



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 29 2014** Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner, a jazz musician (bassist), 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.

On appeal, the petitioner submits a brief and additional evidence. In the brief, the petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (v), (vii), and (viii).

I. LAW

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

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

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

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

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

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

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

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

through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 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.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

The court stated that 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. ANALYSIS

A. One-time Achievement

The 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, specifically a major, internationally recognized award.

The petitioner submitted a “list of 2011 Juno nominations” showing that the eight-song album [REDACTED] by [REDACTED] was nominated for “Contemporary Jazz Album of the Year.” In addition, the petitioner submitted the compact disc album cover for [REDACTED] indicating that he performed bass on Mr. [REDACTED] album and composed one song entitled [REDACTED]. Although the petitioner was the bassist and composer on the album, his name is not identified with Mr. [REDACTED] on the list of Juno nominees. Unlike other music groups that were listed as Juno nominees (such as [REDACTED] for their album [REDACTED] as “Album of the Year”), Mr. [REDACTED] not the entire band, was the listed nominee for “Contemporary Jazz Album of the Year.”

¹ 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).

The Juno nomination received by Mr. [REDACTED] album does not constitute the petitioner's receipt of a major, internationally recognized award. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. Although an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the petitioner's field as one of the top awards in that field.

In the appeal brief, the petitioner states:

If [the petitioner] had received the JUNO award based on this nomination, it would have qualified as a one-time achievement; a major, internationally recognized award as described in 8 C.F.R. § 204.5(h)(3).

However, his nomination for such a major international award does not fall into any of the listed criteria, but it is comparable to both receipt of a one-time major award, and receipt of a lesser nationally or internationally or internationally recognized prize.

The regulation at 8 C.F.R. § 204.5(h)(4) provides the petitioner an opportunity to submit comparable evidence to establish eligibility if the ten categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) – (x) do not readily apply to his occupation. There is, however, no comparable evidence for the one-time achievement of a major, international recognized award. Regardless, the petitioner has not established that the categories of evidence at 8 C.F.R. § 204.5(h)(3) criteria are not readily applicable to his occupation and that garnering a nomination is comparable to receiving a major, internationally recognized award. For instance, the existence of Juno and Grammy awards in multiple jazz categories demonstrates that the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) is readily applicable to jazz musicians. Moreover, we cannot conclude that receiving a nomination is of the same caliber of evidence as actually winning an award.

In this instance, the petitioner has failed to demonstrate that Mr. [REDACTED] Juno nomination constitutes evidence of the petitioner's receipt a major, internationally recognized award, or that the nomination meets the comparable evidence provision at 8 C.F.R. § 204.5(h)(4). Accordingly, the petitioner has failed to demonstrate evidence of a qualifying one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

B. Evidentiary Criteria²

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

As previously discussed, the petitioner submitted a “list of 2011 Juno nominations” showing that [REDACTED] album was nominated for “Contemporary Jazz Album of the Year.” Although the petitioner performed on the album and composed one of its songs, his name is not identified with Mr. [REDACTED] on the list of Juno nominees. Regardless, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of receipt of nationally or internationally recognized “prizes or awards,” not receipt of only a nomination. Earning a nomination does not equate to receipt of a prize or an award.

In the appeal brief, the petitioner asserts that the Juno nomination Mr. [REDACTED]’ album received is comparable to the petitioner’s receipt of a lesser nationally or internationally or internationally recognized prize. Where an individual is simply unable to satisfy the plain language requirements of the categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. The petitioner has not explained why the regulatory criteria 8 C.F.R. § 204.5(h)(3)(i) – (x) are not readily applicable to jazz musicians. Moreover, the petitioner has not established that his occupation is one in which there are no nationally or internationally recognized prizes or awards for excellence in the field. Furthermore, even if the petitioner were to demonstrate that he is eligible for the provisions of the regulation at 8 C.F.R. § 204.5(h)(4), which he has not, the petitioner has not established that the Juno nomination that Mr. [REDACTED] album received is comparable to “the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” The petitioner has not established that the evidence he submitted as comparable to the evidence required by the regulation at 8 C.F.R. § 204.5(h)(3)(i) was based primarily on his excellence in the field (rather than that of Mr. [REDACTED] and that his evidence is of the same caliber as that required by the regulation.

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

The petitioner submitted a November 28, 2012 letter from the Senior Coordinator of Tickets and Awards, [REDACTED] / The JUNO Awards, congratulating him for having “been selected as a judge for the 2013 JUNO Awards in the Traditional Jazz Album of the Year category” and stating that Round #1 of the judging process was scheduled for “December 14, 2012 – January 11, 2013.” The petitioner also submitted a May 8, 2013 letter from the organizers of the 2013 Juno Awards thanking the petitioner “for serving as a

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

judge for the 2013 JUNO Awards.” In addition, the petitioner submitted information about [REDACTED] and the Juno Awards. These letters do not themselves identify the petitioner as a member of [REDACTED] however, according to the information about [REDACTED] membership: “The primary reason to join [REDACTED] is to receive JUNO Awards voting privileges. [REDACTED] members are eligible to vote in 14 different categories.” The petitioner also submitted a December 12, 2012 letter from the Program Coordinator of Submissions, [REDACTED], stating that the petitioner “is an accredited [REDACTED] juror and has been a regular participant in [REDACTED] jury process within the past year.” The director concluded that the petitioner had not established membership in [REDACTED] or [REDACTED]. On appeal, the petitioner asserts that these associations do not issue membership cards and continues: “Membership in these pools of judges for these distinguished organizations is exclusive.”

