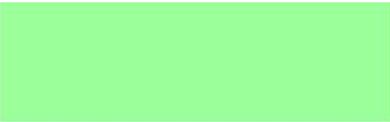


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)

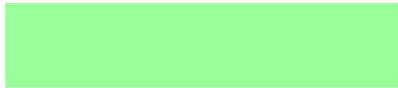


DATE: **JUL 23 2014**

Office: NEBRASKA 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. We rejected the subsequent appeal. The matter is before us on a motion to reopen. The motion to reopen will be granted, and our previous decision will be withdrawn. The petition is denied.

The director denied the petition on September 1, 2010. The petitioner filed an appeal of that decision on October 5, 2010, 34 days after the decision was issued. We rejected the appeal as it was untimely filed. See 8 C.F.R. §§ 103.3(a)(2)(i) and 103.3(a)(2)(v)(B)(1). The petitioner filed a motion to reopen that decision based on the claim of ineffective assistance of prior counsel in accordance with *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). On motion, the petitioner complied with the requirements set forth in the *Matter of Lozada*. The motion to reopen will be granted, our previous decision rejecting the appeal will be withdrawn, and a new decision dismissing the appeal will be entered into the record.<sup>1</sup>

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. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim. On motion, the petitioner claims to meet at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

## I. LAW

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

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

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

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

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

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<sup>1</sup> The petitioner was first represented by [REDACTED]. On appeal, the petitioner was represented by [REDACTED]. When the petitioner filed the appeal, he indicated that a brief would be submitted to us within 30 days. On October 29, 2010, Ms. [REDACTED] requested an additional 30 days to submit a brief and/or additional documentation. The record of proceeding does not reflect that a brief and/or additional documentation was ever submitted in support of the appeal.

(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. 723 101<sup>st</sup> 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 sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.<sup>2</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that our 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 we 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 we concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, we 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. AREA OF EXPERTISE

In Part 6 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed his job title as "music director." In addition, the petitioner indicated his job description as "conducts, directs, plans,

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<sup>2</sup> Specifically, the court stated that we 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).

and leads instrumental and/or vocal performances.” In the petitioner’s cover letter accompanying the petition, however, the petitioner indicated that he was seeking classification as a violinist. In response to the director’s request for evidence (RFE) pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner claimed that he “anticipated” to be a music director, but he is seeking classification as an alien of extraordinary ability as a violinist. On motion, the petitioner claims that his area of expertise was mischaracterized by his first attorney by claiming that he was seeking classification as a music director instead of as a violinist. On motion, the petitioner clarifies that he seeks classification as a violinist. Therefore, the petitioner must rely on his accomplishments as a violinist to meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3) rather than as a music director. The statute and regulations require the petitioner’s national or international acclaim to be sustained and that he seeks to continue work in his area of expertise in the United States. Sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. § 204.5(h)(3) and (5).

### III. ANALYSIS

#### A. Translations

Although the petitioner submitted English language translations, the translations are not certified, and some are partial or abbreviated translations. The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which 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.

As cited above, the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires that any foreign language document that is submitted to USCIS must be accompanied by a full and certified English language translation. The petitioner did not comply with the regulation at 8 C.F.R. §103.2(b)(3). Accordingly, the translations have no probative value and will not be considered in this proceeding.

#### B. Primary Evidence

The regulation at 8 C.F.R. § 103.2(b)(2) provides in pertinent part:

(i) The non-existence or other unavailability or required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the fact at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who

have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits.

### C. Wikipedia

A review of the record of proceeding reflects that the petitioner submitted screenshots from *Wikipedia*. As there are no assurances about the reliability of the content from this open, user-edited Internet site, information from *Wikipedia* will be accorded no evidentiary weight. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008).<sup>3</sup>

### D. Evidentiary Criteria<sup>4</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” It is the petitioner’s burden to establish that the evidence meets every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor, which, by definition, means that they are recognized beyond the awarding entity.

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<sup>3</sup> See also the online content from [http://en.wikipedia.org/wiki/Wikipedia: General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on June 11, 2014, and copy incorporated into the record of proceeding:

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.

