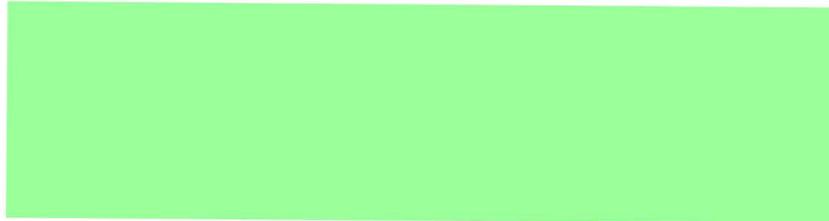




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 30 2014** 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

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as an artist. The director determined that the petitioner had not met the requisite criteria 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. The director determined that the petitioner's evidence had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii) and (vii).

On appeal, the petitioner submits a brief and additional documentary evidence. The petitioner asserts that she meets the regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii), (v), and (vii). In addition, the petitioner correctly points out that the standard of proof in this matter is "preponderance of the evidence." The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* at 376. In the present matter, the documentation submitted fails to demonstrate by a preponderance of the evidence that the petitioner meets the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), and, therefore, that she satisfies the regulatory requirement of three categories of evidence.

I. LAW

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

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

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

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 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*, 580 F.3d 1030 (9th Cir. 2009) *aff'd in part* 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)).

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).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary 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.

The petitioner has submitted published material about herself in major media and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(iii). Accordingly, the director's finding that the petitioner's evidence meets this regulatory criterion is affirmed.

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

The petitioner submitted letters of support discussing her artistic qualities and activities in the field. In addition, the petitioner submitted documentation of her participation in various art exhibitions. With regard to the petitioner's participation in art exhibitions, the regulations contain a separate criterion for display of work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). Evidence relating to or even meeting the display criterion is not presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for artistic display and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

The director acknowledged the petitioner's submission of the letters of support, but found that they "were insufficient to establish that the petitioner's work constitutes original contributions of major significance." In addition, the director stated that references' assertions regarding an individual's ability and vague claims of contributions were less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. The director further stated that the record lacked sufficient evidence showing that "the petitioner's art has enjoyed a larger following" or that "her art has made a significant impact within the

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

petitioner's field." The director therefore concluded that the petitioner failed to establish eligibility for this regulatory criterion.

On appeal, the petitioner points to the letters of support from experts in the field as evidence that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(v). The petitioner states: "The evidence submitted included: dozens of letters, touting the petitioner's expert abilities, from artistic and cultural experts, as well as internationally renowned figures in the public art world, including [REDACTED] a household name, leader and authority on public art." The issue to be determined for this criterion, however, is not whether the petitioner possesses "expert abilities" as an artist. Rather, the letters of support and other documentary evidence must demonstrate that the petitioner's original work equates to artistic contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original artistic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6, 8 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

With regard to [REDACTED] comments concerning the petitioner's work, the petitioner did not submit a letter of support signed by Ms. [REDACTED] or e-mail correspondence directly from Ms. [REDACTED] reflecting those comments. Instead, the petitioner submitted a November 22, 2011 e-mail from herself to counsel stating:

Hi Dear [counsel]...

There are some good thinks [sic] to send for you after the Roma show...I am sending now some of the part [sic]...

* * *

[REDACTED] send me a message and join my interactive show with hers [sic] message...she wrote that[:]

"Start dreaming of love. First imagine a mirror in which you see and love yourself. That love you create, will go all over the world, and make people feel good. Yes. You should start with dreaming love, in the Dream Love Room [the petitioner]"

The petitioner failed to submit primary evidence documenting [REDACTED]'s message to the petitioner. 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)). Absent

documentation that primary and secondary evidence of Ms. [REDACTED]'s original communication is either not available or nonexistent, the petitioner's November 22, 2011 e-mail to counsel cannot be relied upon as evidence. 8 C.F.R. § 103.2(b)(2). Regardless, Ms. [REDACTED]'s message appears to provide artistic advice to the petitioner rather than commenting on the petitioner's specific original contributions in the field.

