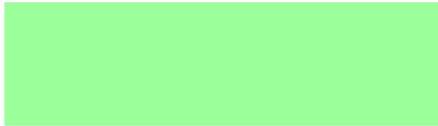




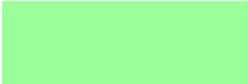
U.S. Citizenship
and Immigration
Services

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Date: **DEC 15 2014**

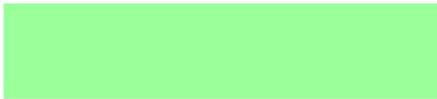
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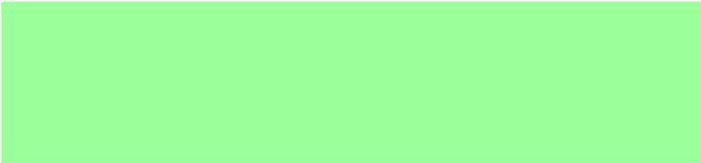
Petitioner:

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, Nebraska Service Center, denied the immigrant visa petition. The petitioner filed a motion to reopen and reconsider. The director reopened the matter and denied the petition again. The Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is currently before the AAO on a motion to reopen and reconsider. The motion is granted, our previous decision is affirmed, and the petition remains denied.

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 in the arts. 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 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").

In the July 3, 2014 decision dismissing the petitioner's appeal, we determined that the petitioner had not met at least three of the regulatory categories of evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Specifically, we affirmed the director's finding that the petitioner's evidence had satisfied the category of evidence at 8 C.F.R. § 204.5(h)(3)(vii), but found that the petitioner had not met any of the remaining regulatory criteria.

On motion, the petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii), (iv), (v), and (vii).

I. EVIDENTIARY CRITERIA¹

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.

In our appellate decision, we determined that the petitioner had not established eligibility for this regulatory criterion. The petitioner's motion points to three articles about him in [REDACTED], [REDACTED] and [REDACTED]. Regarding the named publications, our decision stated that the petitioner had not submitted "evidence such as circulation figures for the preceding newspapers to demonstrate that they qualify as major media."

The November 18, 1998 article about the petitioner in the Arts & Entertainment section of [REDACTED] is entitled "[REDACTED]." Again, as we noted in our appellate decision, the record does not contain a full copy of the article. Specifically, the second part of the article appearing "on page 2B" of the newspaper is not part of the record. On motion, the petitioner submits information about [REDACTED] and its publisher, [REDACTED] from the publisher's website. The submitted information indicates that [REDACTED]' line of twenty local community publications (including [REDACTED]) have a combined regional circulation of 601,485. The petitioner, however, did not submit information showing the specific circulation figures for [REDACTED]. Moreover, the information indicates the combined circulation is limited to 47 communities in [REDACTED]. As such, all of the publications are local to their communities, which is not consistent with a major media publication.

The December 7, 1998 article about the petitioner in [REDACTED] is entitled "[REDACTED]." On motion, the petitioner submits information about [REDACTED] from the online encyclopedia *Wikipedia*, but there are no assurances about the reliability of the content from this open, user-edited internet site.² See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to

¹ On motion, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

² Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . **Wikipedia cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on November 10, 2014, copy incorporated into the record of proceeding.

information for which *Wikipedia* is the source. Regardless, the content does not address the circulation or distribution of [REDACTED]. The petitioner also submits information from the website of [REDACTED], publisher of [REDACTED], stating:

[REDACTED] is published weekly . . . and is regarded as the oldest free newspaper in the United States. Having been founded by us in 1933 as the [REDACTED], it is a [REDACTED] newspaper that was truly ahead of its time. We're proud of this heritage that guides our principles today.

[REDACTED] covers the automotive corridor of [REDACTED] and [REDACTED]. It is distributed to [REDACTED] locations there, and [REDACTED] at the [REDACTED].

In [REDACTED], [REDACTED] covers the auto suppliers and international companies that comprise the [REDACTED], including [REDACTED] and [REDACTED] in nearby [REDACTED].

The preceding information from [REDACTED] is self-promotional and only provides current distribution information for [REDACTED], a local newspaper available to automotive centers in [REDACTED]. There are no objective circulation figures showing that the publication, now or when it operated as [REDACTED], is or was a form of major media.