While the record does not suggest that [REDACTED] admits members, the petitioner submitted information about [REDACTED] membership, suggesting that it is, in fact, an association that admits members. 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)).

Furthermore, with regard to the petitioner’s participation as a judge for the 2013 Juno Awards and as a [REDACTED] juror, the regulations contain a separate criterion for judging the work of others, 8 C.F.R. § 204.5(h)(3)(iv), a criterion that the petitioner has already met. Evidence relating to or even meeting the judging the work of others 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 membership in associations requiring outstanding achievements of their members and judging the work of others, USCIS clearly does not view the two as being interchangeable such that “pools of judges” are qualifying associations. 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.

Even if the petitioner had established membership in [REDACTED] the submitted information about that association stated: “You must be actively working in the Canadian music industry and hold a Canadian birth certificate, passport or are [a] Canadian Landed Immigrant(s) with residency in Canada to qualify for membership.” Being Canadian and “actively working in the Canadian music industry,” however, do not equate to “outstanding achievements.” There is no documentary evidence showing that [REDACTED] requires outstanding achievements of its members and Juno award judges, as determined by recognized national or international experts in the field.

The petitioner submitted a [REDACTED] Juror Handbook and information about the foundation from its website. In addition, the petitioner submitted information about [REDACTED] juror selection that stated:

Music industry professionals are eligible to become accredited jurors if:

- They are a Canadian Citizen or a Permanent Resident
- They have a minimum of 5 years of music industry experience, and have been active in the industry within the last 2 years.

- They have confidence in their ability to make an objective assessment of a project based on the music and documents provided.

The petitioner has not established that being a Canadian citizen or permanent resident, having a minimum of 5 years of music industry experience, demonstrating activity in the music industry within the last 2 years, and possessing confidence in one's ability equate to "outstanding achievements."

In the appellate brief, the petitioner asserts that his participation as a judge for the 2013 Juno Awards and as a [REDACTED] juror should alternatively be considered as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). After first arguing that the petitioner's participation as a judge for [REDACTED] and [REDACTED] meets the elements of this criterion, the petitioner states: "We submit that if the above organizations do not qualify as associations requiring outstanding achievements, then such an association in the field of jazz music does not exist." The record, however, appears to contradict the petitioner's claim. Specifically, the petitioner submitted information from [REDACTED] website that mentions artists and industry professionals whose achievements led to their induction into "the Canadian Music Hall of Fame."

The petitioner's unsupported assertion fails to demonstrate that the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii) is not readily applicable to his occupation. The petitioner has not established that his occupation is one in which there are no associations which require outstanding achievements of their members, as judged by recognized national or international experts. Even if the petitioner had demonstrated that he was eligible for the provisions of the regulation at 8 C.F.R. § 204.5(h)(4), which he has not, the petitioner has not established that his participation as a judge for the 2013 Juno Awards and as a [REDACTED] juror is comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) that requires "[d]ocumentation 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." As there is no evidence showing that his participation as a judge or juror required outstanding achievements, the petitioner has not established that the evidence he claims as comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) is of the same caliber as that required by the regulation.

In light of the above, the petitioner has not established that he meets this regulatory 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 petitioner submitted a January 27, 2012 online concert review about his project posted on the "About.com Jazz" webpage at [REDACTED] entitled [REDACTED]. While the article includes copyright information indicating that [REDACTED] is a part of the [REDACTED] the fact that a company affiliated with a major media company owns this website does not demonstrate that the website itself is major media. The petitioner also submitted information from

stating: “ connects your brand to consumers at their moment of need. . . . reaches 84MM unique monthly visitors in the United States, with approximately 80% of our users arriving from search engines, seeking answers to their questions.” The director determined that is a form of major media. USCIS, however, 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). Moreover, the information relates to generally, and is not objective documentary evidence specifying the number of visitors to the webpage where the review of the petitioner’s work was posted, or showing the number of online visitors relative to those of other music news websites. Accordingly, the petitioner has not established that is a form of major media, and the director’s finding on the issue is withdrawn. The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner also submitted an event announcement (one sentence in the “About the event” section) from the for his playing at the on February 21, 2013. The author of the preceding material, however, does not appear on the website. In addition, the petitioner submitted material from the “About the project” section of the website. The petitioner authored the “About the project” material, which describes his and thanks the audience, his fellow musicians, and other individuals who helped make his project possible. This information constitutes material the petitioner authored about his own work rather than published material about him and, therefore, the material does not meet the plain language requirements of this regulatory criterion. The regulations include a separate criterion for authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi).³ Furthermore, the petitioner has not established that the website is a major trade publication or form of major media.

The petitioner further submitted material entitled from the “blogs” section of the website. The January 16, 2013 posting by commented on the issue of crowdfunding music projects and includes a message from the petitioner to Mr. For instance, the petitioner wrote: “The community can’t constantly fund itself. It needs to have a real audience and demand outside of your other jazz musician friends. Chances are they are struggling as much as you are to make a living (to put that in polite terms).” The blog posting by Mr. is about crowdfunding and various musicians’ opinions on the subject, not the petitioner. The plain language of the regulation, however, requires “published material about the alien.” Articles that

³ The petitioner, however, does not claim to meet the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi). Even if the petitioner made such a claim, which he did not, the material he authored in the “About the project” section of the website does not equate to a scholarly article and was not in a professional or major trade publication or some other form of major media.

