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

U.S. Citizenship  
and Immigration  
Services

DATE:

NOV 13 2013

Office: TEXAS SERVICE CENTER

FILE:

IN RE:

Petitioner:  
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition on April 15, 2013. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on May 16, 2013. The appeal will be dismissed.

According to parts 2 and 6 of the petition, the petitioner seeks classification as an alien of extraordinary ability in the arts as a “musician, ethnomusicologist, [and] program director,” pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner did not establish her sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

On appeal, counsel submits a seven-page brief and the following documents: (1) a review of the petitioner’s book [redacted] published in the [redacted] (2) a printout relating to the [redacted] (3) a [redacted] review of the petitioner’s CD recording [redacted]; (4) a printout relating to [redacted] (5) a [redacted] article entitled [redacted]; and (6) photocopies of the petitioner’s book cover and related documents.

For the reasons discussed below, the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not satisfied at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3) with relevant, probative evidence, and in the final merits determination, the petitioner has not demonstrated that she is one of the small percentage who are at the very top of the field and has not demonstrated her sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the petitioner’s appeal must be dismissed.

I. THE 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 –

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- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

United States Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of the evidence submitted to meet a given evidentiary criterion.<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 meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Kazarian*, 596 F.3d at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the petitioner has not shown that she meets at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, in the final merits determination, the petitioner has not shown that she is one of a small percentage who have risen

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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 (vi).

to the very top of the field or that she has sustained national or international acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.

## II. ANALYSIS

### A. Prior O-1 Visa Petitions

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. The regulatory standard and requirements for an immigrant and nonimmigrant alien of extraordinary ability in the arts are different. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as simply “distinction,” which is further defined as follows:

Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” While the ten immigrant criteria set forth in the regulation at 8 C.F.R. § 204.5(h)(3) appear in the nonimmigrant regulation, 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in the regulation at 8 C.F.R. § 214(o), does not appear in the regulation at 8 C.F.R. § 204.5(h). As such, the petitioner’s approval for a nonimmigrant visa under the lesser standard of “distinction” is not evidence of her eligibility for the similarly titled immigrant visa.

Moreover, it must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. Dep’t of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc.*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, No. 03-10832, 99 F. App’x 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner’s qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 597 (Comm’r 1988). USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. Civ. A. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

#### B. Area of Extraordinary Ability

The petitioner seeks classification as an alien of extraordinary ability in the arts as a "musician, ethnomusicologist, [and] program director." These are three different areas or fields in which the petitioner claims extraordinary ability.

In *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach. The regulations regarding this preference classification are extremely restrictive, and not expanding "area" to include everything within a particular field cannot be considered unreasonable.

*Id.*

In this case, although the petitioner claims extraordinary ability in the areas of musical performance, ethnomusicology and program directing, to meet the basic eligibility requirements for the exclusive classification sought, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) in at least one of the three areas. *See Lee*, 237 F. Supp. 2d at 918 (upholding a finding that competitive athletics and coaching are not within the same area of expertise).

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

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

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<sup>2</sup> The petitioner does not claim that she meets the regulatory categories of evidence not discussed in this decision.

types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) as a “musician, ethnomusicologist [or] program director.”

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

A. 2008 and 2012 Appalachian Stringband Festival Contests

In his April 15, 2013 decision, the director concluded that the petitioner did not meet this criterion. On appeal, counsel asserts that the petitioner “won no less than 15 top prizes indicating her top stature as a fiddler, including first place at the [redacted] Counsel asserts that the [redacted] “is a major international competition” and it is “one of the largest and most prestigious [competitions] in the country.” As supporting evidence, counsel points to a March 11, 2013 letter from [redacted] Events/Festival Manager for the [redacted] a transcript from a TV documentary about the festival; and a [redacted] news article.<sup>3</sup>

According to Mr. [redacted] the [redacted] “is one of the largest international traditional music festivals of its kind dedicated to southern, old-time music in North America.” He states that the festival “is renowned for its competitions; hundreds of musicians from the US and other countries compete for the awards and prestigious blue ribbons,” and that “[t]o traditional musicians, winning at [the festival] is akin to winning an Olympic medal.” He further provides that when the petitioner won first place in the open fiddle category in 2008, she “beat over 90 other competing musicians from many countries.” He also provides that in 2012, the petitioner and her band won second place in the traditional stringband category. An online printout from [redacted] website provides that during the [redacted] “some of the nation’s finest string band musicians and old-time dancers won prizes in four old-time ‘traditional’ contests – fiddle, banjo, string band and flat-foot dance.” In his September 10, 2012 letter, [redacted] Coordinator of Music Contests for the [redacted] [redacted] states that the petitioner “has won numerous awards and honors as a musician,” including “first place fiddle award at the [redacted] [where] old-time fiddlers from all over the world compete[d] in this major competition.”