The petitioner's appellate submission includes information about [REDACTED] and her artistic endeavors (such as Ms. [REDACTED]), but none of the submitted material demonstrates the petitioner's original artistic contributions of major significance in the field.

In addition, the petitioner submits online promotional material concerning her [REDACTED] [REDACTED] at [REDACTED] in New York on August 18, 2013. The submitted documentation pertaining to her digital display includes an online [REDACTED] event description and "Comment Wall" listing one person as "Attending" and 26 as "Not Yet RSVPed." The petitioner also submits August 2013 news articles about the project in the Turkish language, but the articles were unaccompanied by certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.* Regardless, the August 2013 art project and news articles post-date the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the petitioner's August 2013 project and the articles about it cannot be considered as evidence to establish her eligibility at the time of filing.

The petitioner asserts that the "quality of the experts who vouched for [her] international stature in her field is enough to demonstrate it is 'more likely than not' she has made a significant impact in her field." Although the quality of the experts and the petitioner's stature in the field are important considerations, the issue here is whether the experts' statements and the other documentary evidence submitted demonstrate that the petitioner's original artistic contributions were of major significance in the field.

The petitioner further states: "It would be contrary to reason to find that an artist would enjoy international exhibits and media coverage if her work were not imparting a significant contribution to her field of endeavor." The petitioner's appellate brief, however, does not identify any "significant contribution" to the field that had been imparted by the petitioner at the time of filing, or any specific works of art by her that equate to artistic contributions of major significance in the field. Arranging exhibits to display her artwork and garnering media coverage to promote that work are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence of specific artistic contributions that were of major significance in the field.

With regard to the letters of support that comment on the petitioner's abilities and artistic endeavors, as some of the letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

[REDACTED] a photographer and the Art Director of the [REDACTED] Massachusetts, collaborated with the petitioner on a project coordinated by the [REDACTED] nonprofit organization. Mr. [REDACTED] stated:

[The petitioner] is an exciting and productive artist with immense energy and a wealth of ideas. She shows her work regularly in both Turkey and the United States. Much of her recent work is interactive involving the public who come to see her work. She creates a space where participants are encouraged to discover their own artistic talents and in doing so, make efforts to become part of the larger art work that encompasses the talents and creativity of all the participants. [The petitioner's] work celebrates both the act of individual artists and the surprising results of collaborative endeavor. [The petitioner's] interactive installations bring together individuals from many cultures and all walks of life to create works of art that transcend all personal and cultural boundaries. She demonstrates that the creative act is intrinsically a necessary part the healthy social fabric of a culture.

Through her creative work, I believe [the petitioner] has demonstrated to be an artist with immense talent and good will whose work captures the imagination of viewers and participants. [The petitioner's] art work has made and continues to make significant contributions to the advancement of an international art community. By having permanent residency status in the U.S. she will make significant contributions to the betterment and advancement of Turkish and American art communities. I for one look forward to continue our artistic relationship

Mr. [REDACTED] comments on the interactive nature of the petitioner's artwork and asserts that her work "has made and continues to make significant contributions to the advancement of an international art community," but he does not provide specific examples of the petitioner's creations that have influenced the field or otherwise constitute original artistic contributions of "major significance" in modern art. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

[REDACTED], the publisher of [REDACTED] located in [REDACTED], New York, stated:

I have been working in the visual arts in New York for over 35 years. . . . I have known [the petitioner] since 1992 to be a respectful, upstanding citizen, friend, and colleague.

For almost two decades [the petitioner] has been working closely with [REDACTED] and [REDACTED] I have promoted her artwork in print and online at [http://\[REDACTED\]](http://[REDACTED]) Her artwork is incredibly thought provoking and it has been my pleasure to offer her exhibition opportunities and full page articles in our magazine.

Mr. [REDACTED] states that he has promoted the petitioner's artwork and offered her exhibition opportunities, but he fails to provide specific examples demonstrating that the petitioner's original work is of major significance to the field. Although Mr. [REDACTED]'s comments indicate that the petitioner is building a reputation in the New York art community, there is no documentary evidence demonstrating that she has already significantly influenced other artists in the field, that any of her specific works are widely viewed as masterpieces of modern contemporary art, or that her original work otherwise equates to artistic contributions of major significance in the field.