<sup>4</sup> On motion, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

The record of proceeding reflects that the petitioner claims eligibility for this criterion based on the following:



Regarding items 1 – 4, the petitioner submitted foreign language documents without any certified English language translations pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), and the petitioner did not submit any other primary evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(2) regarding his receipt of the purported prizes or awards. Therefore, the petitioner did not demonstrate his “receipt” of prizes or awards. Moreover, the petitioner did not establish that his purported prizes or awards are nationally or internationally recognized for excellence in the field consistent with the plain language of this regulatory criterion. Although the petitioner submitted screenshots regarding the [REDACTED] Dr. [REDACTED]

[REDACTED] and the [REDACTED], the petitioner did not submit any documentary evidence regarding the significance of the prizes or awards, so as to demonstrate that they are nationally or internationally recognized for excellence in the field. Regarding the petitioner’s participation in a master course at the [REDACTED], the petitioner submitted a screenshot reflecting the conditions for participation; however there is no evidence demonstrating that the petitioner’s participation equates to “prizes or awards,” and the petitioner did not submit any documentary evidence establishing his participation is nationally or internationally recognized for excellence in the field.

Regarding the prize at the [REDACTED] the petitioner submitted a foreign language document without a certified English language translation pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner did submit, however, a letter from [REDACTED] who confirmed that the petitioner won his competition. Although the petitioner submitted screenshots regarding [REDACTED] including screenshots from *Wikipedia*, the petitioner did not submit any documentary evidence reflecting that his prize is nationally or internationally recognized for excellence in the field.

Regarding the prize at the [REDACTED] the petitioner submitted a certified English language translation evidencing his receipt of the prize. The petitioner also submitted a document regarding the academy and a screenshot from [REDACTED] that lists the previous winners and provides the prize's selection criteria; however the documentary evidence does not reflect whether the prize is nationally or internationally recognized for excellence in the field.

On motion, the petitioner additionally claims that he won the bronze medal at the [REDACTED]

[REDACTED] Besides the third prize at [REDACTED] a review of the record of proceeding does not reflect that the petitioner previously claimed these prizes, awards, or selections for this criterion at either the initial filing of the petition or in response to the director's RFE. Moreover, the record of proceeding does not contain any documentary evidence to support the petitioner's assertions that he received the prizes or awards, including the third prize at the [REDACTED]

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, the petitioner did not submit any documentary evidence demonstrating that any of these awards are nationally or internationally recognized for excellence in the field.

Finally, on motion, the petitioner claims that since he filed his petition, he also won second prize at the [REDACTED]. The petitioner did not submit any documentary evidence to support his assertion. 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. Regardless, 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. Further, the petitioner did not submit any documentary evidence establishing that prize is nationally or internationally recognized for excellence in the field.

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner demonstrate his receipt of nationally or internationally recognized prizes or awards for excellence in his field. The petitioner did not establish that he has received the claimed prizes or awards, and/or that they are nationally or internationally recognized prizes or awards for excellence in the field.

Accordingly, the petitioner did not establish that he meets this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

On motion, the petitioner does not further claim eligibility for this criterion. Therefore, the petitioner abandoned this issue. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Nonetheless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation. In response to the director’s RFE, the petitioner claimed eligibility for this criterion based on his purported memberships with the

Regarding [REDACTED] the petitioner submitted a screenshot from [REDACTED] reflecting that [REDACTED] “is a membership organization for string and orchestra teachers and our players, helping them to develop and refine their careers.” The petitioner did not submit any documentary evidence supporting his assertion that he is a member of [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, the screenshot reflects the mission of [REDACTED] without providing any evidence of [REDACTED] membership requirements, so as to establish that it requires outstanding achievements its members, as judged by recognized national or international experts in their disciplines or fields.

Regarding [REDACTED] the petitioner submitted a screenshot from [REDACTED] and a recommendation letter from [REDACTED] Director of [REDACTED] who stated that the petitioner “has coached groups at [REDACTED] and provided sectionals as well as Violin Performance Classes and Master Classes for our students.” However, Mr. [REDACTED] did not state that the petitioner is a member of [REDACTED] and the petitioner did not submit any other documentation establishing that he is a member of [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, the screenshot reflects the benefits of [REDACTED] without providing any evidence of [REDACTED]

membership requirements, so as to demonstrate that it requires outstanding achievements its members, as judged by recognized national or international experts.

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner has memberships with associations that require outstanding achievements. The petitioner did not demonstrate that he is a member of the associations and that they are associations requiring outstanding achievements for membership, as judged by recognized national or international experts.

Accordingly, the petitioner did not establish that he meets this criterion.