⁴ According to *Merriam-Webster*, a blog is “a Web site on which someone writes about personal opinions, activities, and experiences.” *See* <http://www.merriam-webster.com/dictionary/blog>, accessed on June 25, 2014, copy incorporated into the record of proceeding.

are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Moreover, although the petitioner submitted circulation figures for the [REDACTED] newspaper, there is no documentary evidence showing that [REDACTED]; online Jazzblog had the same level of readership or otherwise equates to a form of major media.

The petitioner submitted “Jazz listings for [REDACTED] 2012 posted in the Music section of the [REDACTED] website. The jazz listings include [REDACTED] and more than twenty other performing acts for that period. The 23rd listing that mentions the petitioner stated:

[REDACTED]

Although the petitioner submitted evidence that the [REDACTED] is a form of major media, the petitioner has not established that a single mention of his name among numerous jazz schedule listings that identify a large number of other musicians constitutes “published material about the alien.” The director stated: “In order for published material to meet this criterion, it must be primarily about the beneficiary While USCIS is satisfied that [REDACTED] . . . may qualify as major media, the brief mention of the beneficiary’s name does not equate to published material about him or his work in the field.”

In the appeal brief, the petitioner asserts that “there is no basis in the regulations for a requirement that published material ‘must be primarily about the beneficiary.’” The petitioner points to *Muni v. INS*, 891 F. Supp. 440 (N. D. Ill. 1995) and *Racine v. INS*, 1995 WL 153319 (N.D. Ill. Feb. 27, 1995), and asserts that federal courts have repeatedly rejected “the imposition of a “primarily about the beneficiary” standard. The courts’ findings in the preceding decisions, however, are distinguishable from the present matter.

For example, with regard to *Racine v. INS*, the plaintiff submitted documentation indicating that “he was the subject of publications in major media.” *Id.* at *2. Regarding the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), the court in *Racine v. INS* stated:

[T]he INS was not following its own regulations when it held that there are no articles which state that Racine is “one of the best in his field.” Of course, under the Act, he need not be one of the best, he need be only one who is in that small percentage at the top of his field. Further, there is no requirement under the Act that the articles need to state that he is one of the best or even that the articles describe him at the top of his field. The articles need to demonstrate his work within the field.

Id. at *6. In *Racine v. INS*, the court rejected that the INS finding that there were no articles which stated that Racine was “one of the best in his field.” Similarly, in *Muni v. INS*, 891 F. Supp. at 445, the court stated:

[T]he INS gave short shrift to the articles Muni submitted to support his petition. These articles do not establish that Muni is one of the stars of the NHL, but that is not the applicable standard. Under the INS’ own regulations, all Muni need show is that there is “[p]ublished material about [him] in professional or major trade publications or other major media, relating to [his] work in the field for which classification is sought.” 8 C.F.R. § 204.5(h)(3)(iii). The articles Muni submitted, which appeared in various newspapers and hockey magazines, clearly fit this requirement; even the INS admits that some of the articles “discuss [Muni’s] hitting ability and his record as a defenseman”. . . . Yet the INS did not explain why the articles did not qualify as proof of Muni’s ability.

In *Muni v. INS*, the court stated that the articles included a discussion of the plaintiff’s “hitting ability and his record as a defenseman,” and that the INS failed to explain why the articles did not qualify under 8 C.F.R. § 204.5(h)(3)(iii).

In the present matter, even if we withdrew the director’s use of the term “primarily,” the petitioner’s evidence still does not meet the plain language requirements of this regulatory criterion. A sizeable online listing of musicians that mentions the petitioner’s name among twenty-four scheduled jazz acts does not constitute “published material about the alien.” The online jazz schedule listing identifies only the petitioner’s name and musical instrument, and does not qualify as material “about” him relating to his work in the field.

The petitioner submitted material entitled [REDACTED] from the Music “Blogs” section of the [REDACTED] website. The sixth concert listing that mentions the petitioner stated:

[REDACTED]

Again, the petitioner has not established that a single mention of his name in a sizeable concert schedule listing that includes dozens of other musicians equates to “published material about the alien.”

The petitioner submitted a February 1, 2011 article in [REDACTED] entitled “[REDACTED]” [REDACTED]. The article is a review of [REDACTED] new compact disc, and is not about the petitioner.

The petitioner submitted a partial translation of a November 26, 2010 article in [REDACTED] entitled [REDACTED]. The petitioner did not submit “a full English language translation” of the article as required by the regulation at the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, the partial translation is about jazz pianist [REDACTED] not the petitioner. In addition, the petitioner submitted June 28, 2010 material in [REDACTED] entitled [REDACTED]. Again, the petitioner did not submit a full English language translation of the material. The material includes eight June 28, 2010 jazz act recommendations by [REDACTED] columnists [REDACTED]. Among the two jazz act recommendations of [REDACTED], he selected [REDACTED] and wrote three sentences about Mr. [REDACTED]. The third sentence mentioned the petitioner and two other members of Mr. [REDACTED] music group. Accordingly, the [REDACTED] material is not about the petitioner. The petitioner also submitted a May 4, 2010 article in [REDACTED] entitled [REDACTED]. The article is a review of [REDACTED] album, and is not about the petitioner. The article focuses on Mr. [REDACTED] and only mentions the other members of his jazz quartet in passing. Specifically, the petitioner is mentioned in only four sentences of the two-page article. Furthermore, although the petitioner also submitted circulation figures for [REDACTED] there is no evidence showing the distribution of [REDACTED] relative to other Canadian newspapers or that it has a notable distribution outside Montreal. Accordingly, the petitioner has not demonstrated that the preceding articles appeared in a form of major media.

