past achievements, [the petitioner] has a great deal to contribute to music in America and we will be richer for it.

While [redacted] notes the caliber of the references who support the petition, he does not provide specific examples of how the petitioner's musical accomplishments have impacted the field in the same manner as those of [redacted] the influential artists specifically mentioned by [redacted] or of how the petitioner's works were otherwise of major significance in the field. For example, there is no documentary evidence showing the extent of the petitioner's influence on other musicians in the field or that the field has somehow changed as a result of her original work, so as to demonstrate the major significance of her original contributions.

[redacted] a jazz performer and Assistant Professor of Music at [redacted] states:

I learned of [the petitioner] when she mailed me a copy of her latest CD recording and requested that I attest to her musical ability and write a letter of support for her immigration paperwork. [The petitioner] is a performer of [redacted] music, a style of music unique to South Africa but recognized internationally. Her music is grounded in the traditional Zulu culture and combines traditional Zulu instruments and human voice. From her recording, it is evident that [the petitioner] is an accomplished performer in this style of music. Her resume indicates that she has performed and recorded with some of the greatest South African performers of this style of music and other traditional musical styles. [The petitioner] has a growing reputation for being a high level performer with several recordings and concerts to her credit. Clearly she has a solid grasp of the musical style and may be viewed as an accomplished performer of [redacted] music.

It is my opinion that [the petitioner] is making a valuable contribution to the growth and fostering of this unique style of music abroad. Her series of concerts and workshops across the U.S. are paving the way for greater awareness of this indigenous musical style. Having talked to [the petitioner] over the phone, I am impressed with her drive and ambition to spread her musical talent with individuals in the U.S. and in South Africa. I believe she is making a valuable contribution to the vocal literature while also expanding the cultural boundaries of music as it is practiced in the U.S.

[redacted] states that she learned of the petitioner when the petitioner mailed her a copy of the petitioner's latest compact disc recording and requested that she attest to the petitioner's musical ability and write a letter of support for the petitioner's immigration paperwork. The AAO notes that letters from independent references who were previously aware of the petitioner through her reputation in the music field and who have already been influenced by her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's resume and work and to provide an opinion based solely on this review. While [redacted] asserts that the petitioner "is making a valuable contribution to the growth of [redacted] music" and "making a valuable contribution to the vocal literature while also expanding the cultural boundaries of music as it is practiced in the U.S.," [redacted] fails to provide specific examples of how the petitioner's music or instructional workshops have significantly impacted the field at large or otherwise constitute original contributions of major significance in the field.

Director, [REDACTED], states:

I have worked with [the petitioner] in the capacity of performing artist as well as producer since December 2004 when she joined my tour as a backing vocalist. I soon discovered that [the petitioner] was a highly talented and experienced professional in her own right and I began to produce her work both in the studio and on stage.

\* \* \*

She has dedication, stamina and is extremely talented as a vocalist and composer. On stage she is electric and dynamic and can command any audience's attention and adoration. In addition to her vocal skills and brilliant composition skills, [the petitioner] also has the gift of knowing deep traditional Zulu dance and she is able to share these skills easily with other dancers and students.

[The petitioner] has demonstrated that she can teach and educate very effectively also. In short, she is a tremendous jewel for South Africa and she should be nurtured and assisted in any way possible by the movers and shakers in the music industry of South Africa.

[The petitioner] has performed with her own band as well as with [REDACTED] all over South Africa as well as in America and Dubai.

[REDACTED] states that the petitioner is "a highly talented and experienced professional," "extremely talented as a vocalist and composer," and an effective teacher of traditional Zulu dance. It is not enough to be highly skillful and knowledgeable and to have others attest to those talents. An alien must have demonstrably impacted her field in order to meet this regulatory criterion. Vague, solicited letters from colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036. 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." *Kazarian*, 596 F.3d at 1122. The record lacks documentary evidence showing that the petitioner has made original scholarly or artistic contributions that have significantly influenced or impacted others in the field at a level indicative of contributions of "major significance."

[REDACTED], a member of [REDACTED] music group, states:

I met [the petitioner] in 2001 when her band, [REDACTED] was the opening act for [REDACTED] in the town of [REDACTED]. I was immediately impressed with her powerful, extraordinary, and beautiful voice. That day she performed her original compositions in the traditional [REDACTED] style. [The petitioner] is more than an entertainer offering an energetic performance, her lyrics tell listeners to take pride in their culture, no matter who they are. This is a strong message for people of all countries, but especially important for today's South Africans, many of whom have forgotten their culture.