The July 2011 article about the petitioner entitled "[REDACTED]" appeared in [REDACTED] and online at [REDACTED]. On motion, the petitioner submits information from the aforementioned website that states:

Newspaper [REDACTED] is the first [REDACTED] free newspaper in Chicago since 2001. Publishers - [REDACTED] and [REDACTED]. The newspaper reflects the political, cultural and social aspects of life in [REDACTED] [sic], USA, and the world. Our editorial staff consist of more than 20 journalists and corespondents [sic] from USA, [REDACTED] and the world. The newspaper is extremely popular among the [REDACTED] locally, USA, and around the world through subscription and our online edition at [REDACTED].

Also on motion, the petitioner also submits a July 31, 2014 letter from [REDACTED] a member of [REDACTED] editorial team, asserting that the newspaper is "largely circulated in Europe and the United States," but USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The information from [REDACTED] website and a member of its editorial team is vague and self-promotional and does not provide specific circulation figures for [REDACTED] or statistics showing the number of online visitors to [REDACTED]. USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not submitted objective evidence showing that [REDACTED] or [REDACTED] is a form of major media.

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

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

In our appellate decision, we determined that the petitioner had not established eligibility for this regulatory criterion. On motion, the petitioner resubmits an April 12, 2006 letter in the language from Professor [REDACTED], [REDACTED]. With regard to Mr. [REDACTED] letter, our decision noted that his letter was unaccompanied by a certified English language translation that met the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). With the current motion, the petitioner submits a properly certified English language translation of Mr. [REDACTED] letter that states:

The [REDACTED] [,] city of [REDACTED], as well as Professor [REDACTED] himself – rector of the [REDACTED] would like to express their special gratitude to [the petitioner] . . . for accepting our invitation to partake in the jurying of the theses of our students of the arts for the class of 2004-2005, and also for the lectures he has delivered in front of our [REDACTED] arts students.

* * *

Once again we would like to express our gratitude for your participation.

The petitioner's participation as a judge of the work of art students at the [REDACTED] [REDACTED] meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Accordingly, the petitioner has established that he meets this regulatory criterion.

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

In our appellate decision, we determined that the petitioner had not established eligibility for this regulatory criterion. The plain language of this criterion 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).

On motion, the petitioner requests “reconsideration of all the letters previously submitted,” but does not point to any specific letters or explain how our analysis for this regulatory criterion was in error. The petitioner contends that “the letters genuinely describe the originality and uniqueness of his work that qualify his work as an original contribution of major significance in the field.” The petitioner’s contributions, however, must be not only original but also of major significance.

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 (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).

In an April 28, 2011 letter, Professor [REDACTED], [REDACTED] described the petitioner’s artistic qualities, and pointed out that the petitioner’s artwork has been displayed outside of [REDACTED] and that it is appreciated in his country. Mr. [REDACTED] did not 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. It is not enough to be a talented artist and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion.

The May 2, 2011 letter from [REDACTED], Academician and Professor, [REDACTED] commented on the petitioner’s artistic style and creative talent, mentioned that the petitioner has opened galleries in Prague and Chicago, and asserted that the petitioner is “a phenomenon in modern art,” but did not identify specific examples of how the petitioner’s work has influenced the field or otherwise constitutes 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 v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d at 1122. In 2010, the *Kazarian* court reiterated that our conclusion that that petitioner did not meet the contributions criterion was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

In a May 23, 2006 letter, [REDACTED], a real estate businessman and art collector residing in Chicago, stated that he has amassed a collection of more than fifty of the petitioner’s paintings, that the petitioner has been “well received by the public,” and that the petitioner’s work has “sold extremely well.” Mr. [REDACTED] further stated that the petitioner “is well recognized within the European art world,” but he did not provide specific examples of the petitioner’s artworks that have influenced the field or otherwise constitute original artistic contributions of “major significance” in modern art. Again, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. at 15. In addition, Mr. [REDACTED] commented on the quality of the petitioner’s artwork, and stated that it “will continue to escalate in value” and that the petitioner “will continue to gain recognition in the United States.” Speculation about the possible future impact of the petitioner and his work is not evidence, and cannot establish eligibility for this regulatory criterion. 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). There is no documentary evidence demonstrating that the petitioner has significantly influenced other artists in the field, that any of his specific works are widely viewed as masterpieces of modern contemporary art, or that his original work otherwise equates to artistic contributions of major significance in the field.

