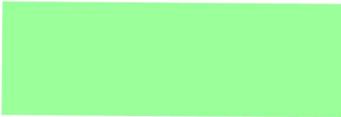




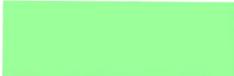
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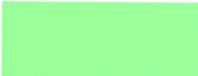
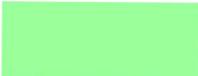
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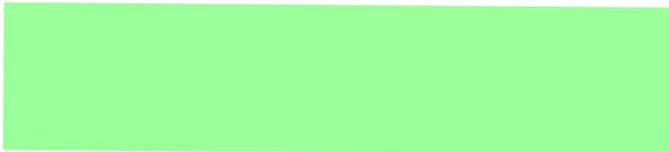
Office: TEXAS SERVICE CENTER

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 employment-based immigrant visa petition on July 2, 2014. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on July 25, 2014. The appeal will be dismissed.

According to the petition that the petitioner filed on March 31, 2014, the petitioner seeks classification as an alien of extraordinary ability in the arts, as an abstract landscape painter, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for this visa classification.

On appeal, the petitioner files a brief with no additional supporting documents. The petitioner asserts that she meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(iii), (v), (vii) and (viii). For the reasons discussed below, we agree with the director that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

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.

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) sets forth a multi-part analysis. First, a petitioner can demonstrate the alien's sustained acclaim and the recognition of the alien's achievements in the field through initial evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

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 requirements for an immigrant and non-immigrant alien of extraordinary ability *in the arts* are dramatically different. 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 at 8 C.F.R. § 204.5(h)(3) appear in the nonimmigrant regulations, 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 8 C.F.R. § 214(o), does not appear in 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.

B. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of 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, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The director concluded that the petitioner met this criterion. The evidence in the record does not support the director’s conclusion. We may deny an application or petition that does not comply with the technical requirements of the law even if the director 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); *see also Soltane v. U.S. Dep’t of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

The petitioner has submitted materials published in a number of publications, including [REDACTED] and [REDACTED]. Many of these materials, including materials published on [REDACTED], [REDACTED], [REDACTED], and [REDACTED] do not include information on the authors of the materials. In addition, the materials in [REDACTED] are advertisements for the [REDACTED], and the materials in the [REDACTED], [REDACTED] and [REDACTED] are gallery event listings. These types of materials are not published material about the petitioner and do not meet the plain language requirements of the criterion.

² We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

Moreover, the petitioner has not shown that the remaining published materials are about the petitioner as relating to her work. Rather, the materials either do not mention the petitioner by name, as is the case for the materials published in [REDACTED], [REDACTED] and [REDACTED], or the petitioner has not shown that the materials are published in professional or major trade publications or other major media, as is the case for the materials published in [REDACTED] and [REDACTED]. In her response to the director's request for evidence (RFE), the petitioner asserts that [REDACTED] is a "[g]eneral interest [publication] in the [REDACTED]" with 29,200 prints per week, and [REDACTED] is a "luxury home design, landscape, architecture and lifestyle magazine" with a circulation of 90,000. The petitioner has not shown that these publications, based on their nature or circulation, constitute professional or major trade publications or other major media.

Furthermore, the material in [REDACTED] is not about the petitioner, because it consists of a photograph of the petitioner in front of her work, with the caption: "[The petitioner] at her exhibit, [REDACTED], of new landscapes at the [REDACTED]. The exhibit runs until April 8." The petitioner has not shown that the photograph and its caption constitute material "about the alien . . . relating to the alien's work," as required under the plain language of the criterion. Similarly, some published materials in the record include photographs of the petitioner's work. The petitioner, however, has not shown that these photographs, which do not discuss the petitioner or her work, meet the plain language requirements under the criterion.

Accordingly, the petitioner has not presented published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

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

The director concluded that the petitioner did not meet this criterion. On appeal, the petitioner, relying primarily on three reference letters, asserts that she meets this criterion. The evidence in the record does not support the petitioner's assertion. Specifically, the petitioner has not shown that her work constitutes contributions of major significance in the field.

First, the petitioner has not shown that her involvement with the [REDACTED] including being selected as the artist for an inaugural solo exhibition at [REDACTED], [REDACTED], second location, is indicative of her contributions of major significance in the field. The appellate brief asserts that "Ms. [REDACTED] galleries only showcase works by [REDACTED] and international artists who have made a significance contribution to [REDACTED] art." Unsupported assertions in an appellate brief do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner points to no evidence in the record to support this conclusory

statement. Indeed, Ms. [REDACTED] does not make such an assertion in her letter. Rather, [REDACTED] states that “the [REDACTED] showcases contemporary art and represents over 300 artists internationally” and that the gallery is “known for identifying trends, coaching and exhibiting some of the most tremendous talents, and also for bringing these talents and their artwork to the attention of discerning collectors and emerging art enthusiasts alike.” Accordingly, the evidence in the record indicates that Ms. [REDACTED] considers the petitioner as one of the artists whose artwork is worthy of being exhibited at her gallery. The evidence, however, does not establish that the petitioner has made contributions of major significance in the field as a whole.