The petitioner submitted a February 2010 album review in [REDACTED] entitled [REDACTED]. The review is about the [REDACTED] album by [REDACTED] and only briefly mentions the petitioner among the five members of the quintet. In addition, there is no documentary evidence showing that [REDACTED] is a major trade publication or form of major media.

The petitioner submitted three sentences about him in the [REDACTED] section of the Fall/Winter issue of [REDACTED] the alumni magazine of [REDACTED]. The magazine does not identify the author of the material, however, and there is no evidence showing that [REDACTED] is a form of major media.

The petitioner submitted a July 2009 article in the [REDACTED] section of [REDACTED]. The article is an interview with pianist [REDACTED] and is not about the petitioner. In addition, there is no documentary evidence showing that [REDACTED] is a major trade publication or form of major media.

The petitioner submitted a November 5, 2012 [REDACTED] entitled [REDACTED] that was posted on the [REDACTED]. The article is about the [REDACTED] album and [REDACTED] not the petitioner. In addition, there is no evidence showing that the [REDACTED] website is a major trade publication or form of major media.

In response to the director’s request for evidence (RFE), the petitioner submitted [REDACTED] that were published on April 11, 2013 in the Music section of the [REDACTED] website. In addition, the petitioner submitted a February 28, 2013 article in [REDACTED] (Canada) entitled [REDACTED]. The petitioner’s response to the RFE also included a February 25, 2013 article posted on the website of [REDACTED] magazine entitled [REDACTED].

[REDACTED] The publications published the preceding articles subsequent to the filing of the Form I-140, Immigrant Petition for Alien Worker, on February 4, 2013. The petitioner, however, must establish eligibility 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, adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we cannot consider the material published after February 4, 2013 as evidence to establish the petitioner's eligibility at the time of filing.

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.

As the director concluded, the petitioner's evidence that he served as a judge for the Juno awards and a [REDACTED] juror meets this regulatory criterion.

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

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." (Emphasis added.) 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).

The petitioner submitted various letters of support discussing his talent as a musician, his "Ancestry Project," his music recordings, and his other activities in the field.

[REDACTED] a saxophonist, composer and recording artist with the [REDACTED] label, who resides in Montreal, Canada, states:

[The petitioner] is a regular member of my quartet, with which he tours and performs on a regular basis. Along with myself and my brother [REDACTED] he is also co-leader of the critically acclaimed trio [REDACTED] a group that has released two well-received albums on the independent [REDACTED] label. Over the years we have performed together extensively, including the world-renowned [REDACTED] (2007), the [REDACTED] (2008), the [REDACTED] Canada (2010), and countless small venue events over the years. We recently completed a series of concerts in Ontario and Quebec with my quartet followed by the recording of my next album, scheduled

for release in Spring 2013. Whether [the petitioner] is in New York or Montreal, he is always my “first-call” bass player for any performance.

In my estimation, [the petitioner] has always possessed a unique and extraordinary talent as he pursued his career in Montreal. Since his move to New York City, he has grown exponentially within his craft, and rapidly developed recognition as an internationally elite bass player. [The petitioner] possesses a true dedication to the art that displays maturity well beyond his years, causing all those who see him to take notice.

Mr. [REDACTED] comments that the petitioner released two “well-received albums” as co-leader of the “critically acclaimed trio [REDACTED]” and performed at various jazz festivals and other events, but does not provide specific examples of how the petitioner’s work has influenced the field of jazz at a level indicative of original contributions of “major significance.” Moreover, with regard to the petitioner’s jazz albums and concerts, the regulations contain a separate criterion regarding commercial successes in the performing arts. 8 C.F.R. § 204.5(h)(3)(x). As the petitioner’s jazz recordings and performances are far more relevant to the “commercial successes in the performing arts” criterion at 8 C.F.R. § 204.5(h)(3)(x), they will be discussed separately within the context of that regulatory criterion. Mr. [REDACTED] further states that the petitioner “has always possessed a unique and extraordinary talent” and describes him “as an internationally elite bass player.” Assuming the petitioner’s music skills are unique, the classification sought was not designed for alleviating skill shortages in a given field. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *See Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215, 221 (Comm’r 1998). The petitioner must demonstrate not only that his contributions are original, but also of major significance.