[The petitioner] and her band are well qualified to represent South Africa and share the stage with [REDACTED]

\_\_\_\_\_ states that the petitioner's band opened for \_\_\_\_\_ at a concert in 2001, but he does not provide specific examples of how the petitioner's concerts and music recordings have substantially influenced the field or otherwise equate to original contributions of major significance in the field.

\_\_\_\_\_ a Grammy award-winning musician, states:

I have released over 25 records, one of which, \_\_\_\_\_ won a Grammy Award and sold over 4 million copies.

\* \* \*

I first met [the petitioner] in the early 1990s while working on a recording project for which she auditioned. Out of 100s of girls, I picked four and [the petitioner] was one of them. Her voice is unique, extraordinary, strong and beautiful.

[The petitioner] is a professional musician with skill equal to and surpassing many well known South African musicians. Currently, she manages her band, \_\_\_\_\_, for which she composes original songs in the traditional \_\_\_\_\_ style.

She also teaches young people about their culture through traditional singing and dancing. [The petitioner] hopes to reach young people and remind them not to forget about and to value their culture. It is a message of strength adults can gain from as well. She is one of the few carrying on traditional South African culture offering a positive message in a time of our country's struggles. [The petitioner] is a gifted individual.

\_\_\_\_\_ asserts that the petitioner's voice "is unique, extraordinary, strong and beautiful." He also comments that the petitioner "is a professional musician with skill equal to and surpassing many well known South African musicians." As previously discussed, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Assuming the petitioner's skills and experience 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 labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221. In addition, \_\_\_\_\_ discusses the petitioner's efforts to carry on South African culture by teaching traditional singing and dancing to young people, but he fails to provide specific examples of how her work has impacted the field at a level indicative of original contributions of "major significance" in the field. For instance, there is no documentary evidence showing the widespread adoption of the petitioner's original methods of instruction by numerous music or dance schools, or that her work is otherwise recognized as of major significance in her field as a whole.

\_\_\_\_\_, a \_\_\_\_\_ style guitar player, states:

As we share the hometown of \_\_\_\_\_ South Africa, I have been able to follow [the petitioner's] career. She has an extraordinary voice that she uses to lead and shape one of \_\_\_\_\_ best \_\_\_\_\_ bands. Her dance movements are based on Zulu traditions and

help to transmit cultural values to the next generation. Her CD [REDACTED] was received with critical acclaim and sold out the first printing.

While [REDACTED] asserts that the petitioner's CD [REDACTED] was received with critical acclaim and sold out the first printing, he does not point to specific examples of critical acclaim or specify the actual sales for the petitioner's compact disc. Regardless, [REDACTED] fails to explain how the petitioner's music recordings have significantly impacted the field or otherwise constitute original contributions of major significance in the field. [REDACTED] also comments that the petitioner's "dance movements are based on Zulu traditions and help to transmit cultural values to the next generation," but he does not indicate how the petitioner's dance movements were both original and of major significance in the field.

[REDACTED] a South African guitarist, states:

I would like to acknowledge and appreciate [the petitioner] for her wonderful work she is doing in our community as a musician artist who go [sic] extra mile in trying to develop our young stars, teaching them artistic skills, how to be professional in what they do best especially in music. She specializes in teaching them how to conduct themselves on stage, voice training and most importantly discipline because they can go far if they are disciplined, that include [sic] punctuality in rehearsals, good listening skill, show respect towards themselves and good behavior.

Another thing that amazed me in her ability . . . was the ability to form a men band which is very hard to do as a young lady. I also saw their performance at [REDACTED] in [REDACTED] which was excellent and satisfying to watch, that encouraged me to continue working with her because I could see that she's a very dedicated person and very passionate about what she does. In 1999 I approached her to come and put her brilliant voice in my album called [REDACTED] and she did an amazing job.

[REDACTED] comments on the petitioner's work as music teacher, but he does not specify how the petitioner's work is original or equates to original scholarly or artistic contributions of major significance in the field. There is no documentary evidence showing that the petitioner's teaching techniques have significantly impacted the field beyond those under her immediate tutelage. Contributions limited to the institutions and communities where the petitioner has taught do not equate to original contributions of major significance to the field as a whole.