In an April 8, 2006 letter addressed to the petitioner, [REDACTED] Executive Director, [REDACTED] Michigan, thanked the petitioner for exhibiting his work at that gallery. With regard to the petitioner’s participation in exhibitions at the [REDACTED] and other art venues, 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 in the field, 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.

In addition, Mr. [REDACTED] commented that “[m]any clients have purchased several of [the petitioner’s] works for their collections” and that the [REDACTED] has “placed over 25 original paintings in homes and offices in our community.” Although Mr. [REDACTED] statements indicate that his gallery has sold many of the petitioner’s paintings, there is no evidence demonstrating that having one’s artwork purchased by others equates to original contributions of major significance in the field. Rather, it demonstrates only that the petitioner has the ability to earn a living as an artist. The plain language of this criterion requires that the petitioner’s contributions be “of major significance in the field” rather than limited to the galleries with which he is affiliated or his art buyers. See *Visinscaia*, 4 F.Supp.3d at 134 (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).

Mr. [REDACTED] further stated that the petitioner received “local media” coverage in which he was compared to “Picasso and Miro.” Mr. [REDACTED] however, did not provide specific examples of how the petitioner’s artwork has impacted the field in the same manner as that of Picasso and Miro, the influential artists to whom the local media specifically compared the petitioner, or of how the petitioner’s work was otherwise of major significance to the field. 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 his original work so as to demonstrate the major significance of his contributions.

In a May 28, 2009 letter, [REDACTED], an art collector residing in Singapore, asserted that the petitioner “established himself as one of the leading artists in Europe,” but Mr. [REDACTED] did not explain how the petitioner’s artwork has specifically affected the field of modern art or otherwise equates to original contributions of major significance in the field. Again, USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. at 15. In addition, Mr. [REDACTED] asserted that the petitioner’s “paintings have grown at least ten times” in value “compared to when he first came out as a painter.” Mr. [REDACTED], however, did not provide any specific dollar amounts or appraisal information to support the claim. 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 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Regardless, the fact that the petitioner’s paintings have grown in value since he began painting several decades ago does not demonstrate that his work has had major significance in the field. Notably, the regulations view remuneration as a separate criterion. 8 C.F.R. § 204.5(h)(3)(x). The petitioner does not claim to meet that criterion and has not submitted evidence of his actual remuneration as well as evidence of what constitutes a significantly high remuneration in his field.

Mr. [REDACTED] further stated that the petitioner's work has been included in "many private collections all over the world" and in the Professor [REDACTED] Art Collection owned by the government of Germany. Additionally, Mr. [REDACTED] mentioned the petitioner's gallery exhibitions in [REDACTED] and [REDACTED]. 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 various collections and exhibitions is not sufficient evidence under this criterion. Mr. [REDACTED] did not provide specific examples of how the petitioner's artwork has influenced the work of other contemporary artists or has otherwise impacted the field of modern art at a level indicative of artistic contributions of major significance in the field.

With the current motion, the petitioner submits three new recommendation letters.

In a July 25, 2014 letter, [REDACTED] states:

[The petitioner] is one of those rare exceptions in contemporary art, who carry with them an authentically plastic poetry, combining within itself the purity of astonishing sensitivity with the sharpness of an expressive, contemporary, stylistic painting.

[The petitioner's] style is distinctive and unparalleled - innovative for its use of pure oil paint - combined with the incorporation of graphic lines whilst constructing the composition.

In an age of total information, when the world of art can be viewed in its entire historical development and when most artists are in touch either with art's classic, or its alternative forms - the artistry of [the petitioner], with its exuberant irony and vitality keeps bringing us back to one human goodwill.

Mr. [REDACTED] comments on the petitioner's artistic qualities and style, but does not provide specific examples of how the petitioner's work has affected contemporary art at a level indicative of original artistic contributions of major significance in the field.

The July 31, 2014 letter from [REDACTED] Head of [REDACTED] and an Associate Professor with the [REDACTED] states:

I have known [the petitioner] in the last four years as a brightly talented person that is extremely devoted to his art. Although his paintings bear resemblance to such art schools as expressionism and fauvism, they display his own distinct style that is nowadays recognized by many collectors as [the petitioner's] style. He has mastered virtuosily [sic] the oil technique, a painstaking process that requires years of patience and hard work. Exhibiting his art since early age, [the petitioner] quickly has made a name for himself. His art has been regarded as "one of a kind" and he is among the top in the field in Europe and the U.S.