The record contains other evidence relating to the petitioner’s achievements at the [redacted] [redacted] In his March 7, 2013 letter, [redacted] a professor at [redacted] and the coordinator of the [redacted] states that the [redacted] “is the largest and most prestigious contest for old-time

<sup>3</sup> In her appellate brief, counsel asserts that the petitioner submitted a [redacted] article in response to the director’s notice of intent to deny (NOID). Counsel did not list a [redacted] article in her list of exhibits filed in response to the director’s NOID. Instead, counsel files a [redacted] article on appeal, which is discussed in the decision. In addition, in her appellate brief, counsel references a press release from the Division of [redacted] [redacted] Neither the list of exhibits the petitioner initially filed in support of the petition nor the list she filed in response to the NOID includes this document. In response to the NOID, the petitioner submitted an online printout from [redacted] website at [redacted] This document is discussed in the decision.

music in [the United States]. More than one hundred fiddlers from across the country and around the world compete at this annual festival.” In her October 5, 2012 letter, [REDACTED] Executive Director of the [REDACTED] states that the petitioner “was the first woman and person from outside of the US to win first place in the open fiddle competition at the [REDACTED] and in 2012, the petitioner and her band took second place in the [REDACTED]. In his October 8, 2012 letter, [REDACTED] Chairman and Chief Executive Officer of [REDACTED] states that the petitioner “has won top prize playing a [REDACTED] melody in the most prestigious violin competition in [REDACTED].” In his November 13, 2012 letter, [REDACTED] states that the petitioner’s “2008 victory in the fiddle contest at the prestigious [REDACTED] confirmed . . . that she belongs in the top echelon of practitioners as well as scholars.” In her March 6, 2013 letter, [REDACTED] Editor-in-Chief of [REDACTED] states that the [REDACTED] “is the world’s top gathering for old-time string band music, and [the petitioner’s] first place win places her at the most elite level of fiddlers in America.”

The evidence in the record establishes that the petitioner’s 2008 first place win in the open fiddle category and her 2012 second place placement in the traditional stringband category at the Appalachian Stringband Festival constitute her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of musical performance. The petitioner meets this criterion as a musical performer based on her achievements at the festival. See 8 C.F.R. § 204.5(h)(3)(i).

B. [REDACTED]

On appeal, counsel asserts that the petitioner’s achievements at the [REDACTED] and receipt of the [REDACTED] also constitute receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. As supporting evidence, counsel points to an undated letter from [REDACTED], a primary organizer of the [REDACTED] and programs for the [REDACTED].

The evidence does not establish that the petitioner’s achievements at the [REDACTED] meet this criterion. According to Mr. [REDACTED] the convention “is a venerable distinguished fiddle contest that has both a national and international reputation of good merit.” Mr. [REDACTED] states that “[o]ver 1000 [ ] musicians compete in the festival annually for \$15,000 in awards in front of estimated 40,000 [ ] attendees who travel to the festival from across the U.S. and as far away as Canada, England, the Czech Republic and Japan.” He further states that in the open fiddle category, the petitioner won fourth place in 2009, won second place in 2010, and won third place in 2011 – “each year beating almost a hundred other competitors in the same category.” He concludes, “[d]ue to the high number of competitors those musicians who win in the top ten spots are considered to be the most skilled in the nation.” Programs from the convention, filed in response to the director’s notice of intent to deny (NOID), corroborate the petitioner’s placement in 2009 and 2010.

The evidence is insufficient to show that the convention’s open fiddle contest is nationally or internationally recognized in the field of musical performance. Although Mr. [REDACTED] claims that

over a hundred competitors entered the open fiddle contest, neither his letter nor any other evidence in the record provides information relating to the level of competence of the entries or the criteria under which a winner was selected. Moreover, the evidence submitted to show the recognition of the petitioner's achievements at the convention is from the entity, or a person associated with the entity, that organized the convention and issued the awards. Such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff'd*, 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). On appeal, counsel has not pointed to independent evidence in the record, such as, but not limited to, independent journalistic coverage of the 2009 through 2011 open fiddle contests in nationally circulated publications, to corroborate the self-promotional evidence. As such, the petitioner has not shown that her placements in the open fiddle contests between 2009 and 2011 meet this criterion.