Similarly, the petitioner’s participation in the [REDACTED] Program, a collaborative project that involved [REDACTED], [REDACTED] and the [REDACTED] does not establish that the petitioner has made contributions of major significance in the field. The evidence shows that [REDACTED] chose some of the petitioner’s work to include in the program that wraps artwork around recycling bins in downtown [REDACTED] to beautify public spaces. The evidence shows that Ms. [REDACTED] considers the petitioner’s work to be worthy of exhibiting not only in her gallery, but also in public spaces. The petitioner’s participation in the program amounts to an exhibition of her work, which is something that many artists engage in, albeit in different venues. The petitioner’s participation in the program does not, however, establish that she has made contributions of major significance in the field, such that her work has fundamentally changed or significantly advanced the field. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (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).

The record includes other evidence showing that the petitioner has displayed her work in galleries and other venues. These displays, absent evidence that the petitioner’s work constitutes “contributions of major significance in the field,” are not sufficient to establish that the petitioner meets this criterion. The regulations contain a separate criterion regarding evidence of the display of the petitioner’s work, which is a criterion we conclude below that the petitioner meets. *See* 8 C.F.R. § 204.5(h)(3)(vii). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from display. As such, display of one’s work is not sufficient evidence under the contributions criterion absent evidence that the display represents contributions of “major significance in the field.” *Cf. Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d at 1115.² At issue in considering whether a display is a contribution of major significance is the impact the display has in the field. *Cf. Visinscaia*, 4 F. Supp. 3d at 134-35. The evidence in the record is insufficient to show that the petitioner’s display has had an impact consistent with contributions of major significance in the field.

Second, the reference letters from [REDACTED] Curatorial Assistant, Department of Modern and Contemporary Art, [REDACTED], do not establish that the petitioner meets this criterion. Ms. [REDACTED] authored two reference letters for the petitioner. According to her first letter, the

² In 2010, the *Kazarian* court reaffirmed its 2009 holding pertaining to contributions of major significance. 596 F.3d at 1122.

petitioner “has earned distinction and demonstrates a degree of skill (and recognition) substantially above that ordinarily encountered.” Ms. [REDACTED] states that the petitioner “is viewed by her peers as a leading figure in the art community. She is featured as a leading artist at pre-eminent galleries such as [REDACTED], [REDACTED], The [REDACTED], [REDACTED] and several others throughout the years. Many of her imagines are also found in the media.” Ms. [REDACTED]’s first letter does not specifically state what the petitioner has done that constitutes contributions of major significance in the field. Instead, the letter indicates that the petitioner’s work has been on display and has received praise and attention in the field, which are insufficient to show that she meets this criterion.

The petitioner filed a second, undated letter from Ms. [REDACTED] in response to the director’s RFE. According to the second letter, the petitioner’s work “meets the standard of outstanding significance due to her advancements in the field of abstract landscape painting.” Ms. [REDACTED] reference to “the standard of outstanding significance” relates to [REDACTED] classification of “moveable cultural property that is of outstanding significance (OS) and national importance (NI) in the public domain.” According to a December 2013 document entitled “Outstanding Significance and National Importance (OS/NI), Writing an Effective OS/NI Justification for the Certification of Cultural Property by the [REDACTED],” the OS/NI classification, unlike the exclusive classification that the petitioner seeks in this case, is given to an object, not a person. Moreover, the petitioner has submitted no evidence showing that the [REDACTED] [REDACTED] has specifically designated any of the petitioner’s work as OS/NI. In addition, the December 2013 document indicates that “outstanding significance” can be shown through the object’s “close association with [REDACTED] history or national life, its aesthetic quality, or its value in the study of the arts or science.” The petitioner has not shown that the “outstanding significance” definition, as applied to an object, is analogous or similar to, as the petitioner suggests on appeal, “original . . . contributions of major significance in the field,” as applied to a person who seeks to establish her extraordinary ability in a field of endeavor.

In her second letter, Ms. [REDACTED] also states that “Painters such as [REDACTED] and [REDACTED] have utilized [the petitioner’s] approach to a dappled representation, especially her palette. Both [REDACTED] and [REDACTED] have integrated a slightly more formal compositional approach to their landscape, but are clearly building on the influence of [the petitioner]. These artists are young [REDACTED] painters whose careers are rising.” Ms. [REDACTED] states that she has “noticed a general trend among artists to utili[z]e this trademark stylistic approach.”