[The petitioner] has contributed greatly to the overall success of [REDACTED] art in the US as well, taking part in our art shows and various activities. His extraordinary skills as an artist have drawn the attention of the mass media of the [REDACTED] abroad. An article

about him could be found in the largely circulated in Europe and the United States newspaper ‘[REDACTED]’ speaking fondly about his talent and contributions.

In conclusion, I would like to say that [the petitioner’s] art constitutes, without a doubt, an original artistic contribution of major significance in the field of the contemporary art.

Mr. [REDACTED] comments that the petitioner’s paintings have a “distinct style that is nowadays recognized by many collectors,” but he does not provide specific examples of the petitioner’s artworks that have influenced the field in a major way or otherwise equate to original contributions of major significance in modern art. In addition, Mr. [REDACTED] asserts that the petitioner “is among the top in the field,” that the petitioner has “extraordinary skills as an artist,” and that his art constitutes “an original artistic contribution of major significance in the field of the contemporary art.” Merely repeating the language of the statute or regulations, 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.). Mr. [REDACTED] a member of the editorial team of [REDACTED] also mentions that the publication reported on the petitioner’s talent and contributions. The regulations, however, include a separate criterion for “[p]ublished material about the alien.” 8 C.F.R. § 204.5(h)(3)(iii). Mr. [REDACTED] further states that [REDACTED] is “largely circulated in Europe and the United States,” but, as previously discussed, USCIS need not rely on vague and unsubstantiated claims or self-promotional material from the newspaper’s website. Accordingly, the article in [REDACTED] is not sufficient to demonstrate that the petitioner’s artwork rises to the level of original contributions of major significance in the field.

In a July 23, 2014 letter, [REDACTED], Owner of [REDACTED] Czech Republic, states:

I have known [the petitioner] since [REDACTED], when I was invited by him to exhibit my artwork in his art gallery located at [REDACTED]. [The petitioner] is one of the first artists to open his own art gallery in [REDACTED] immediately following the democratic processes in the Czech Republic. Prior to Czech democracy, art was exclusively presented in government-owned galleries and the Czech art scene altogether was extremely limited. [The petitioner] has paved the way for other private-owned art galleries to open, making him a pioneer and innovator of the art business scene in Prague. [The petitioner’s] gallery has encouraged many foreign as well as Czech artists to break the tradition and the way art was sold in the Czech capital, making him an important contributor to the city of Prague which today has become a major trading center for art in Europe. Some galleries that were founded following the opening of the [the petitioner’s] Art Gallery in Prague are: [REDACTED] etc. To this day, 15 years later, I own and operate my own art gallery [REDACTED] as well.

Mr. [REDACTED] asserts that the petitioner was “one of the first artists to open his own art gallery in [REDACTED] immediately following the democratic processes in the Czech Republic” and that the petitioner “paved the way for other private-owned art galleries to open.” Although the petitioner may have been among the first artists to open a privately-owned gallery in Prague following the Czech Republic’s democratization, there is no documentary evidence showing that a substantial number of

new art galleries implemented the petitioner's specific practices and innovations or that his work had otherwise risen to the level of contributions of major significance in the visual arts field. Moreover, the petitioner seeks classification as an alien of extraordinary ability in the arts rather than in business. Accordingly, the petitioner has not adequately explained how his work as a small business owner and entrepreneur is probative evidence of his artistic contributions. Regardless, Mr. [REDACTED] does not explain how the petitioner's work has substantially affected the visual arts community outside of Prague or was otherwise indicative of original artistic contributions of major significance in the field. The plain language of this regulatory criterion requires that the petitioner's contributions be "of major significance in the field" rather than limited to a few art galleries in the same municipality where the petitioner opened his art gallery.

The petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 17. In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). 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 petitioner's eligibility. *Id.* *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"). 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 he meets this regulatory criterion.

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

In our appellate decision, we determined that the petitioner had established eligibility for this regulatory criterion. The petitioner submitted documentation showing that he has displayed his 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, we reaffirm our finding that the petitioner's evidence meets this criterion.

II. 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.

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.³

Our previous decision dismissing the appeal will be affirmed 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 July 3, 2014 decision is affirmed and the petition remains denied.

³ We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep’t of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). 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).