[REDACTED], lead singer and guitarist of the South African [REDACTED], states: "I am writing to recommend [the petitioner] as a traditional Zulu singer, dancer and musician of extraordinary ability in the [REDACTED] style. . . . I respect [the petitioner] for using her great skill to carry on [REDACTED] music and Zulu Culture." [REDACTED] asserts that the petitioner is "a traditional Zulu singer, dancer and musician of extraordinary ability in the [REDACTED] style," but 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 \*1, \*5 (S.D.N.Y.). [REDACTED] fails to explain how the petitioner's work was both original and of major significance in the music field.

An unidentified member of the South African band Imithenthe states: "It is difficult for women to gain recognition in maskanda music. This is one reason why [the petitioner's] achievements are to be commended. Other reasons include her incredible voice, her style of [redacted] that updates yet remains true to its roots." While it may be "difficult for women to gain recognition in [redacted] music," there is no evidence demonstrating that the petitioner was the first or only woman to perform such music. Moreover, an individual's gender is not a qualifying factor for employment-based immigration benefits. The fact that the petitioner is female is not automatic evidence that she has made original artistic contributions of major significance in her field. The member of the Imithenthe band fails to provide specific examples of how the petitioner's original contributions were of major significance in the field.

[redacted], a member of the three-person Zulu band [redacted] states:

We know [the petitioner] as an [redacted] style singer and traditional dancer who is not afraid to show the world our Zulu culture. She is proud on stage. Like us.

\* \* \*

We are happy [the petitioner] can keep the [redacted] music alive in the new generation that loves new styles of music. She creates a new sound by mixing [redacted] with a little mbaqanga and little blues to make today's audiences dance.

[redacted] states that the petitioner has created "a new sound," but there is no evidence showing that the petitioner's music has drawn unusually large audiences, generated substantial record sales, influenced the work of other professional musicians, or otherwise equates to original contributions of major significance in the field.

[redacted] Director of International Programs, [redacted]

[redacted], states:

Recently, I have had the pleasure to witness [the petitioner's] extraordinary musical abilities at a conference on South Africa to which she was invited. Not only did her musical contributions stir audience participation; but her introduction to the culture of indigenous groups in South Africa became the high point of the conference.

[The petitioner] has serenaded groups of students in the community on other visits to the United States. She has taught them South African dances and encouraged them to appreciate cultural practices that celebrate the heritage of a society. However, her involvement in the South Africa conference at [redacted] has provided the campus with a unique opportunity to see her engage very young children in a day care facility as well as college students and community members in an evening event. As a result of [the petitioner's] short visit to [redacted] students are speaking out about their interest in developing projects in South Africa. Listening to their enthusiasm is heartwarming to educators who are searching for ways to promote study abroad activities and increase cultural competence.

It should be clear to international professionals who have traveled extensively that exposing the public to the musical and cultural talents possessed by [the petitioner] can do more to enhance cross-cultural understanding than politicking can. There is no doubt that [the petitioner] touches young, disadvantaged children as much as she impresses adults young and old. She is a woman with rare gifts.

[redacted] states that the petitioner introduced the culture of indigenous groups in South Africa at a conference she attended, serenaded groups of students in the community, taught children South African dances, and interacted with young children at a day care facility, but there is no documentary evidence demonstrating that the petitioner's work was of major significance in the field. [redacted] fails to provide specific examples of how the petitioner's work has impacted the field at a level indicative of original contributions of major significance in the field (such as through the widespread adoption of her original methods of instruction by reputable music or dance schools). Mastering and subsequently teaching music techniques and dances developed by others are not demonstrative of "original" contributions to the field. While the petitioner has earned the admiration of her audiences, the record does not establish that she has made original artistic contributions of major significance in the field.

[redacted] Professor and Chair of the Early Childhood Department, [redacted] states:

I came to know [the petitioner] in January 2010 when she was visiting in the area. We met to discuss her South African culture, her musical abilities, and most importantly her work as a performing arts educator. We discussed a professional early childhood conference I was planning for the college to highlight issues affecting children in South Africa and how early childhood professionals can advocate. [The petitioner] offered to come back to New York in March to perform and speak at the conference as well as teach South African music and dance to campus preschoolers and college students.

As I observed her work with college students and preschoolers, I was impressed with her musical talent and her rapport and effectiveness as a teacher. [The petitioner] exhibited a natural ability to engage young adults and young children and teach them South African traditions, using developmentally appropriate music and movement activities. She used varying techniques depending on the age and experience of her student groups.