*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 plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the [REDACTED] nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>5</sup> Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

On motion, the petitioner claims that he has been “profile[d] in various media outlets throughout the U.S. Europe and South America.” A review of the record of proceeding reflects that the petitioner submitted numerous articles that did not contain certified English translations as required pursuant to the regulation at 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii). Moreover, it appears that several of the translations were only partially translated, such as the articles entitled [REDACTED]

[REDACTED] For these reasons alone, the translations have no probative value. Furthermore, most of the translations reflect material about concerts and competitions that mention the petitioner but are not about the petitioner. For example, the translation for the article entitled [REDACTED] is about a concert in the Golden Hall of the Augsburg Conservatory, and the translation for the article entitled [REDACTED] is about the XXII International Competition for Musical Performance. Although the petitioner is mentioned as a performer or competitor, the articles are about the concerts and competitions rather than about the petitioner. Articles that are not about the petitioner do not meet this regulatory criterion. See,

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<sup>5</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the [REDACTED] but in a section that is distributed only in [REDACTED] County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

In addition, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material.” The majority of the petitioner’s translations do not include the date and/or author of the material. For instance, the translation for the article entitled [REDACTED] did not contain the date of the article, and the translation of the article entitled [REDACTED] did not contain the author of the article.

Further, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “in professional or major trade publications or other major media.” In response to the director’s RFE, the petitioner submitted a list of publications with circulation statistics and provided the website addresses for the publications. The petitioner did not submit the screenshots of the websites and did not indicate the source of the circulation statistics. There is no evidence supporting the petitioner’s assertions. 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. Moreover, even if the circulation statistics originated from the publications, the petitioner did not submit independent, object evidence demonstrating that the publications are professional or major trade publication or other major media. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine’s status is not reliable evidence of major media).

Finally, the petitioner submitted four articles that were published in the English language:

[REDACTED] None of the articles are about the petitioner relating to his work; rather the articles are about concerts in which the petitioner is mentioned as one of the performers. Again, articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*7. Moreover, the petitioner did not include the author for the [REDACTED] article. Finally, the petitioner did not submit any documentary evidence, and they were not included in his compiled list mentioned above, demonstrating [REDACTED] and [REDACTED] are professional or major trade publications or other major media.

As discussed above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” The petitioner’s documentary evidence does not reflect published material about him relating to his work in professional or major trade publications or other major media.

Accordingly, the petitioner did not establish that he meets this 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.*

On motion, the petitioner does not contest the decision of the director or further claim eligibility for this criterion. Therefore, the petitioner abandoned this issue. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n. 2; *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*9.

Nevertheless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.” A review of the record of proceeding reflects that at the initial filing of the petition, the petitioner claimed eligibility for this criterion based on a workshop he created to teach violin and viola players, and the petitioner submitted promotional material and an application. Serving as a teacher to instruct students does not constitute participation as a judge of the work of others in the field. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually. Teaching in a classroom setting does not meet the elements of this criterion.

Moreover, in response to the director’s RFE, the petitioner claimed that he served as a judge at the [REDACTED]. The petitioner submitted a pamphlet/brochure regarding the festival that listed the petitioner as an invited faculty member. The documentation does not, however, describe the petitioner’s responsibilities at this festival or otherwise indicate that the petitioner served as a judge. The petitioner did not submit any documentation to support his assertion. 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.

The petitioner also claimed that he was going to be a judge at the upcoming [REDACTED] and the petitioner submitted a brochure/application for the festival and screenshots from [REDACTED] listing the petitioner as one of the violin/viola professors. None of the documentation indicates that the petitioner was to be a judge at the festival. 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. Regardless, the petitioner’s intention to serve as a judge is not evidence of his actual participation as a judge of others’ work. Even if the petitioner demonstrated that he participated as a judge, which he did not, 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. at 49. 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. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114 that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

For the reasons discussed above, the petitioner did not demonstrate that he served as a judge of the work of others in the same or an allied field of specification for which classification is sought at the time of the filing of the petition.

Accordingly, the petitioner did not establish that he meets this requirement.

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

The plain language of the regulation 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 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 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

The petitioner submitted recommendation letters that praised him for his talents and skills. For instance, [REDACTED] stated that the petitioner “is one of the outstanding violinists of today - he possess [sic] all the necessary ingredients: a beautiful tone, excellent technique, and imaginative musicianship.” [REDACTED] stated that he has “consistently been impressed with [the petitioner’s] extraordinary talent, skill, and work ethic.” Furthermore, [REDACTED] stated that the petitioner “proved to be an outstanding violinist.” In addition [REDACTED] stated that the petitioner “proved to be an outstanding violinist and a mature young artist in concerts and international competitions.” Further, [REDACTED] stated that the petitioner “possesses a big sound, maintains highest technical standards, and has an exceptional large repertoire.” Also, [REDACTED] stated that the petitioner “is an artist of extraordinary ability.” Finally, [REDACTED] stated that the petitioner “has had a stellar career as a violin soloist.”