The petitioner submitted a “list of 2011 Juno nominations” showing that the eight-song album [REDACTED] by [REDACTED] was nominated for “Contemporary Jazz Album of the Year.” In addition, the petitioner submitted the compact disc album cover for [REDACTED] showing that he performed bass for the songs on Mr. [REDACTED] album and that he composed one song entitled [REDACTED]. In the appeal brief, the petitioner states: “[The petitioner’s] original composition, [REDACTED] was featured on the JUNO-award-nominated album. . . . The album’s status a JUNO-award-nominee provides strong evidence of the significance of the contribution in the field of jazz.” The preceding Juno nomination for [REDACTED] was previously addressed under the category of evidence at 8 C.F.R. § 204.5(h)(3)(i). Regardless, there is no documentary evidence setting the petitioner’s [REDACTED] composition apart from the seven other songs on Mr. [REDACTED] album. In addition, the Juno nomination specifically named Mr. [REDACTED] not the petitioner. Furthermore, there is no evidence showing that [REDACTED] and [REDACTED] have affected the field of jazz in a major way, have topped the jazz recording charts for a substantial period of time, or have otherwise risen to the level of original contributions of major significance in the field. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

[REDACTED] a saxophonist and composer from Montreal, states:

I have known [the petitioner] for over twelve years and have worked with him in a wide variety of musical situations, including numerous recording projects and international tours. In 2008, [the petitioner] performed with my band [REDACTED] for three major festivals in Mexico, including the [REDACTED] and the [REDACTED]. In April 2011, [the petitioner] was a member of my quintet when we played at the premiere edition of the [REDACTED] in India. As always, [the petitioner] performed at an elite level and was a consummate professional during the performances.

His playing is extremely unique, creative, and original and he has a very personal, sensitive approach to his instrument. In addition to his outstanding musicianship, he is always a great pleasure to work with.

Ms. [REDACTED] mentions that the petitioner collaborated with her on recording projects and toured internationally with her quintet, but fails to provide specific examples of how the petitioner's original work was of major significance in the field. In addition, Ms. [REDACTED] comments on the petitioner's playing style and "outstanding musicianship." It is not enough, however, to be a talented bass player and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion. *See id.* There is no documentary evidence showing that the petitioner's music recordings have affected the jazz industry, have substantially influenced the work of other musicians, or otherwise constitute original contributions of major significance in the field.

[REDACTED], a saxophonist and composer in New York, states:

When I first had the opportunity to work with [the petitioner] in his native home of Montreal, Canada, I was greatly impressed by his musical abilities. . . . I have made him a regular fixture of my working groups both at the [REDACTED] and through international tours in Europe and Canada. . . . I wish to express my desire to continue collaborating with him in the future.... [The petitioner] is a highly skilled and extremely accomplished bassist and musician and his playing, composing, and arranging skills possess an extremely high degree of depth and maturity. His skills on his instrument are extraordinary. He is a very unique and versatile artist in his own right, thanks to his broad and diverse musical and personal background. [The petitioner] is an invaluable asset to the music community and amongst the elite in a very competitive field.

It must be said again that [the petitioner's] original compositions are extremely artistic and skilled. The significance of these compositions to the future of Jazz music is without question. I was deeply involved with his complex and engaging musical suite, [REDACTED]. The suite was a multi-part composition that detailed the life and career of his grandfather, [REDACTED] who was himself a highly regarded musician in Montreal in the 1950s. Not only was I honored to take part in such a personal and meaningful composition, but also I could not help but sense with [the petitioner], that the future of Jazz music is in safe and capable hands.

Mr. [REDACTED] comments on the petitioner's music skills, unique artistry, and diverse background. Again, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 221. Moreover, the regulation requires that the petitioner demonstrate not only that his work is original, but of major significance in the field. In addition, Mr. [REDACTED] states that he collaborated on the petitioner's [REDACTED] but does not provide specific examples of how their work has influenced the field as a whole or otherwise constitutes original contributions of major significance in the field of jazz.

[REDACTED] a musician, bandleader, and composer residing in New York, states:

I first met [the petitioner] in Montreal, Canada where I was performing at the 2006 edition of the prestigious [REDACTED]. During that visit, I had the opportunity to perform with him at the [REDACTED] and was also able to hear some of his recorded work with his group [REDACTED]. I was instantly struck by his maturity as a bassist and composer. Since then, we've collaborated together on various New York City based projects and plan to work on many more in the near future. Since that time, . . . [the petitioner] has continued to grow as a musician. So much so that in many ways he is making contributions that are advancing the state of jazz music in the United States. Such original and novel contributions include his wonderful suite called [REDACTED]. Written about his grandfather [REDACTED] who was also a musician, [the petitioner] did a brilliant job demonstrating his elite skill as a composer and arranger. I firmly believe that [the petitioner's] contributions to the world of Jazz are without comparison.

Mr. [REDACTED] comments on the petitioner's recorded work with [REDACTED] and his collaborations with the petitioner, but does not explain how the petitioner's original work was of 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, 1997 WL 188942, *1, *5 (S.D.N.Y. Apr. 18, 1997). Further, in the same manner as Mr. [REDACTED] Mr. [REDACTED] mentions the [REDACTED] asserting that the petitioner's work "is advancing the state of jazz music in the United States" and that his "contributions to the world of Jazz are without comparison." Mr. [REDACTED] however, does not provide specific examples of how the petitioner's [REDACTED] has advanced the field of jazz music or was otherwise of major significance in the field. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

As previously discussed, the petitioner submitted a January 27, 2012 online concert review posted on the "[REDACTED] webpage entitled [REDACTED]. The article states that the petitioner "has reached for something beyond the typical jazz concert experience." In addition, the article describes the petitioner's music tribute to his grandfather at Ibeam Brooklyn as a "satisfying and entertaining combination of jazz" and "great storytelling." Although the preceding comments demonstrate the originality of the petitioner's project, the favorable online review is not sufficient to demonstrate that his project rises to the level of a contribution of major significance in the field.