[The petitioner] also presented a Power Point slide show to the audience about her background, children's issues in her community, and her mission as a cultural educator. Her ability to use her extraordinary musical talents to develop cultural understanding was impressive and likely unique. She created a learning environment in which students are most likely to remember what they have learned.

In my professional opinion [the petitioner] has unique talents and skills as a teacher of arts and culture, effectively and positively representing her native Zulu traditions. Her vocal and musical talents seem to enthrall her students of any age.

[redacted] states that that the petitioner performed and spoke at an early childhood conference planned by [redacted] and taught South African music and dance to campus preschoolers and

college students at [REDACTED] but she fails to provide specific examples regarding how the field has been influenced by the petitioner's work. The AAO notes that many occupational fields regularly hold conferences to present new work, discuss new trends, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events does not equate to original contributions of major significance in the field. There is no documentary evidence showing that any of the petitioner's specific presentations have significantly impacted the field at large or have otherwise risen to the level of contributions of major significance in the field. While presentation of the petitioner's work demonstrates that her ideas and talents were shared with others, the AAO is not persuaded that presentation of the petitioner's work at an early childhood conference is sufficient evidence establishing that her work is of "major significance" to the field at large and not limited to the specific forum in which her talents were on display. The petitioner has failed to establish, for example, the impact or influence of her presentation beyond those in attendance so as to establish that her work was of major significance in the field. [REDACTED] also comments on the petitioner's "unique talents and skills as a teacher of arts and culture." Once again, it cannot suffice to state that the petitioner possesses useful skills or a unique background. Assuming the petitioner's skills and experiences 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 labor certification process. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221.

[REDACTED] Head of Mvumelwano Traditional Council, [REDACTED] states:

I confirm that [the petitioner] is a person who works with the communities. She helps to develop rural communities. As an artist she performs African Music directed to the African culture. The aim is to see to it that Africans do not lose their culture, and have to appreciate it through music industry. So most importantly job creation opportunities help to reduce crime, developing skills, help the youth to do something out of their talent.

She also appreciates and honours Calendar events e.g. [REDACTED], [REDACTED], Heritage day or investigating about heritage sites. She is a person who likes to keep good relations with the stakeholders, domestic tourists and sharing ideas with all groups. She is a generous kind of a person. She does not discriminate people, for example people in the community know her by name and they love her. Previously she assisted schools (with provision of computers) in the province of [REDACTED]

[REDACTED] asserts that the petitioner helps to develop and improve rural communities and to promote African culture, but [REDACTED] fails to explain how the petitioner's work was both original and of major significance in the music field.

[REDACTED] Distinguished Professor of Ethnomusicology, [REDACTED] states:

[The petitioner] takes deep Zulu traditions and refashions them for new audiences.

I understand that a good example of this refashioning of traditions is [REDACTED] track two of the CD [REDACTED] Zulu communities in the past praised [REDACTED]

the Zulu Goddess of Prosperity, while they planted crops. In this song [the petitioner] tells young people to continue this practice in order to foster community.

\* \* \*

The track [redacted] refashions rural [redacted] traditions to an urban setting in which people often face unemployment and poverty. The lyrics state "[redacted] [redacted] She also tells the young people they must [redacted] and build community. Zulus must first take care of themselves spiritually, before they can solve the problems that the community faces.

\* \* \*

Using [redacted] as an example again, [the petitioner] modernizes traditional male-female relationships and addresses HIV directly. Using Zulu words that mean "virgin" for both boys and girls, the lyrics state that both genders are responsible for stopping the spread of HIV and should keep themselves for marriage.

\* \* \*

This song, along with others from the [redacted] CD, plays on community radio stations . . . . While these stations aren't at the top of the radio hierarchy, they have a large audience within their limited regions. This is one conduit through which [the petitioner's] music reaches its audience.

[The petitioner] has also created a nonprofit organization to reach people, especially young people. [The petitioner] teaches children the [redacted] style of music, but also songs and dances for celebrations that are very old. . . . [The petitioner] introduces young people to traditional Zulu and African instruments such as the Zulu bass drum, makhweyana (a bow of wire with a gourd), whistle, shakers, frog, and calabash. These instruments are not featured in most Maskanda music or popular music so many people have forgotten them.