Similarly, the evidence does not establish that the petitioner's receipt of the [REDACTED] meets this criterion. According to her March 7, 2013 letter, [REDACTED] Marketing Manager for [REDACTED] program "is committed to the development of Canadian music and honours [sic] exceptional musicians." According to an online printout from [REDACTED] program is "an original program designed to champion up-and-coming Canadian artists" and the program "sets out to discover, encourage and promote new artists." While the focus of the award on rising musicians does not necessarily demonstrate that the award is not a nationally or internationally recognized prize or award for excellence, the petitioner has not provided independent evidence, such as but not limited to national coverage of the competition, establishing its national or international recognition.

C. [REDACTED]

On appeal, counsel asserts that the petitioner's selection for the [REDACTED] constitutes receipt of a nationally or internationally recognized prize or award for excellence in the field of ethnomusicology. As supporting evidence, counsel points to a March 8, 2013 letter from [REDACTED] Sound Archivist at the Department of [REDACTED]. The record also includes an August 29, 2012 letter from Mr. [REDACTED] and an online printout relating to the fellowship. According to Mr. [REDACTED] the fellowship program "is advertised nationally, mainly through college and university academic departments throughout the country and professional organizations such as the [REDACTED] the [REDACTED]" and the program "attracts a large number of applicants each year from around the world but primarily from the United States." Mr. Rice states:

In addition to a detailed proposal, applicants must submit three recommendations from colleagues who themselves are highly qualified to assess the individual's credentials and proposed work. The potential success or outcome is assessed through this material as well as the individual's past record of success as a predictor of future influence or success.

Mr. [REDACTED] concludes, “[a]s such, Fellowships are conferred upon those who have demonstrated excellence in the field, and selection is a reflection of the individual’s outstanding credentials.”

The evidence in the record is insufficient to show that the petitioner’s selection for the fellowship meets this criterion. The fact that the fellowship program is advertised nationally and receives an unspecified number of applicants from different geographic areas does not render the fellowship a nationally recognized award or prize for excellence in the field of ethnomusicology. Instead, the petitioner must demonstrate through independent evidence that the consensus in the field of ethnomusicology is that the fellowship constitutes a nationally or internationally recognized award or prize for excellence. Also, according to the online printout relating to the fellowship, the purpose of the fellowship “is to encourage scholarly use of [REDACTED] non-commercial audio collections that document [REDACTED] history and culture, especially the areas of traditional music, religious expression, spoken lore and radio programs.” The purpose of the fellowship is not to recognize excellence in the field of ethnomusicology. In addition, it is unclear who may apply for the fellowship or if the fellowship is offered only to students, excluding the most experienced and renowned scholars in the field. Moreover, the evidence submitted to show the recognition of the petitioner’s fellowship is from the entity that offered the fellowship. Such self-promotional evidence has minimal evidentiary value. *See Braga*, No. CV 06-5105 SJO at 10. On appeal, counsel has not pointed to independent evidence in the record, such as, but not limited to, independent journalistic coverage of the petitioner’s receipt of the fellowship in 2006, to corroborate the self-promotional evidence.

Furthermore, even if the petitioner’s selection for the fellowship constitutes her receipt of a nationally or internationally recognized award or prize in the field of ethnomusicology, the petitioner has not met this criterion in that field. The plain language of the criterion requires evidence of qualifying awards or prizes, in the plural, consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. The petitioner has not established, or even asserted, her receipt of a second qualifying award or prize for excellence in the field of ethnomusicology.

Finally, the record includes evidence of the petitioner’s other achievements. On appeal, counsel has not specifically raised issues relating to the director’s finding that the other awards or prizes do not meet this criterion. In addition, the evidence in the record supports the director’s conclusion as relating to these awards and prizes.

Accordingly, the petitioner has presented documentation of her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of musical performance. Specifically, the petitioner meets this criterion based on her achievements in the field of musical performance at the 2008 and 2012 [REDACTED] *See* 8 C.F.R. § 204.5(h)(3)(i).

*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).*

#### A. Ethnomusicology

In his April 14, 2013 decision, the director found that the petitioner did not meet this criterion. The director concluded that “the [petitioner] did not submit any evidence [showing] the publications are considered professional or major trade publications, or other major media,” and that “book reviews are not about the [petitioner], relating to her work in the field. Instead, they are about the [petitioner's] book, for which the [petitioner] is mentioned as the author of the book.” On appeal, counsel challenges the director's finding. As supporting evidence, counsel points to “[t]hree positive, academic book reviews” from [REDACTED], leading professor of musicology and co-editor of the *Handbook of Applied Ethnomusicology*[:]; [REDACTED] Program Officer of the West Virginia Humanities Council[:]; and [REDACTED] Assistant Professor of Folklore and English at [REDACTED].” Counsel notes that “[a]dditional positive reviews of the book are also contained on the back cover of the book,” including a review from “Alan Jabbour, the founding director of the [REDACTED] from [REDACTED] in West Virginia.”