The petitioner also submitted an online announcement posted at [REDACTED] for his [REDACTED] playing at the [REDACTED] in Montreal on February 21, 2013. The petitioner authored the material, in which he describes his [REDACTED], and thanks his fellow musicians and others who helped make his project possible. In addition, the petitioner submitted a February 28, 2013 article in [REDACTED]. The article describes the petitioner's [REDACTED] as "a very unique and personal concert," but does not establish that the petitioner's work was of major significance in the field. The February 21, 2013 concert at the [REDACTED] and the February 28, 2013 article in [REDACTED] post-date the filing of the Form I-140 petition on February 4, 2013. Again, the petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, material published and concerts performed after February 4, 2013 cannot be considered as evidence to establish the petitioner's eligibility at the time of filing. Regardless, the submitted documentation is not sufficient to demonstrate that the petitioner's work equates to contributions of major significance in the field. There is no documentary evidence showing the extent of the petitioner's influence on other jazz musicians in the field, or demonstrating that the field has specifically changed as a result of his original work, so as to establish the major significance of his contributions.

[REDACTED], a composer and multi-instrumentalist whose current group is [REDACTED] states:

[The petitioner] is an originator and an innovator and in short, extraordinary.

He has recently worked with me and it is clear that he will continue to be a significant contributor to whatever artistic project he is a part of.

[The petitioner] absolutely qualifies as a standout and as a professional. It is without hesitation that I declare [the petitioner] to hold extraordinary abilities.

Mr. [REDACTED] asserts that the petitioner is "extraordinary" and has "extraordinary abilities," but does not identify specific examples of how the petitioner's work has affected the field of jazz or otherwise constitutes original contributions of major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942, at *1, *5.

[REDACTED], a jazz flautist and faculty member at the [REDACTED], states:

[The petitioner] is featured on my upcoming septet album set to be released on the [REDACTED] record label in 2013 and he will also be accompanying my group when it performs at the [REDACTED] Mexico on December 8th 2012. Good bassists are essential to the success of a band – extraordinary bassists are what provide the foundation for soloists to truly flourish. When I played with [the petitioner], I was able to perform at the highest of levels due to his unparalleled ability. These bookings alone prove that [the petitioner] has performed a critical role for venues and musicians that carry distinguished reputations. He has enormous energy, a gift for melody and great creativity on his instrument. These factors combine to make [the petitioner] an elite member of a very competitive field.

Ms. [REDACTED] comments on her musical collaborations with petitioner, but there is no documentary evidence showing that their work is of major significance in the field. The plain language of this criterion requires that the petitioner's contributions be "of major significance in the field" rather than limited to the other musicians with whom he has performed. *See Visinscaia*, 2013 WL 6571822, at *6 (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).

[REDACTED], a professional jazz guitarist based in New York, states:

I am writing on behalf of [the petitioner], a double bassist and friend I have had the pleasure of working with for the last three years. Since his arrival to New York City, [the petitioner] has established himself as a highly "in demand" double bassist, an exceptional feat for any musician in New York, one of the most competitive cities in the world. This is based on the fact that [the petitioner] is hands down one of the best of the best – extraordinary, in fact. His reputation reaches far beyond the New York City limits and touches many professional jazz musicians and aficionados across the globe.

As a member of my successful and groundbreaking jazz themed children's music group [REDACTED] [the petitioner] has been an integral contributor to the success of numerous live concert performances. [The petitioner's] ability to perform such a wide variety of music is a skill set that many musicians spend a lifetime trying to obtain. It truly sets him amongst the elite of our trade and I am proud to consider him a colleague, band member, and collaborator.

Mr. [REDACTED] comments on the petitioner's talent as a double bassist, the demand for the petitioner's services, and their collaboration as part of a children's music group. In addition, Mr. [REDACTED] asserts that the petitioner's "reputation reaches far beyond the New York City limits and touches many professional jazz musicians and aficionados across the globe," but does not provide specific examples of how the petitioner's work has affected the jazz or children's music industries, or otherwise equates to contributions of major significance in the field.

[REDACTED], a professional double bassist residing in New York, states:

I first heard of [the petitioner] in September 2009 when I was looking for a bassist to take my place at the last minute for one of my concerts at the [REDACTED] with a world-class combo, featuring vocalist [REDACTED]

I needed to find a musician who had enough skill and experience to perform some very challenging music with no time for rehearsal. Several musicians recommended [the petitioner] to me and so I called him for the concert at which I was told he performed outstandingly well.

I have since then had the opportunity of hearing [the petitioner] performing in many different venues and musical contexts. There are many venues in New York City to experience live jazz, but [the petitioner] has performed at some of the most notable venues in the city,

including the famed [REDACTED] the [REDACTED], and the [REDACTED]. He is without doubt one of the greatest musical forces of our generation. He plays effortlessly in all styles and his skills on the double bass are only matched by his talent for composition.

Mr. [REDACTED] mentions that he relied on the petitioner to replace him as a “last minute” substitute at a concert at [REDACTED] and that the petitioner “has performed at some of the most notable venues” in New York. In addition, Mr. [REDACTED] asserts that the petitioner “is without doubt one of the greatest musical forces of our generation,” but does not provide specific examples of the petitioner’s compositions or recordings that have influenced the field as a whole or otherwise constitute original artistic contributions of “major significance” in the field. USCIS need not accept primarily conclusory assertions. *See 1756, Inc.*, 745 F. Supp. at 15 (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). With regard to the petitioner’s jazz performances at [REDACTED] and other New York venues, again, the regulations contain a separate criterion regarding commercial successes in the performing arts. 8 C.F.R. § 204.5(h)(3)(x).

