



U.S. Citizenship
and Immigration
Services

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DATE: **JAN 31 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:
[REDACTED]

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which 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, specifically as a musician and a composer, 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 the petitioner had 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 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 director erred by determining that the petitioner failed to satisfy the criterion relating to original, scholarly, and artistic contributions of major significance. Additionally, counsel asserts that the petitioner is one of that small percentage who has risen to the top of the field of endeavor, as required by the regulations and the statute. Counsel maintains that the director’s final merits determination was erroneous in that he failed to evaluate the evidence in its entirety and failed to evaluate the evidence under the proper evidentiary standard.

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 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, international 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*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.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." *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 AAO concludes that 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.* Nevertheless, as the director's sole basis of denial was a final merits determination, the AAO will also perform that analysis.

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 8 C.F.R. § 204.5(h)(3)(vi).

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II. ANALYSIS

A. Evidentiary Criteria²

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).

The petitioner submitted evidence along with his Form I-140 in support of this criterion. The director, after reviewing the evidence, concluded that the petitioner failed to satisfy the regulatory requirements and the petitioner does not identify any factual or legal error in this conclusion on appeal. Consequently, the AAO concludes that the petitioner abandoned this claim. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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).

The director determined in his decision that the petitioner met this regulatory criterion and the AAO affirms the director's conclusions in this regard.

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).

The director determined that the petitioner failed to meet this criterion. In the appeal brief, counsel asserts that the director's denial in this regard is not sufficiently supported by factual specifics and that the director's references to three of the support letters failed to ascribe the importance of the associated institutions. Counsel further questions that the director's identification of the author of one of the letters by noting his association with a less distinguished institution rather than his position with the [REDACTED]. Upon a thorough review of the testimonial evidence, the AAO finds that the director properly weighed the evidence. The petitioner in this instance submitted over twenty letters from experts and colleagues attesting to his original musical and scholarly contributions. However, USCIS determines the truth not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M*, 20 I&N Dec. 77, 80 (Comm'r 1989). While the petitioner in this instance submitted a great quantity of letters relating to the original contributions

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

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criterion, a review of the submitted documents, including the content of the letters, indicates that the evidence is not of sufficient quality to satisfy the plain language requirements of the regulation.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. The AAO must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). To be considered a contribution of major significance in the field of music, it can be expected that the petitioner demonstrate some notable impact within his genre as a whole.

As an initial matter, a number of the letters that the petitioner submitted to establish this criterion primarily discuss the petitioner's contributions to the local musical community or to the local community generally. For instance, [REDACTED] the Executive Director of the [REDACTED] notes that their grants are evaluated by a panel of community members. With respect to the Balkanicus concerts, Mr. Prauer states:

[They] have provided the community with rare opportunities, to hear music by composers from Balkan countries, performed by outstanding area musicians. It is evident from our grant review panels and from the community and audience responses to these concerts that Balkanicus is enriching the community with music and culture that would otherwise be unavailable.

Similarly, while [REDACTED] Assistant Professor of Music at [REDACTED] writes a complimentary letter and while she observes that the petitioner has a rare combination of skills and experience, her overall summation of the petitioner's impact is that: "[the petitioner] will certainly enrich the musical life of any American community in which he chooses to live." [REDACTED] the Executive Secretary for [REDACTED] writes about the positive contributions the petitioner has had on her specific organization, which has a local presence. [REDACTED] Director, International Relations Department for [REDACTED] refers to an interview she had with the petitioner where he described the [REDACTED] as a rare chance to "introduce audiences in Minnesota to Bulgarian art and artists." This letter does not address the petitioner's ultimate impact in his field.

The letters from [REDACTED] Dean, College of Arts and Sciences at the [REDACTED] [REDACTED] Senior Producer, [REDACTED] Specialist, [REDACTED] Channel at [REDACTED] Director, Graduate Programs in Music Education at the [REDACTED], Executive Director, [REDACTED], Director of Undergraduate Studies, [REDACTED] of Music; and [REDACTED] Professor of Violin of the [REDACTED], discuss the petitioner's impact in his current community, or a community where he formerly resided, or for a particular organization with a local or regional presence.

In the appeal brief, counsel asserts that the petitioner's impact in the field can be determined by the fact that he has lectured in various parts of the United States and been to workshops and conferences. The participation at invited lectures in various locations is insufficient to demonstrate that the petitioner's contributions are of major significance in the field. Specifically, while such lectures provide the petitioner with wider exposure within the field, at issue is the ultimate impact of that exposure on that field.