The evidence in the record shows that Professor [REDACTED] review was published in the [REDACTED] in the winter of 2007. Mr. [REDACTED] review was published in the [REDACTED] in the spring of 2007. Mr. [REDACTED] review was published in the [REDACTED] in the spring and fall of 2008. The evidence establishes that these reviews are published in professional publications. In addition, while the director is correct that some book reviews in the record are not about the petitioner, these three reviews discuss the petitioner's book [REDACTED] as well as the petitioner.

Accordingly, the petitioner has provided published material about her in professional publications, relating to her work in the field of ethnomusicology. The petitioner has met this criterion as an ethnomusicologist. *See* 8 C.F.R. § 204.5(h)(3)(iii).

#### B. Musical Performance

The record includes evidence of published material relating to the petitioner's musical performance. On appeal, counsel asserts that published material in the [REDACTED] and [REDACTED] meets this criterion because the publications constitute major trade magazines.<sup>4</sup> Although some of the published material is about the petitioner relating to her work in the field of music performance, the petitioner has not shown that the material is published in major trade publications. Specifically, the September 2009 [REDACTED] article [REDACTED] in

<sup>4</sup> On appeal, counsel does not assert that these materials are published in either professional publications or other major media.

Toronto,” the October-November 2007 [redacted] review of the petitioner’s [redacted] CD recording, the November 2005 [redacted] review of the petitioner’s [redacted] CD recording, the June 2010 [redacted] review of the petitioner’s [redacted] CD recording and the January 2008 [redacted] review of the petitioner’s [redacted] CD recording discuss not only the petitioner’s CD recordings, but also provide information about the petitioner. As such, these published materials are about the petitioner, relating to her work in musical performance. The evidence, however, does not establish that the materials are published in major trade publications.

According to a March 11, 2013 letter from [redacted] Circulation Manager, the magazine “has been the premiere [redacted] music magazine since its inception in [redacted] [It] currently [has] over 15,000 subscribers in the U.S. [and other countries].” On appeal, counsel provides a printout from [redacted] showing that it had 22,947 paid subscribers as of March 2007 and it distributed the publication via music stores, record shops, festivals and concerts, newsstands and subscriptions in the United States and other countries. According to Ms. [redacted] of [redacted] “for more than 25 years [*Old-Time Herald*] has been the preeminent publication about traditional string band music. [Its] more than 2,000 subscribers live throughout the United States [and other countries.]” The petitioner has not provided sufficient evidence showing that a circulation of more than 15,000 or 2,000 subscriptions constitutes a major trade publication. Moreover, the evidence submitted to show the magazines are “premiere” or “preeminent” are from the people associated with the magazines. Such self-promotional evidence has minimal evidentiary value. *See Braga*, No. CV 06-5105 SJO at 10. On appeal, counsel has not pointed to evidence from independent sources to corroborate the status of the magazines in the field of musical performance.

On appeal, counsel also references published material in [redacted]. The published material, however, does not meet this criterion. First, the [redacted] book review only discusses the petitioner’s book and is not about the petitioner, as required by the plain language of the criterion. Second, the spring 2013 [redacted] is published after the petitioner filed the petition in December 2012. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

Finally, the record includes evidence of published material in other publications. On appeal, counsel has not specifically raised issues relating to the director’s finding that the published material in other publications does not meet the criterion. In addition, the evidence in the record supports the director’s conclusion relating to the published material in other publications.

Accordingly, the petitioner has not provided published material about her in professional or major trade publications or other major media, relating to her work in the field of musical performance. The petitioner has not met this criterion as a musical performer. *See* 8 C.F.R. § 204.5(h)(3)(iii).

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

In his April 15, 2013 decision, the director concluded that the petitioner meets this criterion. The evidence in the record supports this finding. Specifically, according to Mr. [REDACTED] in 2011, the petitioner served as one of three judges for the fiddle and stringband competitions at the [REDACTED] [REDACTED] during which the petitioner evaluated over 150 individual competitors and bands. Mr. [REDACTED] provides that the petitioner was asked to serve as a judge "because of her prior success at [the festival] and because the committee thought she would make valuable contributions in assessing the performance skills and execution of the contestants." Mr. [REDACTED] notes that the petitioner "did an excellent job and [the festival] expect[s] to invite her to judge in the future." According to a March 9, 2013 letter from [REDACTED] Section Head for fiddle of the [REDACTED] [REDACTED] the petitioner "adjudicate[d] the Fiddle Section for the [REDACTED] in 2009." She states that the "Festival judges are nationally known for their own performance virtuosity" and "are [at] the very top of their field." Accordingly, the petitioner has provided evidence of her participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. The petitioner has met this criterion as relating to the fields of musical performance, ethnomusicology and program directing. See 8 C.F.R. § 204.5(h)(3)(iv).