None of the letters, however, indicated how the petitioner’s skills or talents are original contributions of major significance in the field. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner’s skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Assoc. Comm’r 1998).

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 a violinist who has made original contributions of major significance in the field. *See also Visinscaia*, CV No. 13-223, at \*1, \*6 (D.D.C. Dec. 13, 2013) (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Although those familiar with the petitioner's work generally describe it as "extraordinary," there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. Vague, solicited letters that repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, \*1, \*5 (S.D.N.Y. Apr. 18, 1997). Without supporting evidence, the petitioner has not met his burden of establishing his present contributions of major significance in the field.

Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that he meets this criterion.

Accordingly, the petitioner did not establish that he meets this criterion.

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

On motion, the petitioner does not further claim eligibility for this criterion. Therefore, the petitioner abandoned this issue. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n. 2; *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*9 (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Notwithstanding the above, the plain language of the regulation requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." The petitioner is a violinist. When he is playing the violin, he performs before an audience. As a performing artist, it is inherent to his occupation to perform. If we accept that a performance artist like the petitioner meets this criterion, it would render the regulatory requirement that the petitioner meet at least three criteria

meaningless as this criterion would effectively be collapsed into the criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The interpretation that this criterion is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ, at \*7 (upholding an interpretation that performances by a performing artist do not fall under this criterion).

Therefore, while the petitioner's performances have evidentiary value for other criteria, they cannot serve to meet this criterion. Instead, as the petitioner's performances are more relevant to the leading or critical role criterion set forth at the regulation at 8 C.F.R. § 204.5(h)(3)(viii) and the commercial success criterion set forth at the regulation at 8 C.F.R. § 204.5(h)(3)(x), they will be discussed separately within the context of those criteria.

Accordingly, the petitioner did not establish that he meets this criterion.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The plain language of the regulation requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.”

The petitioner submitted various concert programs and other documentation evidencing his concerts for numerous orchestras and ensembles. For instance, the petitioner has performed for the

There is no indication from a review of the documentary evidence that the petitioner performed in a leading or critical role. For example, the documentary evidence does not reflect that the petitioner was featured or received top billing in any of the concerts consistent with the meaning of leading or critical. The petitioner did not submit evidence showing his position in relation to that of the other musicians, or to demonstrate how the petitioner's roles within these concerts differentiated him from the other musicians. As the petitioner is a violinist, it is expected that the petitioner will perform.

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires that the petitioner perform “for organizations or establishments that have a distinguished reputation.” The petitioner did not submit any documentary evidence regarding the reputation of any of the orchestras or ensembles, so as to demonstrate that they have distinguished reputations consistent with the regulatory criterion.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” The burden is on the petitioner to establish that he meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a

leading or critical role for organizations or establishments that have a distinguished reputation, the petitioner has not established that he meets the plain language of this regulatory criterion.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The plain language of the regulation requires “[e]vidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.”

At the initial filing of the petition, the petitioner claimed that his work “has also been featured on compact disc” and submitted a compact disc entitled, [REDACTED]. As this regulatory criterion requires evidence of commercial successes in the form of “box office receipts” or “sales,” the petitioner’s submission of a compact disc reflecting his performance without sales data for that compact disc does not meet the plain language of this regulatory criterion.

In response to the director’s RFE, the petitioner claimed eligibility based on “reviews of his performances over the years to sold-out crowds in Europe, South America, and the United States.” Although the petitioner submitted programs, advertisements, and other promotional concert material of his performances, none of the documentation supports the petitioner’s assertion that he performed to sold-out crowds. 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. Furthermore, the petitioner did not submit any documentary evidence reflecting his commercial successes in the form of box office receipts as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x).

Similarly, on motion, the petitioner claims that he performed “as a soloist on five continents” and has “produc[ed] and perform[ed] engagements at over 200 concerts since 2002.” Again, the petitioner did not submit any documentary evidence of his commercial successes consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x).

Accordingly, the petitioner did not establish that he meets this criterion.

#### E. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types 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. While we conclude 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, we need not explain that conclusion in a final merits determination.<sup>6</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types 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 motion is granted. The petition remains denied.

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<sup>6</sup> We conduct 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, 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* 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).