[REDACTED] New York, a jazz guitarist and musical director for the Grammy-nominated trumpeter [REDACTED] states:

I have had the chance to record and share the stage with [the petitioner] on numerous occasions. It is my feeling that these performances reached new levels of excellence thanks to his incredible musicianship and love for his craft. In my vast performing experience, it is rare to meet someone with that level of talent. [The petitioner] has already established himself as one of the world’s best and only continues to improve.

Mr. [REDACTED] comments on his musical collaborations with the petitioner and asserts that the petitioner “has already established himself as one of the world’s best,” but does not point to specific examples of the petitioner’s contributions of major significance in the field. 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. The petitioner has not established that his work has affected the field of jazz music in a major way, or that his work was otherwise indicative of original contributions of major significance in the field.

[REDACTED] a saxophonist residing in Brooklyn, New York, states:

[The petitioner]’s skills as a bass player are what drew me to him in the beginning. Since first hearing him perform live at the prestigious [REDACTED] in September 2005, then soon after becoming good friends, there are no other bass players that I would call to perform and/or record with before [the petitioner]. He is a versatile player who is able to perform almost anything you give him, making him an ideal studio and performing musician. As a fellow [REDACTED] alumnus, I can fully appreciate the level of training [the petitioner] has received and the true extent of his network of connections within the industry. . . . He already has changed the way that people perceive jazz and how it can be used in different forms to please different tastes and different generations.

* * *

Since we first met, I have collaborated with [the petitioner] for numerous performances including shows and recordings with my own trio as well as with our critically acclaimed collectively led group ‘ [REDACTED] ’ We have performed extensively together throughout Europe, and Canada, as well as in New York City. This includes appearances at the internationally renowned [REDACTED] (2009), the [REDACTED] (2010) and the [REDACTED] (2011).

Although Mr. [REDACTED] asserts that the petitioner “has changed the way that people perceive jazz and how it can be used in different forms to please different tastes and different generations,” Mr. [REDACTED] does not provide examples of these changes and there is no documentary evidence showing that the petitioner’s work was of major significance in the field. USCIS need not accept primarily conclusory assertions. *See 1756, Inc.*, 745 F. Supp. at 15. In addition, Mr. [REDACTED] comments on his recordings and performances with the petitioner as part of the group The Story, but there is no documentary evidence demonstrating that their work has had a substantial impact in the jazz recording industry, has influenced the work of other musicians in the field, or otherwise constitutes original contributions of major significance in the field.

[REDACTED], a professional musician and educator residing in Brooklyn, New York, stated:

[The petitioner] is among some of the best players that I’ve ever worked with. He is talented, hardworking, and determined, and is currently one of the most in-demand double bassists in the New York City’s elite music community.

[The petitioner] and I have worked together in numerous professional situations including international performances with my own group, ‘ [REDACTED] ’ as well as with our collective band ‘ [REDACTED] ’ We have toured extensively in Europe with both, including appearances at the extremely prestigious [REDACTED] Netherlands in 2009, the [REDACTED] in 2010 and a multi-week tour of the United Kingdom in 2010.

[The petitioner’s] musical and creative output is first rate and he is always a pleasure to work with. Since his arrival on the New York jazz scene, [the petitioner] has maintained a very busy schedule of performing, and recording on almost a daily basis. [The petitioner’s] level of skill, creativity, and professionalism truly sets him amongst the best of our trade.

Mr. [REDACTED] comments on their collaborative performances, and asserts that the petitioner “is currently one of the most in-demand double bassists in the New York City’s elite music community” and that his “level of skill, creativity, and professionalism truly sets him amongst the best of our trade,” but does not explain how the petitioner’s music has specifically affected the field of jazz or otherwise equates to original contributions of major significance in the field. Again, USCIS need not accept primarily conclusory assertions. *See 1756, Inc.*, 745 F. Supp. at 15.

[REDACTED], a jazz performer, writer, and band leader, states:

I first heard [the petitioner] with [redacted] band when they performed at New York City's highly distinguished [redacted] in the fall of 2007. I was immediately impressed by his musical maturity and his sensitivity. I could see then that [the petitioner] possessed the critical skills that have led him to become one of the most sought after bassists currently on the elite New York City jazz scene. The [redacted] is one of New York City's most prestigious jazz venues; on any given night one can hear the world's best musicians perform there. . . . I am proud to acknowledge [the petitioner] as one of New York's most elite bass players.

* * *

[The petitioner] is a natural musician with exceptional skills backed up by a great sense of melody, taste and a very strong sense of rhythm. These collections of skills are very difficult to attain, especially in a highly disciplined field like Jazz music. In my informed opinion, [the petitioner] has reached an extremely high level of musicianship that demonstrates his dedication to the craft and willingness to reach the apex of our trade.

Mr. [redacted] comments on the petitioner's performance at the [redacted] in New York and his skills and talent as a jazz musician, but does not provide specific examples of how the petitioner's music has influenced the work of other bass players or has otherwise affected the field of jazz at a level indicative of contributions of major significance in the field.

The petitioner submitted letters of varying probative value. Some letters are generalized, without identifying specific contributions or their impact in the field, and thus have little probative value. *See 1756, Inc.*, 745 F. Supp. at 17.; *see also Visinscaia*, 2013 WL 6571822, at *6 (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"). Furthermore, almost all of the letters of support are from those who have collaborated on various music projects with the petitioner. Although such letters are important in providing details about the petitioner's role in the collaborations, they cannot by themselves establish the influence of the petitioner's work beyond his immediate circle of music acquaintances.