Although Ms. [REDACTED] has identified two young, rising artists whose work the petitioner has influenced, Ms. [REDACTED] has not stated that the petitioner’s influence has been felt in the field as a whole. The petitioner has not shown that influencing two young, rising artists constitutes contributions of major significance in the field, as a whole, such that the petitioner’s work has fundamentally changed or significantly advanced the field. Ms. [REDACTED] conclusory statement that she has noticed “a general trend among artists to utili[z]e [the petitioner’s] trademark stylistic approach” without providing specific information in support of her conclusion, in addition to the two young, rising artists she has referenced, is insufficient to show that the petitioner meets this criterion.

Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In her appellate brief, the petitioner states that Ms. [REDACTED] “likened [the petitioner’s] abstract landscape paintings to that of the [REDACTED]” and that this statement “indicates that [the petitioner] is regarded as an artist of high caliber amongst prominent figures in the area of contemporary [REDACTED] art.” The petitioner’s assertion is not supported by Ms. [REDACTED] letter. Specifically, Ms. [REDACTED] second letter states:

. . . Looking at painters working before [the petitioner], many employed a more faithful rendering [of] their subject and utilized a more naturalistic palette (think green to represent trees, as an example). Many painters of generations working before [the petitioner], one might think back to the iconic landscape painters from the 1920’s, the [REDACTED], used a method of representation that slightly abstracted what was an obvious [REDACTED] landscape, whether it was a forest, mountain or lake. Painters in [REDACTED] to this day have been influenced by the [REDACTED] and have emulated their style.

Ms. [REDACTED] has not “likened” the petitioner’s work to that of the [REDACTED]. Rather, Ms. [REDACTED] states that the [REDACTED] came before the petitioner and their work still influences [REDACTED] artists today. Even if Ms. [REDACTED] has put the petitioner’s work on par with the work of the [REDACTED] this comparison alone, shows Ms. [REDACTED] overall opinion of the petitioner’s work, and does not specifically identify contributions that the petitioner has made that are of major significance in the field, as required under the plain language of the criterion.

Third, the demand of the petitioner’s work is insufficient to show that she meets this criterion. According to [REDACTED] President of [REDACTED], a publisher, manufacturer and licensor of exclusive works of art and framed art prints, the petitioner’s “images are extremely marketable to [the company’s] clients [The petitioner] has been a key artist included in [the company’s] many catalogues, and as a testament to her importance with [the] organization, she is listed as an artist on [the] website and has four dedicated pages as well as many images in several artistic categories. [The petitioner’s] work is in high demand. She has become one of [the company’s] top selling artists, with thousands of her images having been sold to clients across [REDACTED] and internationally.” According to an April 2009 article entitled “[REDACTED] has more than 2,000 exclusive images from some 200 artists. The evidence shows that the petitioner has contributed to the profitability of [REDACTED] This contribution, limited in scope, is not a contribution of major significance in the field. 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*, 4 F. Supp. 3d at 134-35 (D.D.C. 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).

Finally, on appeal, the petitioner has not specifically explained how the remaining reference letters in the record establish that she meets this criterion. These remaining reference letters, mostly from individuals who have purchased the petitioner's work, do not specifically identify what the petitioner has done that is considered contributions of major significance in the field. Rather, the reference letters state in a general manner that the petitioner is a high caliber artist who has received compensation for her work, which is insufficient to establish that the petitioner meets this criterion. Vague, solicited letters from colleagues or clients that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.⁴ *Kazarian*, 580 F.3d at 1036. The opinions of experts in the field are not without weight and have been considered. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done, evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. at 795; see also *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190); *Visinscaia*, 4 F. Supp. 3d at 134-35 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

Accordingly, the petitioner has not presented evidence of her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.
8 C.F.R. § 204.5(h)(3)(vii).

The director concluded that the petitioner met this criterion. The evidence in the record supports the director's conclusion. The petitioner has submitted evidence showing that her artwork has been on display at artistic exhibitions and showcases at [REDACTED], [REDACTED], [REDACTED], [REDACTED] the [REDACTED], [REDACTED] and [REDACTED].

Accordingly, the petitioner has presented evidence of the display of her work in the field at artistic exhibitions or showcases. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(vii).

⁴ In 2010, the *Kazarian* court reiterated that our 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.

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NON-PRECEDENT DECISION

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).

The director concluded that the petitioner did not meet this criterion. On appeal, the petitioner asserts that she meets this criterion because [REDACTED] selected the petitioner for its second location's inaugural solo exhibit in [REDACTED] and because [REDACTED] selected several of the petitioner's work to include in the [REDACTED]. The petitioner has not shown that she meets this criterion.