[The petitioner] is committed to her culture, her community, and especially to young people. With high rates of HIV infection, unemployment and poverty, South Africans can gain strength from remembering who they are and from where they came. . . . There must be some continuity with the past as a way of guiding people in the present and future. [The petitioner] is doing this through choosing [redacted] music rather than pop music, by imbedding messages of hope and guidance rather than simply discussing relationships, by including traditional instruments in her [redacted] that plays on the radio and, most importantly for the South African community by having the vision to start a non-profit and take on the role of director.

[redacted] comments on the petitioner's song track [redacted] but there is no documentary evidence showing that the song had a significant impact in the recording industry, has significantly influenced the work of other musicians in the field, or otherwise equates to an original contribution of major significance in the field. [redacted] also states that the petitioner "created a nonprofit organization to reach people, especially young people" in her community. There is no

documentary evidence demonstrating that the petitioner's work as a non-profit director was recognized beyond her organization and the municipality it served such that her work constitutes artistic or scholarly 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 original contributions be "of major significance in the field" rather than limited to a particular educational center or municipality. Further, there is no documentary evidence showing that rates of HIV infection, unemployment, and poverty substantially decreased as a result of the petitioner's original work or that her educational concepts otherwise equate to original contributions of major significance in the field.

founder and curator of music and dance productions for states:

[The petitioner] is an extraordinary performer and a unique talent.

[The petitioner] performs the traditional Zulu music. . . . As a female bandleader in music, [the petitioner] is unusual. Historically has been a genre in which men have found expression. The fact that she has the respect of her male band members is a testament to her skills as an artist.

She is also an educator and has dedicated her life to working with children. As is true of many types of World Music, traditional values are embedded in music. [The petitioner] is using this music to educate South Africans via the radio and by establishing a Non-Profit to educate all people, but especially young people, the next generation. [The petitioner] demonstrates her determination to help the people of her country and real courage when she tackles potentially controversial topics such as HIV.

asserts that the petitioner "is an extraordinary performer and a unique talent." In the fields of music and cultural education, it is not enough to be talented and to have others attest to that talent. As previously discussed, an alien must have demonstrably impacted her field in order to meet this regulatory criterion. In addition, comments that becoming a female bandleader in music "is unusual." While USCIS recognizes the importance of maintaining diversity in any occupation, the issue for this regulatory criterion is whether the petitioner has made original contributions of major significance in the field. The record lacks documentary evidence showing that the petitioner has made original scholarly or artistic contributions that have significantly influenced or impacted her field. further states that the petitioner is using "music to educate South Africans via the radio and by establishing a Non-Profit to educate all people," but there is no evidence demonstrating that the petitioner's work has impacted the field in a significant manner beyond the locality of . As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to a particular municipality or non-profit organization. also comments that the petitioner has worked to tackle "potentially controversial topics such as HIV," but does not cite to any specific national health studies to demonstrate that the petitioner's work or song lyrics were of major significance in preventing the spread of HIV infections.

founder and producer of radio program, states:

[The petitioner] is a female band leader, as well as a composer, arranger, and lyricist in [redacted] a male dominant genre of music. She is also an innovator in her use of traditional instruments and lyrics. For all of these reasons, [the petitioner] has made and is making significant contributions to [redacted] music.

\* \* \*

[redacted] music, the type of music [the petitioner] performs with her band, is considered by some to be Zulu Folk music. It has roots in the Apartheid era of South Africa, when men traveled from their rural homelands to Johannesburg to find work, often in the mines. . . . As a consequence of this history, [redacted] music is a male dominated field even today.

\* \* \*

The fact that [the petitioner] leads an all-male band and produced the CD [redacted] of her original music is rare indeed. . . . Many songs of the top female [redacted] bands are not original compositions or lyrics written by the women, but are formulaic and are written by male producers. In addition, while the women of [redacted] bands only sing lyrics written by men, [the petitioner] plays traditional Zulu bass drum, makhweyana (a bow of wire with a gourd), whistle, shakers, frog, and calabash. Moreover, these instruments are not featured in most [redacted] music. These four things are significant contributions and innovations that [the petitioner] has made to [redacted] music: she leads her own band, she writes her own music and lyrics, she has produced her own CD, and plays instruments when women typically only sing, and these traditional instruments are not featured in most [redacted] music. She is a genuine artist who has chosen a difficult, but creative path of her own.