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

In his April 15, 2013 decision, the director concluded that the petitioner has not met this criterion. On appeal, counsel asserts that the petitioner's book [REDACTED] constitutes evidence of the petitioner's original contribution of major significance in the field of ethnomusicology. Specifically, counsel notes that the petitioner "discovered a new genre of music" and "discovered that women played a much more major role in [REDACTED] music than previously recognized or understood."

In his September 9, 2012 letter, [REDACTED] Professor of Music at the [REDACTED] at [REDACTED], states that the petitioner's [REDACTED] was "practically the only book-length treatment of old-time music that [he] could find that gives equal time to the ballad and instrumental traditions and that incorporates original research with living musicians." Professor [REDACTED] provides that he assigned the book for his class to read and he was "quite pleased with how well it worked." He further provides that the petitioner's book "is a substantial contribution that bodes well for her future contributions to the field of old-time music studies" and states that the petitioner "is very well-positioned to contribute to American applied ethnomusicology in her current capacity working for the [REDACTED] Virginia."

In his March 8, 2013 letter, [REDACTED] Ph.D., a Professor and Chair of the History Department at [REDACTED] states that the petitioner's book is one of three required books in his [REDACTED] class. He "use[s] the petitioner's

text], and the accompanying field recordings that are included with [the] book, as the centerpiece of [his] course discussions.” Since the book’s publication, Professor [REDACTED] has “heard and read reference to [REDACTED] in virtually every conversation [he has] been engaged in when the topic is old-time [REDACTED] fiddle or song, whether it involves a [REDACTED] subject or in some other Southern region.” He concludes that the petitioner’s book “is a major scholarly addition that serves as the basis, inspiration and model for further and ongoing research” and that it “has influenced in the field of [ethnomusicology] is without a doubt.” He further notes that the petitioner “has advanced the field of ethnomusicology in North America through her scholarly work.”

The record includes letters from other references attesting to the importance of the petitioner’s book in the field of ethnomusicology. According to Ms. [REDACTED] the petitioner’s “original research and insights into the ballad and instrumental folk traditions of [REDACTED] as documented in her respected book [REDACTED], [REDACTED] have contributed in significant ways to recent scholarship in this area of American vernacular culture.” In his November 1, 2012 letter, [REDACTED] states that the petitioner’s book “highlights some of the lesser known musicians of [REDACTED] from a unique perspective and is a notable contribution to [the] understanding of American roots music.” According to Mr. [REDACTED] “[a]n especially important aspect of [the petitioner’s book] was [its] finding that, contrary to conventional perceptions, songs with lyrics were as important a source for many older [sic] generation fiddlers’ repertoires as instrumental tunes. Also of importance is the inclusion in [the petitioner’s] documentation of several notable women fiddlers.” In his August 25, 2012 letter, [REDACTED] a journalist, states that the petitioner’s book “is highly respected in [the] field, a work which opens new paths of comprehension regarding how traditions in [REDACTED] have changed, and the evolving place of music in the culture of the southern mountains.” In his November 13, 2012 letter, Mr. [REDACTED] states that the petitioner’s book “is a major contribution to [the] understanding of folk traditions in their living community context.” In his September 10, 2012 letter, Mr. [REDACTED] states that the petitioner’s book represents an important and rare transcription of the oral history of [the Appalachian] region.”

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. 2003). To be considered a contribution of major significance in a scholarly field, it can be expected that other experts would have built on or otherwise applied the petitioner research. Otherwise, it is difficult to gauge the impact of the petitioner’s work. While the above letters confirm that the petitioner’s book is original, they do not establish that her research constitutes a contribution of major significance. The record lacks evidence that other ethnomusicologists have pursued the “new paths” the petitioner’s work revealed or that they have otherwise utilized or cited to her book in their own research. Even if the petitioner had shown that her book [REDACTED] constitutes a contribution of major significant in the field of ethnomusicology, the petitioner, would not establish that she meets this criterion. Specifically, the plain language of the criterion requires evidence of qualifying contributions in the plural, consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. Thus, even if the petitioner’s book constitutes a single example of original contribution of major significance in the field of ethnomusicology, the record lacks evidence of contributions of major significance, in the plural.