First, although the petitioner, as the artist of the solo exhibit, has performed a leading or critical role for the opening of [REDACTED], [REDACTED] second location, the petitioner has not shown that the event constitutes an organization or establishment. The [REDACTED], which hosted the event, is an organization or establishment. The petitioner, however, has not shown that the event itself is an organization or establishment, as the terms are used in the criterion. In the alternative, even if the petitioner has shown that the gallery opening event constitutes an organization or establishment, which she has not, the petitioner has not shown that the event had a distinguished reputation. The record includes evidence that [REDACTED] has a distinguished reputation, but lacks sufficient evidence showing that all [REDACTED] events, including the opening of [REDACTED], for which the petitioner has performed a leading or critical role, also have a distinguished reputation. Specifically, the petitioner has not shown that all events of an organization or establishment that has a distinguished reputation also have a distinguished reputation. According to [REDACTED] the owner and curator of the [REDACTED], the opening of [REDACTED] "was well attended by respected personalities in the community, and earned media attention and generated press." While the evidence shows that the event received some attention in the field, it does not establish that the event had a distinguished reputation.

Second, although the petitioner has shown that [REDACTED] has a distinguished reputation, she has not shown that she has performed either a critical or leading role for the gallery as a whole. According to Ms. [REDACTED], the petitioner's solo exhibit "[REDACTED]" received positive responses from [REDACTED] patrons and "resulted in a near sell out of [the petitioner's] work." Ms. [REDACTED] states that at the [REDACTED] opening of [REDACTED], the petitioner's "works were well received and most sold." Although Ms. [REDACTED] praises the petitioner's work and notes positive customer response to the petitioner's work, does not state that the petitioner has performed either a leading or critical role for the gallery. An art gallery, such as [REDACTED] is in the business of displaying and selling art from different artists. The fact that the petitioner has been one of the artists whose work [REDACTED] has displayed and sold, does not establish the petitioner has performed either a leading or critical role for the gallery. Indeed, according to a 2011 edition of [REDACTED], [REDACTED] "regularly rotates the works of 400 artists."

Third, the evidence in the record does not support the petitioner's assertion that the selection of her work for the [REDACTED] is indicative of her performing a leading or critical role for [REDACTED]. Ms. [REDACTED] states that the gallery selected several of the petitioner's work to include in the [REDACTED]. Ms. [REDACTED] indicates that "one of the bins that

featured [the petitioner's] work was chosen by the [redacted] executives to be placed directly across the street from the [redacted] and was visible from its entrance." The petitioner has not submitted evidence relating to how many artists [redacted] selected to participate in the program. According to a June 2008 letter from [redacted], Director of [redacted], the petitioner is not the only artist that [redacted] chose to participate in the program. The petitioner has also not submitted evidence relating to how being selected to participate in this program constitutes performing a leading or critical role for [redacted]. Specifically, the petitioner has not presented evidence showing that the program and the [redacted] are so inextricably tied that performing a leading or critical role for the program constitutes performing a leading or critical role for [redacted].

Fourth, the petitioner has not shown that she has performed a leading or critical role for the [redacted]. The petitioner has not provided information relating to how many artists were involved in the program. The petitioner has not shown that her role in the program, which included the work of an unspecified number of artists, is either leading or critical. The petitioner has not shown that every participating artist has performed either a leading or critical role for the program. According to Ms. [redacted] May 2013 letter, the petitioner's paintings "were featured prominently on bins in the downtown core of [redacted] including [redacted] financial district." Assuming *arguendo* that the placement of the petitioner's work is indicative of her leading or critical role for the [redacted], the petitioner has not shown that the program had a distinguished reputation. According to a January 2008 article from [redacted], the project involves "[redacted]" The petitioner has not submitted evidence relating to [redacted] that shows that an article in this publication is indicative of the program's distinguished reputation. Moreover, although [redacted], Chief Executive Officer (CEO), [redacted], indicates in the article that the project is an "award-winning program," he does not indicate what award(s) the program has won. The petitioner similarly has not provided any information relating to what award(s) the project has won or the reputation of the project outside of individuals and groups who were involved in the project.

Finally, the evidence in the record indicates that the petitioner has been involved with [redacted] and [redacted]. On appeal, however, the petitioner has not asserted that the role she has performed for these organizations or establishments meet this criterion. As such, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Accordingly, the petitioner has not presented 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).

C. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) “that the alien has sustained national or international acclaim and that his 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. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.⁵

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.

⁵ We maintain *de novo* review of all questions of fact and law. *See Soltane*, 381 F.3d at 145. In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).