[The petitioner's] music is rooted in traditional [redacted] but she takes this form and invents something altogether new. One way that she does this, the traditional instruments mentioned above, are unique to [the petitioner's] music. . . . On track 4 [redacted] of the [redacted] CD, [the petitioner] plays both the frog and the makhweyana (the bow of wire instrument). . . . Also the humming is reminiscent of a village woman of a long time ago going to the river talking to the crocodiles and listening to the frogs. The elements of the song reach back to the countryside and the rural roots of [redacted] but are new to young people and audiences of today. This is just one detailed example of [the petitioner's] tradition-based innovation.

\* \* \*

This song is on community radio stations and young people like it. Not only does [the petitioner] perform live, her music is on radio stations across the country. In South Africa there are commercial radio stations, community radio stations and government radio stations. The first two tracks of each of [the petitioner's] CDs play on [redacted] part of the [redacted] . . . . While it is primarily for Zulu speakers, the [redacted] reaches throughout the whole country of South Africa, not just the province of [redacted] where the majority of Zulu speakers reside.

Many more of [the petitioner's] songs play on community radio stations. While these stations are local and are an entryway into the music business, many people listen to them because they play new music.

[redacted] asserts that the petitioner is an "innovator in her use of traditional instruments and lyrics," but does not provide specific examples of how her original music has substantially impacted the field or otherwise equates to artistic contributions of major significance in songwriting or music production. In addition, [redacted] states that the petitioner "leads her own band, she writes her own music and lyrics, she has produced her own CD, and plays instruments when women typically only sing, and these traditional instruments are not featured in most [redacted] music." The AAO is not persuaded by the assertion, offered by several references, that the petitioner's gender is a qualifying factor because she works in a field of music in which women are generally underrepresented. As previously discussed, there is no evidence demonstrating that the petitioner was the first or only woman to perform [redacted] music. The fact that the petitioner is female is not automatic evidence that she has made original artistic contributions of major significance in her field. Moreover, without evidence demonstrating the significant impact of her music performances, the petitioner has not established that her ability to play a rare instrument and to add creative elements to her songs are indicative of original contributions of major significance in the field. [redacted]

[redacted] also states that the petitioner's songs have been played by radio stations targeting Zulu speakers, but there is no documentary evidence differentiating the petitioner's songs from those of the numerous other musicians whose songs were similarly broadcasted. [redacted] comments are not sufficient to demonstrate that the petitioner's songs have significantly impacted the field at large or otherwise constitute artistic contributions of major significance in the field.

[redacted] Director and Producer, [redacted] states:

[The petitioner] is an upper-echelon South African performing artist. She is topnotch; an artist at the height of her powers. I have heard her music and seen her perform.

\* \* \*

Not only South African, [the petitioner] is a Zulu. As we are Norwegian American, Mexican American, Japanese American, African American, et al., her unique point of view as a South African tribal person hold significant relationship to our country's Native Americans. Her knowledge, skills, and abilities to communicate, through her art, holds a direct comparison to the situation and struggle faced by many American Indians in the United States, and gives her voice an additional degree of importance. [The petitioner's] music fills the space between the indigenous and the national, the old and the new, and links them as one in today's global society. She takes deep Zulu performance traditions, refashions them for contemporary audiences, and relates them to a world ethnicity that comprises the very best of today's American society.

[The petitioner] is committed to her culture, her community, and especially to young people. She is likewise committed to sharing the message of her people with us.

[redacted] praises the petitioner as "an upper-echelon South African performing artist" with unique talents, but he fails to explain how the music field has been influenced by the petitioner's work.

does not provide specific examples of how the petitioner's music has substantially impacted the field or otherwise equates to original artistic contributions of major significance in the field.

Managing Member, states:

I personally met [the petitioner] in 2005 in my capacity as a accredited service provider rendering various services and capacity building programmes to the public and private sector. . . . During that year [the petitioner] was enrolled for a 1 year Learnership Programme "National Certificate in Music Business Management, NQF Level 4." I have kept in touch with her since this time through our professional contacts in arts and culture.

Through the duration of a learnership program [the petitioner] stood out as a mature learner who already had real world experience and knowledge of the music industry. She managed to juggle the recording and release of her first CD with performances, class attendance and being a mother.

\* \* \*

Not only did she manage to squeeze the course into an already busy life, she took what she learned in the class and acted on it. For example, after learning the importance of registering her original music with , she has since registered both of her recordings.

\* \* \*

Since taking the course, [the petitioner] has created a career of her own and become a leader of her band composed of men. In addition to live performances, [the petitioner's] music plays on radio stations across and even across the country . . . . She produced her second CD in and gained the support of in this endeavor.