[REDACTED], "a Turkish-born New York-based curator," stated:

I have choreographed and organized dozens of global exhibitions and events that explore everything from the intersection of abstraction and figuration to the significance of high and low art. My projects focus on artists, such as [the petitioner] who project an entirely different perspective within the cultural sphere of the art world.

* * *

[The petitioner's] work stands as evidence of her extraordinary qualities as an artist. Her work shows extremely high standards of artistic ability. Her artistic creation reflects a passion for life, growth, and compassion for human nature, a necessary quality which must be employed by an artist, and which comes naturally for [the petitioner].

In addition to her first-rate artistic talent in producing great works of art which can elevate and inspire people, [the petitioner] has also nurtured great respect in her relationships with all the people she has worked in collaboration with. She has successfully met all deadlines and has shown much self-discipline in the context of her work as well as proving that she is a reliable and indeed also extraordinary as a player for team-work necessary to implement a successful creative art project.

Ms. [REDACTED] points to the petitioner's "extraordinary qualities as an artist" and her "extraordinary" capability as a team player in artistic collaborations. Merely repeating the language of the statute, however, does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942, at *1, *5 (S.D.N.Y. 1997). Ms. [REDACTED] fails to provide specific examples of how the petitioner's artwork has significantly influenced the field of modern art or has otherwise risen to the level of original contributions of major significance in the field.

[REDACTED] Head of Section, United Kingdom and Americas, [REDACTED]
[REDACTED] Republic of Turkey, stated:

I have met [the petitioner] during my post (Oct. 2003 - Nov. 2006) as the Director of the [REDACTED] in New York. She applied to have an exhibition at the [REDACTED] Gallery which was a very nice opportunity for us to

promote her work as she is one of the extraordinary expressionist artists of our country. [The petitioner's] solo exhibition " [redacted] (in which she was inspired by the [redacted] [redacted] took place between dates 8-30 September 2006 in [redacted] New York). The exhibition was very successful. One of the press members ([redacted] commented "This passionate, sensitive, and generous artist soul clearly and freely lets her emotions flow into her paintings."

Her works simply have no barriers of culture and language and highly interactive with the people and environment. [The petitioner] contributes greatly to the community with her art. She is giving art classes to the children voluntarily and supports many charities. Her works are well known in Turkey and internationally. She made a special interactive performance for [redacted] which received prominent acclaim.

Ms. [redacted] comments on the petitioner's [redacted] exhibition at the [redacted] in New York, the multicultural appeal of the petitioner's work, the petitioner's art classes for children, and the petitioner's support for charities such as [redacted] but fails to provide specific examples of how the petitioner's work has substantially impacted the visual arts field, has influenced the work of other artists, or otherwise equates to an original contribution of major significance in the field.

[redacted] Director of the [redacted] in Turkey, stated:

[The petitioner's] uniqueness stems from the fact that she engages the viewer in an interactive display of her art and talent. [The petitioner] is passionate about engaging the audience. She is truly one-of-a-kind because she brought a new perspective, a new way of seeing and displaying art to Turkey. Her exhibitions are a complex entanglement of permanent art with fleeing ideas and thoughts. She has the viewer not only embrace the art but also the movement, understanding and production of that art. One of her goals in creating is to improve the situation of the things she is passionate about. She uses art to contribute to education and charitable causes, and to bring attention to things that are important to her.

[The petitioner's] success is extremely important because she succeeded with non-traditional art in a traditional society. Her work has made a lasting impact in the Turkish art world by paving the way for modern art and interactive displays. [The petitioner] broke through the typical stereotype of a Turkish artist and created a way to display her talents which transcends the barriers of culture and language. Through her, the public has developed a new-found appreciation for art. Her talent is limitless and she has had exhibitions throughout the world.

[The petitioner's] style is similar to [redacted] in that they are both unpredictable, innovative and instantly recognizable. [The petitioner] is seen as the Turkish [redacted] because they both extremely stand out in an already diverse universe.