On appeal, counsel asserts that the petitioner's CD recordings also meet this criterion. First, the CD recordings relate to the petitioner's contributions in the field of music performance, not ethnomusicology. Second, the evidence in the record does not support counsel's assertion that the CD recordings constitute original contributions of major significance in the field of musical performance. Although the evidence shows that the petitioner's CD recordings have received positive reviews, including feature reviews, the petitioner has not shown that positive reviews render the CD recordings original contributions of major significant in the field. In other words, the petitioner has not shown that her performances as recorded in CDs have significantly impacted or altered the field of musical performance as a whole. Third, the record includes a 2013 review of the petitioner's CD recording. This evidence does not establish the petitioner's eligible for the exclusive classification sought, because the petitioner must demonstrate eligibility for the visa petition at the time of filing, which was December 2012. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Accordingly, the petitioner has not submitted sufficient evidence showing that she has made original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of ethnomusicology or musical performance. The petitioner has not satisfied this criterion. See 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).

In his April 15, 2013 decision, the director concluded that the petitioner met this criterion. The evidence in the record does not support this finding. The AAO conducts appellate review on a *de novo* basis. *Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004). 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 (9th Cir. 2003).

The evidence shows that the petitioner, as an ethnomusicologist, has authored a book entitled which was published by the According to Mr. the petitioner's "writing about music of the region is of interest to scholars, as well as local artists. Her master's thesis about the deeply traditional music of was given the highest honor her colleagues could present: selection for publication as a book by the Although the publication of her book constitutes evidence of the petitioner's authorship of scholarly material in one professional publication, the petitioner has not met this criterion. Specifically, the plain language of the criterion requires evidence of scholarly articles, in the plural, in the professional or major trade publications, in the plural, or other major media. 8 C.F.R. § 204.5(h)(3)(vi). This is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. While the petitioner's book constitutes a single example of scholarly writing in a qualifying publication, the record lacks evidence showing the petitioner's authorship of a second scholarly article in another professional or major trade publication or other major media.

The evidence in the record shows that the petitioner, as a musician, has recorded and released her musical performances in CDs and has produced an instructional DVD on how to play fiddle. In her March 12, 2013 response to the director's NOID and on appeal, counsel asserts that these materials constitute the petitioner's "oral publications." The petitioner has not shown that her involvement in these materials constitutes her authorship of scholarly articles, as required by the plain language of the criterion.

Accordingly, the petitioner has not submitted evidence of her authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vi).

*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 April 15, 2013 decision, the director found that the petitioner met this criterion. The evidence in the record does not support this finding. The AAO conducts appellate review on a *de novo* basis. *Soltane*, 381 F.3d at 145-46. 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.*, 229 F. Supp. 2d at 1043.

The evidence in the record includes posters relating to the petitioner's musical performances as a solo musician and as a member of the [REDACTED]. The evidence also indicates that some of the performances were recorded on CDs. The interpretation that this criterion 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 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, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the criterion.

Accordingly, the petitioner has not provided evidence of the display of her work in the field at artistic exhibitions or showcases. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

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

In his April 15, 2013 decision, the director concluded that the petitioner met this criterion. The evidence in the record does not support this finding. The AAO conducts appellate review on a *de novo* basis. *Soltane*, 381 F.3d at 145-46. 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.*, 229 F. Supp. 2d at 1043.

The evidence shows that the petitioner is a music program manager for the [REDACTED]. According to Ms. [REDACTED] the [REDACTED] was established by Congress in 1985 and is

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operated through a partnership between the [REDACTED] and the [REDACTED] [REDACTED] “honors and celebrates the traditional music and musicians of the [REDACTED] region, and strives to educate visitors about this centuries-old strand of American music history and culture, which remains alive and thriving in the region today.” Ms. [REDACTED] further states that as a music program manager for the [REDACTED] the petitioner “has taken [REDACTED] programs to new levels, both in terms of the number of offerings and curatorial quality, the success of which is amply demonstrated in the fact that overall attendance has increased 30% in three years during a major recession.”

According to Mr. [REDACTED] in her position as a music program manager, the petitioner has “served in a position that is critically important to educational and cultural affairs in [REDACTED]” He further states that the petitioner “organizes traditional [REDACTED] performances and seminars that attract many well-known musicians and are attended by [REDACTED] residents and Parkway visitors from throughout the nation as well as many foreign visitors.” Mr. [REDACTED] provides that “during the last three years, [the petitioner] has made a tremendous impact on the quality of education, performances and outreach at the [REDACTED] She is enhancing the funding of the program and has outreach to national and local funding sources that are most beneficial.”