\* \* \*

[The petitioner] has increased her commitment to her community and tradition by establishing a non-profit with the primary goal of teaching traditional arts and culture. . . . People are drawn to her and it is her stature in the community that made her non-profit possible.

While states that the petitioner has registered her music recordings with he fails to explain how the petitioner's songs are of major significance in the field. In addition, asserts that the petitioner's "music plays on radio stations across and even across the country," but there is no documentary evidence demonstrating that her songs equate to original contributions of major significance in the field. Regarding the petitioner's compact disc music recordings, although such works may certainly be considered original, the record contains no evidence such as her songs' influence on other performing artists, their specific impact on society,

or an unusually large number of units sold, to demonstrate that her recordings are considered to be of major significance to the field. [REDACTED] further states that the petitioner established “a non-profit with the primary goal of teaching traditional arts and culture.” There is no documentary evidence demonstrating that the petitioner’s work for this non-profit center equates to scholarly or artistic contributions of major significance in the field. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner’s contributions be “of major significance in the field” rather than limited to a particular educational center or municipality.

Although the petitioner has earned the admiration of the preceding references, the record does not establish that she has made original scholarly or artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner’s influence on other singers, musicians, or dancers, nor does it show that the field has specifically changed as a result of her work, so as to demonstrate the major significance of her original contributions. Thus, the AAO concurs with the director’s determination that the reference letters submitted by the petitioner did not meet the elements of this regulatory criterion. The opinions of the petitioner’s references are not without weight and have been considered by both the director and the AAO. 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). USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of reference letters 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 references’ 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 musician or an educator who has made original contributions of major significance in the field.

On appeal, the petitioner submits the following:

1. Various excerpts from the publication [REDACTED]
2. An online profile of [REDACTED] who was awarded “[REDACTED]”;
3. An article entitled “[REDACTED]”;
4. An article entitled “[REDACTED]”;
5. An article entitled “[REDACTED]”;
6. An article entitled “[REDACTED]”;
7. A compact disc entitled “[REDACTED]” featuring ten songs performed by the petitioner;
8. An article entitled “[REDACTED]” constructions of masculinity in [REDACTED]”;
9. A Ph.D. dissertation by [REDACTED] entitled “[REDACTED]”;
10. A document entitled “[REDACTED]” providing information about HIV and AIDS in Sub-Saharan Africa;

11. Statistics prepared by the [REDACTED] entitled "[REDACTED]";
12. A document entitled "[REDACTED]";
13. Lyrics from various songs by the petitioner;
14. An article entitled "[REDACTED]"; and
15. An article entitled "[REDACTED]";

With regard to items 7 and 13, the AAO notes that the regulations contain a separate criterion regarding commercial successes in the performing arts. 8 C.F.R. § 204.5(h)(3)(x). The AAO will not presume that evidence relating to or even meeting the commercial successes criterion is presumptive evidence that the petitioner also meets the criterion at 8 C.F.R. § 204.5(h)(3)(v). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for commercial successes in the performing arts and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that an alien meet at least three separate criteria. Regarding the remaining items, none of these documents focus on the petitioner and her specific contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's original work has been unusually influential, has substantially impacted her field, or has otherwise risen to the level of artistic or scholarly contributions of major significance, the AAO cannot conclude that she meets this regulatory criterion.

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

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion. The petitioner submitted documentation of her musical performances as evidence for this regulatory criterion. Neither the petitioner nor counsel has explained how music performances equate to visual art exhibitions or showcases. The petitioner's work as a [REDACTED] musician is audible in nature and is enjoyed for its sound, not its visual aspects. Therefore, her music performances do not satisfy the regulatory requirements under 8 C.F.R. § 204.5(h)(3)(vii). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." The petitioner is a musician. When she sings and dances on stage, she is not displaying her music in the same sense that a painter or sculptor displays his or her work in a gallery or museum. The petitioner is performing her work, she is not displaying her work. In addition, to the extent that the petitioner is a musician, it is inherent to her occupation to perform in public. The AAO notes that the ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, she has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R.

§ 204.5(h)(3)(vii). Accordingly, 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.*

The petitioner submitted a July 27, 2009 letter from the Director and the Youth Development Manager of [REDACTED] stating: "I have known [the petitioner] for the past four months while she worked as a Performing Arts instructor in the [REDACTED]. The petitioner also submitted letters of support discussing her role as founder and director of the [REDACTED]."