Counsel, in the appeal brief, attributes particular importance for one lecture the petitioner gave at [REDACTED] and the two support letters from individuals who observed the lecture and are associated with [REDACTED]. Counsel asserts that one of the petitioner's references, [REDACTED], Professor of Composition at [REDACTED] is a living legend in the music world. On behalf of the petitioner, he writes that: "[It] was a great pleasure to meet you . . . I find the music you are discussing most interesting for I think we do not enough about it in this country." While Dr. [REDACTED] expresses interest, there is nothing in the content of the letter to suggest that he finds the petitioner's contributions to be of major significance in the field. On appeal, Dr. [REDACTED] asserts that the petitioner's project of presenting music by Balkan composers to U.S. audiences is "incredibly important" and expresses his hope that the petitioner "can expand [sic] it to other regions of our country." Nothing in these letters suggests that the petitioner has already influenced his field.

Similarly, the letter from [REDACTED] Chair of the Music History Department at [REDACTED] compliments the petitioner on his single lecture-performance and states that it "was extremely instructive and enjoyable." However, such sentiments do not substantiate a claim of major impact on the field. The reputation of an author of a support letter, no matter how distinguished, is insufficient to meet the requirements of this criterion. Rather, USCIS must evaluate the content of the letters themselves.

The letters from [REDACTED] Professor and Head of the Department of Anthropology, [REDACTED] and [REDACTED], Professor of Cello and Chamber Music, [REDACTED] largely discuss the petitioner's contributions as an educator and promoter of Bulgarian music. These letters, however, are largely conclusory rather than supported with examples of the petitioner's impact. For example, Dr. [REDACTED] simply states that the petitioner's research "elevated the subject of World music to a higher degree and increased the interest tremendously in this country." USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Dr. [REDACTED] discusses the petitioner's efforts to promote Bulgarian classical music through his radio show without explaining the ultimate result of those efforts.

The letters from [REDACTED] Principal Flute, [REDACTED] former Principal Cellist of the [REDACTED], cellist; [REDACTED] Chair of the Department of Chamber Music; [REDACTED] and [REDACTED], Concertmaster of the [REDACTED] are from the petitioner's immediate circle of colleagues. While such letters can be important in providing details about the petitioner's role in various projects, they cannot by themselves establish the impact of the petitioner's contributions beyond his immediate circle

of colleagues. Furthermore, the letters generally discuss the petitioner's proficiency and skill as a cellist, but do not specifically identify contributions that influenced the field. See *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010) (finding letters that did not specifically identify contributions nor provide specific examples of how those contributions influenced the field to be insufficient as major contributions).

The final group of letters relating to this criterion includes letters from the following individuals:

[REDACTED] Vice President of Programs, [REDACTED] Co-Artistic Director, [REDACTED] Director of Graduate Studies in Music, [REDACTED] Senior Program Director, [REDACTED] President, [REDACTED] Director of Institute of Art Studies, [REDACTED] and [REDACTED] Chair of the Union of [REDACTED]

These letters are conclusory in their discussion of the petitioner's contributions to the field. As stated above, USCIS need not accept primarily conclusory assertions. See *1756, Inc.*, 745 F. Supp. at 15. Moreover, in evaluating the reference letters, USCIS notes that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Accordingly, for all of the reasons discussed above, the petitioner has failed to satisfy the plain language requirements under 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The director determined that the petitioner met this criterion. The petitioner submitted evidence of an article, which was included in a compilation text titled, [REDACTED]. In response to the director's request for evidence (RFE), the petitioner asserted that [REDACTED] is based on the presentations at a conference and constitutes "the authoritative scholarly collection on [REDACTED]." 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)). While the petitioner also submitted evidence of another conference presentation, the record contains no evidence that this presentation was published in conference proceedings or that the proceedings compilation constitutes professional or major trade publications or other major media.

Even if the petitioner had established that [REDACTED] constitutes a professional or major trade publication or other major media, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of "scholarly articles" in the plural, which 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.³ Because the petitioner in this instance only submitted a single article, he has failed to satisfy the plain language requirements of 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the AAO withdraws the director’s finding with regard to this criterion and concludes that the petitioner failed to satisfy the regulatory requirements.

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 his initial application packet, the petitioner submitted evidence of his performances, asserting that these performances constitute the display of his work in the field at artistic exhibitions or showcases. In the RFE, the director advised that this criterion is reserved for the visual arts. The director did not further discuss this criterion in the final denial. The petitioner fails to raise a challenge regarding this criterion on appeal and the AAO concludes that the petitioner abandoned this claim. *See Sepulveda*, 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885 at *9.

Alternatively, the AAO affirms the director’s statement in the RFE that the regulation at 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts. This interpretation is longstanding and has been upheld by a federal district court. *See Negro-Plumpe*, 2:07-CV-820-ECR-RJJ at *7 (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, and is instead a musician, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

Therefore, the petitioner has failed to sufficiently demonstrate that he met this evidentiary criterion and has otherwise failed to properly raise this matter on appeal.

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).

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role’s matching duties. A critical role should be apparent from the petitioner’s impact on the organization or the establishment’s activities.