According to Mr. [REDACTED] the petitioner “brings memorable programs together week after week, with careful thought as to the concepts and stories to be communicated to tourists and local visitors . . . . [H]er work for the Center is invaluable as the Center establishes its reputation in its first few years of operation.” Similarly, Mr. [REDACTED] provides that the petitioner “is instrumental in setting up [ ] programs and performances [at the [REDACTED], hand selecting just the right musicians and just the right line up. She knows almost everyone in the old-time music scene and is vital to the success of this program.”

Based on the evidence in the record, the petitioner has shown that as a music program director, she has performed in a critical role for the [REDACTED] an organization or establishment that has a distinguished reputation. The petitioner, however, has not established that she meets this criterion. Specifically, the plain language of the criterion requires evidence of the petitioner performing in a leading or critical role for organizations and establishments, in the plural, that have a distinguished reputation. The plural requirement is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. While the petitioner’s involvement with the [REDACTED] constitutes an example of a leading or critical role for one qualifying organization or establishment, the record lacks evidence showing the petitioner is performing in a similar role in a second qualifying organization or establishment.

In her NOID response, counsel asserted that the petitioner “serves as part of the teaching staff for many music schools and workshops, including at [REDACTED] [sic] summer workshop on traditional music.” Counsel further asserted that the petitioner “played a critical role when she taught at the [REDACTED] The evidence in the record does not address the petitioner’s role for the schools, or the entities organizing the workshops, as a whole. The plain language of the criterion requires evidence of the petitioner’s leading or critical role

for organizations or establishments as a whole, not merely a program or service the organizations or establishments provide. *See* 8 C.F.R. § 204.5(h)(3)(viii).

Accordingly, the petitioner has not submitted evidence that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

#### D. Final Merits Determination

Based on the evidence in the record, the petitioner has not submitted the requisite evidence under at least three evidentiary categories relating to a single occupation. In the field of musical performance, the petitioner meets two criteria: the prizes or awards for excellence criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i) and the participation as a judge criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv). In the field of ethnomusicology, the petitioner meets two criteria: the published material about the petitioner relating to her work criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and the participation as a judge criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv). In the field of program directing, the petitioner meets one criterion: the participation as a judge criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Notwithstanding the above findings, in accordance with the *Kazarian* opinion and given that the director's sole basis of denial was a final merits determination, a final merits determination follows. All the evidence in the record is considered in the context of whether or not the petitioner has demonstrated: (1) her "level of expertise indicating that [she] is one of [a] small percentage who have risen to the very top of the field of endeavor," and (2) that she "has sustained national or international acclaim and that [] her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. For the reasons discussed below, the petitioner has not made such a showing. Accordingly, the appeal must be dismissed.

With regard to the prizes or awards for excellence criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), although the petitioner meets this criterion as relating to her work in musical performance, she has not shown that these awards are indicative of or consistent with national or international acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The *Kazarian* court recognized that evidence satisfying a given criterion might not, in fact, be indicative of national or international acclaim and may be evaluated as such in the final merits determination. Specifically, the petitioner has received a first place win and a second place finish at the [REDACTED]. The record, however, lacks evidence that these awards garnered her any personal national or international acclaim, such as national media coverage of her receipt of the awards. The evidence also does not establish that she has won any other nationally or internationally recognized prizes or awards for excellence in the field of musical performance or any qualifying prizes as an ethnomusicologist or program director. As the awards from the [REDACTED] are lesser nationally or internationally recognized prizes, they cannot establish the petitioner's eligibility as a musical performer on their own. 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the remaining evidence is not indicative of or

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consistent with national or international acclaim as a musical performer, ethnomusicologist, or program director.

With regard to the published material about the petitioner relating to her work criterion under 8 C.F.R. § 204.5(h)(3)(iii), although the petitioner meets this criterion as relating to her work in ethnomusicology, she has not shown her eligibility for the employment classification sought. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The *Kazarian* court recognized that evidence satisfying a given criterion might not, in fact, be indicative of national or international acclaim and may be evaluated as such in the final merits determination. According to Dr. [REDACTED] ethnomusicologists are “scholars” who “put music to use in a variety of contexts, academic and otherwise.” On appeal, counsel has pointed to three reviews of the petitioner’s book *Music in the Air Somewhere* published in professional publications and two book reviews printed on the cover of the petitioner’s book. The reviews are primarily about the petitioner’s book with a few additional biographical details about the petitioner. The petitioner has not shown that the number of reviews, albeit positive ones, relating to one book are indicative of or consistent with national or international acclaim in the field of ethnomusicology, a scholarly field. The record lacks evidence that a review in a publication that follows and reviews new additions to the literature in the field is indicative of the author’s national or international acclaim rather than recognition of an addition to the literature in the field.