In discussing the evidence submitted for this regulatory criterion, the director's decision stated:

USCIS acknowledges that your role with [REDACTED] is leading and critical, however, the record does not demonstrate that the non-profit organization has a distinguished reputation. In addition, the record does not establish that your role with [REDACTED] is leading or critical compared to other Performing Arts Instructors at [REDACTED] nor does it demonstrate that [REDACTED] has a distinguished reputation.

The AAO affirms the director's findings. In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien is responsible for the success or standing of the organization. The petitioner failed to submit an organizational chart or similar documentary evidence to demonstrate where her role fit within the overall hierarchy of the [REDACTED]. Further, the letter from the Director and the Youth Development Manager of the [REDACTED] fails to explain how the petitioner's role was leading relative to that of the [REDACTED] other instructors, let alone the center's administrators. Moreover, the submitted evidence does not establish that the petitioner was responsible for the [REDACTED] success or standing to a degree consistent with the meaning of "critical role." Accordingly, the petitioner has failed to demonstrate that her role for the [REDACTED] was leading or critical. In addition, there is no documentary evidence showing that the [REDACTED] and the [REDACTED] have a distinguished reputation relative to other schools and non-profit organizations. 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'l Comm'r 1972)).

On appeal, counsel asserts that "evidence contained in the petitioner's affidavit clearly meets both points raised by the director." Counsel then quotes various statements from the petitioner's June 7, 2011 affidavit that was submitted with the petition at the time of filing. In the affidavit, the petitioner discusses her work for the [REDACTED] and the [REDACTED]. The petitioner's self-serving statements, however, fail to demonstrate that the [REDACTED] and the [REDACTED] have a distinguished reputation and that her role for the [REDACTED] was leading or critical. USCIS need not rely on self-serving documents. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (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). Further, 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 regulatory criterion at 8 C.F.R. § 204.5(h)(3)(x) focuses on volume of sales and box office receipts as a measure of “commercial successes in the performing arts.” In this instance, the petitioner has failed to submit documentary evidence of “sales” or “receipts” showing that she has achieved commercial successes in the performing arts. The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not established that she meets this regulatory criterion.

#### B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

#### C. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

In Part 3 of Form I-290B, counsel states: “Since the above standards do not readily apply to the Petitioner’s occupation, comparable evidence establishes the petitioner’s eligibility in accordance with 8 C.F.R. § 204.5(h)(4).” Form I-290B and counsel’s appellate brief do not include any further discussion of this issue. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11<sup>th</sup> Cir. 2009). The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten categories of evidence “do not readily apply to the beneficiary’s occupation.” Thus, it is the petitioner’s burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien’s occupation and how the evidence submitted is “comparable” to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the petitioner submitted evidence that specifically addressed more than half of the categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. On appeal, counsel fails to explain why the regulatory criteria are not readily applicable to the petitioner’s occupation. For instance, the petitioner has not established that the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix) is not applicable to musicians or educators. Moreover, counsel fails to identify the petitioner’s documentary evidence that is “comparable” to any specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x).

### III. CONTINUING WORK IN THE AREA OF EXPERTISE IN THE UNITED STATES.

Beyond the decision of the director, the statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how she intends to continue her work in the United States. *Id.* On the Form I-140, under Part 6, "Basic information about the proposed employment," the petitioner failed to provide a specific address where she will work in the United States. On page 13 of the petitioner's June 7, 2011 affidavit accompanying the petition, she states:

I will be working with [REDACTED] in the coming months. It is fitting that this should be so. I have come full circle since the first time I worked with [REDACTED]. Before, I was in my twenties and just starting out. Now I am a grown woman who has gained great success in [REDACTED] music which I am using to bring hope to the next generation of young people in South Africa and America.

The petitioner's affidavit does not provide specific details regarding the nature of her work with [REDACTED] in the United States. Further, the affidavit is unsupported by any documentary evidence from [REDACTED] confirming their upcoming musical collaboration. Without more sufficient details of the petitioner's plans or other "clear evidence" of where and how she will continue to work in her area of expertise in the United States, the AAO cannot conclude that she satisfies the requirements of the regulation at 8 C.F.R. § 204.5(h)(5).

### 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.

Even if the petitioner had 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[ir] field of endeavor" 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." 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.<sup>4</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the

<sup>4</sup> 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 section 103(a)(1) of the Act; section 204(b) of the Act; 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).

antecedent regulatory requirement of three categories of evidence. *Id.* 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 AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.