³ *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."⁴ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. at 306. Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or a similar reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner satisfied the requirements of this criterion based on the fact that the petitioner was the producer of Balkan Jamboree on [REDACTED] since 2010 and that he was the organizer and creator for the Balkanicus concerts, presented by the [REDACTED]. While the petitioner has shown that he performed in a leading or critical role on behalf of Balkan Jamboree and the Balkanicus concerts, he has failed to satisfy the remaining elements of the plain language requirements. The petitioner has failed to include documentation showing that Balkan Jamboree and the Balkanicus concerts are structured or organized in such a manner that either the show or the concert series could be considered an "organization" or an "establishment." The petitioner does not claim that he played a leading or critical role for [REDACTED] or the [REDACTED] as a whole.

Furthermore, the record does not contain evidence showing that Balkan Jamboree has a distinguished reputation. [REDACTED], the Executive Director for [REDACTED] states that the petitioner is "a valuable resource" and the petitioner's program "presents unique music to our listening audience" and "is a cultural treasure." While the letter is complimentary to the show and to the petitioner, it is insufficient to support a determination that the show enjoys a distinguished reputation.

Similarly, while Balkanicus has received some positive feedback, local press coverage, and received some grant funding, the evidence of record is insufficient to support a determination that the concert series enjoys a distinguished reputation. However, even assuming *arguendo*, that Balkanicus has a distinguished reputation, the petitioner still would be unable to satisfy all of the regulatory requirements for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for "*organizations and establishments that have a distinguished reputation*" (emphasis added) in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. As analyzed previously in the discussion for the criterion for scholarly articles, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural and the AAO can infer that the plural in the remaining regulatory criteria has meaning. Thus, the petitioner has failed to satisfy the plain language requirements of 8 C.F.R. § 204.5(h)(3)(vi).

⁴ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on January 28, 2013.

Accordingly, the AAO withdraws the director's finding with regard to this criterion and concludes that the petitioner failed to satisfy the plain language requirements as outlined in 8 C.F.R. § 204.5(h)(3)(viii).

B. Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, given that the director's basis for denial was the final merits determination, the AAO will similarly review all of the evidence in the aggregate.

C. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119-20.

The record reveals that the petitioner came onto the music scene early as a performer and musician in Bulgaria, as evidenced by his participation in the [REDACTED]. The record also reveals some early successes and media coverage in Bulgaria, such as radio programs and television broadcasts in Bulgaria. However, section 203(b)(1)(A) of the Act requires that an alien demonstrate "sustained" acclaim. The record reveals that after completing a doctoral program in music education in the United States, he continued his work as a musician and composer in the United States. While he has garnered local media coverage, is involved with a musical program on a regional radio station, and has participated at lectures and conferences, the record on the whole does not establish that he has sustained national or international acclaim. Section 203(b)(1)(A)(i) of the Act.

The numerous letters from members of the petitioner's field have been considered in detail above. For the reasons discussed above, these letters do not sufficiently demonstrate the petitioner's impact in the field. Many of the letters also state that the petitioner is an accomplished scholar, but they do not actually discuss or identify particular works demonstrating his scholarship. Moreover, the petitioner has only submitted one scholarly article as evidence. Beyond mere dissemination in the field, the petitioner must demonstrate the impact of his scholarly work upon dissemination.

While the petitioner submits evidence that he has judged the works of others pursuant to 8 C.F.R. § 204.5(h)(3)(iv), the nature of the judging experience is a relevant consideration in the final merits determination as to whether the evidence is indicative of national or international acclaim. *See Kazarian*, 596 F.3d at 1122. The petitioner submitted evidence showing that he was invited to serve as

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an artistic adjudicator of the [REDACTED] The competition is part of a program that allows students from grade seven through age 25 to participate in community recitals as well as the annual competition, and includes students at the [REDACTED] who are preparing for a professional career in music. The competition is age restricted and there is nothing in the record to indicate that the competition is recognized beyond the immediate community. Furthermore, the petitioner's involvement with [REDACTED] appears, albeit over multiple years, to be the only evidence of judging, which is not consistent with national or international acclaim.

On appeal, counsel asserts that the petitioner was involved in staging performances of previously unheard music in the United States, and, on occasion, previously unheard music in the world. While the act of bringing novel and unique music to audiences for the first time has merit, novelty does not necessarily translate to a major contribution or otherwise indicate that the person responsible for presenting the novel music has demonstrated that he is at the top of his field.

In evaluating the entirety of the record, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. Specifically, while the AAO acknowledges that the praise of the petitioner's peers, the petitioner's participation as a judge of local age-restricted competitions, regional promotion of Balkan classical music, and limited scholarship is indicative of an accomplished musician, it is not commensurate with national or international acclaim and status among the small percentage at the top of his field. Consequently, the AAO concludes that there is no indication that the director failed to apply the proper evidentiary standard and affirms his conclusion that the petitioner did not establish that he is within the small percentage at the top of his field.

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 has risen to the very top of the field of endeavor.

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

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

ORDER: The appeal is dismissed.