Ms. [REDACTED] comments on the petitioner's uniqueness, passion, novel perspective, and other artistic qualities, but does not provide specific examples of how the petitioner's artwork has impacted the field in the same manner as that of [REDACTED] the influential artist to whom Ms. [REDACTED] specifically compares the petitioner, or of how the petitioner's work was otherwise majorly significant to the field. In addition, although Ms. [REDACTED] asserts that the petitioner's "work has made a lasting impact in the Turkish art world by paving the way for modern art and interactive displays," there is no documentary evidence showing the extent of the petitioner's influence on other modern artists in the field or indicating that the field has specifically changed as a result of her original work so as to demonstrate the major significance of her contributions. For example, the petitioner did not submit statistical evidence demonstrating a significance increase in interactive art as a result of her exhibitions. Notably, the promotional material for the petitioner's November 2012 exhibition at [REDACTED] which the petitioner provided, indicates that the petitioner's work "referenc[es] such artists as [REDACTED] and [REDACTED]" The record lacks promotional material for other artists suggesting that they reference the petitioner's style. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. It is not enough to be a talented artist and to have others attest to that talent. An individual must have demonstrably impacted her field in order to meet this regulatory criterion.

[REDACTED] Chief Executive Officer, Curator, and Design Consultant of [REDACTED] Turkey, stated:

I was blessed to see [the petitioner's] one of a kind work multiple times throughout my life and happy to know her. [The petitioner] has contributed greatly to the art world in Turkey and throughout the world. I cannot name another person who has such unique ability to invoke the passion and interest of the viewer as she does. Her art has the power to combine people and fix emotions.

[The petitioner] is a social artist. Her talent is not only creating the art, but also bringing the viewer into the shoes of the artist. [The petitioner] enjoys sharing her birth given talent with us and bringing color into our lives. In all the projects we have done together, she has managed to tie the viewers into her by contributing her liveliness and her fearlessness to even put her hand in the bucket of paint. I believe the reason for her international fame is because of her insightfulness and genuineness. [The petitioner] achieves to be a local in all parts and corners of the world through her art. She becomes one with the character of the place. Her art has a universal value. [The petitioner's] art is an important model for our children and new generations. We are happy she is working with us in our projects and will continue to cultivate hope in the future.

I fully believe that with support, she will play a very important and constructive role to bring messages of peace and love throughout the world.

Mr. [REDACTED] points to the petitioner's artistic qualities and creative talent, and asserts that the petitioner "has contributed greatly to the art world in Turkey and throughout the world," but he does not identify specific examples of the petitioner's works of art that have influenced the field or otherwise constitute original contributions of major significance in the field of modern art. Vague,

solicited letters from colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036. In 2010, the *Kazarian* court reiterated that the conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

[REDACTED], President of [REDACTED], a nonprofit contemporary art association in Rome, Italy, stated:

[The petitioner] has worked for distinguished organizations around the world. She participates in many international exhibitions and projects for internationally recognized organizations. She has shown his [sic] art in Rome, first at [REDACTED] to great acclaim with the presentation of the Turkey Ambassador at the [REDACTED] then in a great international exhibit name[d] [REDACTED] during last June 2012 at the [REDACTED] all curated by me, with the presentation of the President of [REDACTED] in Italy, Mr. [REDACTED]

I can confirm that [the petitioner] is an artist in high demand for his [sic] creative genius. I am certain that she will receive the same kind of acclaim for his [sic] art in all the Italy, Europe, and USA as she has received in the past at home and throughout the world.

Ms. [REDACTED] comments on the petitioner’s exhibitions at the [REDACTED] in Rome and “at the [REDACTED]” but does not explain how the petitioner’s artwork from the events has affected the field of modern art or otherwise equates to original contributions of major significance in the field. In addition, Ms. [REDACTED] asserts that the petitioner is “an artist in high demand” and that the petitioner will continue to receive acclaim for her work. The fact that the petitioner has participated in exhibitions and projects for various organizations and has garnered some degree of recognition for her art, however, does not automatically demonstrate that her work has had major significance in the field.