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. *Id.* Without additional, specific evidence showing that the petitioner's work 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.

In light of the above, 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.

The petitioner submitted documentary evidence of his various jazz performances at concerts and music festivals as evidence for this criterion. The petitioner's work as a jazz musician is audible in nature and is enjoyed for its sound, not its visual aspects. Therefore, his music performances do not satisfy the regulatory requirements under 8 C.F.R. § 204.5(h)(3)(vii). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the *display* of the alien's work in the field at artistic exhibitions or showcases." (Emphasis added.) The petitioner is a musician. When he records a song or performs in concert, he is not displaying his music in the same sense that a painter or sculptor displays his or her work in a gallery or museum. The petitioner is performing his music, he is not displaying his work. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

In the appeal brief, the petitioner asserts that "jazz music is art, and playing jazz music for an audience is the exhibition of that art." The petitioner points to a September 2006 memorandum from [REDACTED] Acting Associate Director for [REDACTED] USCIS, that provided an update to Chapter 22 of the Adjudicator's Field Manual (AFM) concerning the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner asserts that the preceding AFM guidance for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vii) shows that "artistic performance" is applicable to this regulatory criterion. A subsequent December 22, 2010 policy memorandum (PM) entitled "Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the *Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14,*" however, rescinded and superseded that guidance stating:

This PM rescinds and supersedes all previously published policy guidance issued by USCIS and the legacy Immigration and Naturalization Service (INS) specific to the evaluation of required initial evidence submitted in support of Form I-140 petitions under Title 8 Code of Federal Regulations (8 CFR) sections 204.5(h)(3) and (4), 204.5(i)(3)(i), and 204.5(k)(3)(ii).

The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe*, 2:07-CV-820-ECR-RJJ at *7 (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, he has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). The petitioner's music performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and we will discuss them separately within the context of that regulatory criterion.

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

The petitioner asserts that he has performed in a leading or critical role for [REDACTED] a jazz club in New York, [REDACTED] (New York) [REDACTED] (New York) [REDACTED] (a concert theater in Brooklyn), [REDACTED] (a bar in London), [REDACTED]

(Pennsylvania), [REDACTED] (Montreal), [REDACTED] and [REDACTED]

The petitioner submitted online information about the reputation of the preceding venues, but the submitted information was either self-promotional or limited to local New York media (such as [REDACTED], and therefore not sufficient to demonstrate that they have a distinguished reputation. In addition, [REDACTED] asserted that the [REDACTED] is “highly distinguished” and “one of New York City’s most prestigious jazz venues,” but the record lacks sufficient objective evidence to support his claims. Again, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. at 15. Moreover, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Furthermore, the petitioner has not established that his role as part of a music act temporarily performing at the above venues was leading or critical for the organizations and establishments. There is no documentary evidence differentiating the petitioner’s role as a musician from that of the numerous other jazz acts who also performed at the above venues, let alone from that of the management and staff at those organizations and establishments, so as to demonstrate his leading role for them.⁵ In addition, the submitted evidence fails to establish that the petitioner was responsible for the above organizations and establishments’ success or standing to a degree consistent with the meaning of “critical role.” The petitioner did not submit, for instance, evidence from the owners, managers, administrators, or festival coordinators discussing the significance of his specific contributions to the above organizations and establishments beyond their need to book musicians to entertain their patrons and audiences.

The petitioner’s music performances at the above venues are far more relevant to the “commercial successes in the performing arts” criterion at 8 C.F.R. § 204.5(h)(3)(x) and we will discuss them separately within the context of that regulatory criterion.

In light of the above, the petitioner has not established that he meets 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 petitioner submitted evidence of his jazz recordings and his performances at concerts and music festivals as evidence for this criterion. This regulatory criterion focuses on volume of sales and receipts as a measure of the petitioner’s commercial success in the performing arts. Therefore, the fact that a petitioner has recorded and released music or performed before an audience is insufficient, in and of itself, to meet this criterion. The evidence must show that the volume of sales or receipts reflect the petitioner’s commercial success relative to others involved in similar pursuits in the performing arts. The petitioner, however, failed to submit documentary evidence of “sales” or “receipts” demonstrating that his specific song compositions and music performances were

⁵ For example, while the President of the [REDACTED] performs in a leading role for the school by overseeing its faculty and academic programs, a non-faculty visiting jazz performer such as the petitioner who was invited to play at a school recital does not.

indicative of his commercial successes in the performing arts. Accordingly, the petitioner has not established that he meets this regulatory criterion.

C. Summary

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

D. Prior O-1 Nonimmigrant Visa Status

The record reflects that the petitioner is the beneficiary of approved O-1 nonimmigrant visa petitions for an alien of extraordinary ability in the arts. Although the words “extraordinary ability” are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, “The term ‘extraordinary ability’ means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.” The O-1 regulation reiterates that “[e]xtraordinary ability in the field of arts means distinction.” 8 C.F.R. § 214.2(o)(3)(ii). “Distinction” is a different standard than that required for the immigrant classification, which defines extraordinary ability 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.” 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner’s receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability. Further, approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

Many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien’s qualifications).

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

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La. Mar. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

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

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Although 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.⁶ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

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

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁶ In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).