With regard to the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv), although the petitioner meets this criterion, she has not shown her eligibility for the employment classification sought. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The *Kazarian* court recognized that evidence satisfying a given criterion might not, in fact, be indicative of national or international acclaim and may be evaluated as such in the final merits determination. The evidence submitted to show the petitioner’s acclaim as relating to the judging criterion is primarily solicited letters, authored by individuals whom the petitioner knows. In addition, the petitioner’s judging experience does not match that of at least one of her references. Specifically, Mr. [REDACTED] “has judged the [REDACTED] and is a regular judge at the [REDACTED] Va.” He is also “a nationally recognized consultant on rules and judging procedures for fiddle contests.” As such, the petitioner has not shown that her judging experience is indicative of her national or international acclaim.

With regard to the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), as discussed above, the petitioner has not met this criterion. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Although the petitioner’s book has received positive reviews in the field of ethnomusicology, has been used as a textbook in two college level classes and has contributed original ideas within the field of ethnomusicology, this evidence is insufficient to show she meets the criterion. The petitioner’s book has achieved some recognition in the field. This single example of an original work does not establish that the petitioner meets the criterion and is not indicative of the petitioner’s national or international acclaim in the field of ethnomusicology. As noted above, ethnomusicologists are scholars who put music in context academically. Thus, the use of the petitioner’s book in academic classes does not, by itself, set her apart from other ethnomusicologists. In addition, although magazine reviewers have

praised the petitioner's CD recordings, the evidence does not establish that the CD recordings constitute contributions of major significance in the field of musical performance, such that they have impacted or altered the entire field in a significant way. As such, the petitioner has not shown to have made original contributions of major significance in the field of ethnomusicology or musical performance.

With regard to the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), as discussed above, the petitioner has not met this criterion. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The petitioner's book is the only evidence of her published scholarly writing in the field of ethnomusicology. The petitioner has not shown that the publication of one scholarly book in 2006, seven years ago, is indicative of her sustained national or international acclaim in the field of ethnomusicology.

With regard to the display at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii), as discussed above, the petitioner has not met this criterion. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20; *Negro-Plumpe*, 2:07-CV-820-ECR-RJJ at 7. Even if the petitioner met this criterion as a musical performer, she has not shown her eligibility for the employment classification sought. The *Kazarian* court recognized that evidence satisfying a given criterion might not, in fact, be indicative of national or international acclaim and may be evaluated as such in the final merits determination. The petitioner has performed at a number of festivals and other venues. Performing in concerts, however, is inherent to the petitioner's occupation as a performing musician. The ability to secure employment in one's occupation is not indicative of national or international acclaim. The petitioner has not shown that the frequency of her performances or the venues where she has performed are indicative of her national or international acclaim in the field of musical performance. In addition, the petitioner has not provided sufficient evidence showing that only musicians at the very top of the field may perform at venues she had performed. The petitioner's accomplishments as a musical performer also do not match those of at least one of her references. Mr. [REDACTED] "has performed on musical tours in Australia and Ireland, and was a featured performer at the [REDACTED] in March of 2008. He was a featured performer at the [REDACTED] and at the [REDACTED] on August 16, 2012. The [REDACTED] show was recorded for their [sic] permanent collection." As such, the petitioner has not shown that her performances are indicative of her national or international acclaim in the field of musical performance.

With regard to the leading or critical role for organizations or establishments criterion under 8 C.F.R. § 204.5(h)(3)(viii), as discussed above, the petitioner has not met this criterion. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Although the evidence provides that as a [REDACTED] music program manager, the petitioner has made positive impacts on the center, the petitioner has not provided evidence of her involvement with a second qualifying establishment or organization such that her involvement could be considered her performing either in a leader or critical role. Also, the petitioner's achievements in the field of program directing do not match those of her references. For example, Ms. [REDACTED] has "organized, directed or produced 29 national tours, been involved in the planning, artistic direction and production of 56 national festivals, 24 recordings of traditional music and 24 programs for public radio and television." Mr. [REDACTED] "has produced 42 large-scale musical festivals in 11 states, 21 national

tours by musicians and dancers, nine international tours that visited 33 nations, and 131 LP and CD audio recordings of various forms of folk music.” On appeal, counsel asserts that the petitioner has taught at prominent music symposiums. The petitioner has not submitted evidence showing that these music symposiums constitute organizations or establishments having a distinguish reputation, as required by the plain language of the criterion. As such, the petitioner has not shown that her role in one organization or establishment is indicative of her national or international acclaim in the field of program directing.

Ultimately, the record does not support counsel’s claim on appeal that the petitioner is an alien of extraordinary ability in the field of musical performance, ethnomusicology or program directing. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who have risen to the very top of any of the three fields.

### III. CONCLUSION

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

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

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.