[REDACTED] Museum Manager and Board Chairman, [REDACTED] Turkey, stated:

[REDACTED] is a modern art museum operating under the [REDACTED] in [REDACTED] Turkey. We are Turkey’s biggest exhibition area with 13,000 square meters of space.

[The petitioner] is one of [REDACTED]’s most significant artists. More than 20 art pieces from [the petitioner] are maintained at our exhibitions and her work takes its place with other very well-known and valuable arti [sic], are included in our museum’s collection. In 2010, [the petitioner’s] exhibition titled [REDACTED] was received very positively and had more than 10,000 visitors.

We believe that [the petitioner’s] multidimensional understanding of art and interactive social and cultural projects with artists from all over the world makes a great contribution to the development of transnational cultural dialogues.

Mr. [REDACTED] asserts that the petitioner “is one of one of [REDACTED]’s most significant artists” and that more than twenty pieces of her art are maintained in the museum’s exhibitions. Again, the regulations contain a separate criterion for display of work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). Absent documentation of specific contributions that were of major significance in the field, display of the petitioner’s artwork in [REDACTED]’s exhibition area is not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v). For example, although Mr. [REDACTED] points out that the petitioner’s exhibition [REDACTED] was received very positively and had more than 10,000 visitors,” he does not provide specific examples of how [REDACTED] has influenced the work of other contemporary artists or otherwise constitutes an artistic contribution of major significance in the field.

[REDACTED] President of [REDACTED] the [REDACTED] a project of [REDACTED] stated:

[The petitioner] and I have worked on projects together for the benefit of whales and dolphins in the NYC area. . . . She is a unique soul who cares about animals and the environment and incorporates them into her artwork to benefit the world. [The petitioner] has managed to create a style of exhibition and creation which is unique and all her own. She follows the [REDACTED] which inspires her creativity. She has created a unique yet universal art style, with a global message that has the power to unite people, crossing language and cultural barriers, generation gaps, and genres.

Ms. [REDACTED] points to the petitioner’s unique style, but does not explain how the petitioner’s work has impacted the field of modern art at a level indicative of an artistic contribution of major significance in the field of modern art. Assuming the petitioner’s artistic skills are unique, the classification sought was not designed for alleviating skill shortages in a given field. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm’r 1998).

Ms. [REDACTED] further stated:

[The petitioner] has been involved in many exhibits, museums and galleries throughout the world, including an exhibit by our charity which was held at the [REDACTED] in New York. The exhibit, named [REDACTED] was created to bring attention to the beauty of whales in nature and to benefit the [REDACTED] working to protect whales in their own habitat. She created the works exhibited during this show by listening to the [REDACTED] This exhibit brought great recognition to our charity and we were able to raise \$1,000.00. The exhibit was also successful at bringing people together, at one with nature. I personally saw at least 100 attendees gain a newfound appreciation of this whale art and the beauty of the environment.

* * *

[The petitioner] has also been involved in international projects to distribute art and grow interest in art. For example, she was in [REDACTED] which set out to transcend

geographic political and cultural boundaries by distributing over 10,000 pieces of art around the world. Over 99 artists staged “trans-global exhibitions” where the pieces were displayed and then “handed out around the world in the guise of coasters to bars, cafes and restaurants.”

Ms. [REDACTED] mentions that the petitioner participated in the [REDACTED] exhibition at the [REDACTED] and helped to raise \$1,000.00. In addition, Ms. [REDACTED] comments that the petitioner was involved in [REDACTED] that displayed art pieces and then distributed them “in the guise of coasters to bars, cafes and restaurants.” Ms. [REDACTED] however, does not provide specific examples indicating that the petitioner’s artwork has affected the field of modern art, has influenced the work of other artists, or otherwise equates to a contribution of major significance in the field.

The opinions of the petitioner’s references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Thus, the content of the references’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an artist who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner’s artwork has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that she meets this regulatory criterion. *See Visinscaia*, 2013 WL 6571822, at *6, 8.

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

The petitioner submitted documentation showing that she has displayed her work in the field at artistic exhibitions or showcases and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vii). Accordingly, the director’s finding that the petitioner’s evidence meets this regulatory criterion is affirmed.

B. Summary

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

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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Although the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.³ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

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

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.

³ The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).