



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 22 2014

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts as a pianist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

The petitioner’s priority date established by the petition filing date is January 15, 2014. On January 27, 2014, the director issued the petitioner a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on March 20, 2014. On appeal, the petitioner submits a brief with new documentary evidence. For the reasons discussed below, we uphold the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought.

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 the decision to deny the petition, the court took issue with the evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner did not submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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 not satisfied the regulatory requirement of three types of evidence. *Id.*

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Evidentiary Criteria²

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards be nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner claims the following prizes on appeal:

- First prize at the 2012 [REDACTED] and
- First prize at the 2010 [REDACTED] (2010 award).

The director determined that the petitioner did not meet the requirements of this criterion. The petitioner states within the appeal that the director concluded the first prize at the 2012 [REDACTED] satisfied this criterion's requirements. Within his decision, the director listed the above two awards and subsequently addressed only the 2010 award by name. Prior to addressing the 2010 award, however, the director stated that one of the petitioner's awards "appears to be an educational award" and that she had not established that this educational award was nationally or internationally recognized. Thus, contrary to the petitioner's claim on appeal, the director did not conclude that the petitioner's 2012 award from a scholarship competition was qualifying.

The only evidence the petitioner submits relating to the [REDACTED] prize is a copy of the award itself. The petitioner did not submit any additional evidence to demonstrate that this award is a nationally or internationally recognized prize. An accolade of this type does not garner national or international recognition from the competition that issues the prize or award, nor is it derived from the individual or group that issued it. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This recognition can occur through specific means, such as media coverage. Additionally, unsupported conclusory letters from those in the petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized. See *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990).

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

Regarding the 2010 award, the director concluded the award received only local recognition and was only open to students. On appeal, the petitioner identifies previously submitted evidence in addition to a new letter from [REDACTED] Executive Director of the [REDACTED] and [REDACTED] Mr. [REDACTED] states that this competition is open to “applicants from all over the world born on or after July 1, 1986.” Mr. [REDACTED] focuses on the pool of applicants and the fact that the competitors originate from around the globe. Focusing on the pool of candidates to determine if a prize or award is nationally or internationally recognized is not sufficient to meet the regulatory requirements at 8 C.F.R. § 204.5(h)(3)(i). The regulation requires that the award be nationally or internationally recognized. A national pool of candidates does not necessarily impart national significance to an award. Mr. [REDACTED] also points to the success of past winners of this award. He asserts that because these winners have progressed to particular jobs or have won other awards, that this subsequent success is an indication that this award is nationally or internationally recognized. Mr. [REDACTED] position that any precursor or subsequent events to this award are any indication that it is nationally or internationally recognized is not persuasive.

On appeal, the petitioner also asserts that because the award “winner has the opportunity to perform with the [REDACTED] a nationally and internationally recognized professional orchestra,” the 2010 award is nationally or internationally recognized in the field. However, the petitioner has not provided any corroborating evidence aside from her assertions that performing with this orchestra imputes the orchestra’s notoriety to the 2010 award. The petitioner’s unsupported assertions do not constitute evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Finally, the petitioner asserts the 2010 award is nationally or internationally recognized based on “glowing testimonials in the event’s program from prominent professionals in the field of music.” As previously noted, unsupported conclusory statements from those in the petitioner’s field are not sufficient evidence that a particular prize or award is nationally or internationally recognized.

The petitioner submits an article in [REDACTED] about [REDACTED] that discusses the young artists program at [REDACTED] in general. While the article mentions a competition for young artists that allows the winners to perform with the [REDACTED] orchestra, the article states that the young artists program “helps prepare them for major international competitions” and does not suggest that a prize at the [REDACTED] is a lesser nationally or internationally recognized competition.

The only form of media coverage dedicated to the [REDACTED] originates from the websites of the [REDACTED] [REDACTED] article first discusses the event as a festival that attracts young artists, talented amateurs, and “big names,” suggesting different levels of experience and acclaim at the event, which, according to the program, included both a young artists and an amateur competition. According to the [REDACTED] pamphlet, the young

artists program provides a “variety of opportunities for further developing their skills as emerging professional musicians.” The [REDACTED] article then reviews the first of two young artists concerto concerts at the event and discusses the challenges for “the youthful protégé” as well as predicting a future “brilliant career” for a young performer. Regarding the competition portion of the concert, the article states: “This was even a competition, and the judges awarded modest prizes for this particular concert.” The article in [REDACTED] reviews the final concerto concert and reflects that another performer [REDACTED] took first place in the competition related to this event. In describing the competition portion of the concert, the article states: “To add interest, a mini competition was included and token awards of \$250, \$150, and \$100 given to the first three winners. “Local coverage that refers to “modest” and “token” awards and a “mini competition” is not indicative of an award or prize that is nationally or internationally recognized for excellence.

Moreover, the evidence the petitioner provides relating to the 2010 award is a letter from Mr. [REDACTED] and the article in the [REDACTED]. The record lacks a copy of the award itself. Thus, the petitioner did not submit primary evidence of her receipt of the 2010 award. 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. While the article constitutes secondary evidence, according to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or that she cannot obtain it, may the petitioner rely on secondary evidence. In this case, while the petitioner submitted secondary evidence, the petitioner did not submit any documentary evidence demonstrating that she cannot obtain primary evidence or that it does not exist.

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of 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.

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that she is a member of more than one association in her field. Second, the petitioner must demonstrate both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements (in the plural) of prospective members to determine if the achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the association itself to determine if the achievements were outstanding, unless nationally or internationally recognized experts in the petitioner’s field, who represent the association, render this determination. It is also insufficient for the petitioner to claim that she was admitted to the association because of her outstanding achievements; the petitioner must show that the association requires outstanding achievements of all prospective members. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner claims membership in the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The director determined that the petitioner did not meet the requirements of this criterion. The director determined that the positions of staff pianist and piano instructor did not constitute memberships as anticipated by the regulation. The director also determined that the [REDACTED] did not require outstanding achievement as a condition of membership. The director did not address the claim of piano accompanist at [REDACTED]

First, as the director indicated, the staff pianist position at [REDACTED] constitutes a position of employment rather than a membership in an association as anticipated by the regulation. The petitioner provided Merriam-Webster's definition of a membership to be, "[T]he state of belonging to or being a part of a group or an organization" and the definition of association as, "an organized group of people who have the same interest, job, etc." Irrespective of the petitioner's assertion, not every person who, as an employee, is technically part of an organized group of people who hold the same job, can meet this criterion's requirements. For example, not every employee who works at the [REDACTED] is a member of that association. Moreover, the regulations do cover employment, but require that the role be leading or critical and that the organization or establishment enjoy a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii). The petitioner has never asserted that her roles meet the requirements of that regulation. Accordingly, the petitioner's attempts to equate employment with membership are not persuasive and are not in accord with the regulation.

Regarding the staff pianist position at [REDACTED] the petitioner provides a letter from [REDACTED] Director of the [REDACTED] Ms. [REDACTED] states:

When determining whom to hire as an [REDACTED] Staff Pianist, I make the final decision . . . The criteria applied when selecting an [REDACTED] Staff Pianist include superior pianism, an ability to learn music quickly, substantial prior experience in accompanying, a strong work ethic and an ability to work well with others. To be selected as an [REDACTED] Staff Pianist, the individual must be able to meet and maintain the school's extremely high standards and expectations.

Although Ms [REDACTED] indicates that she is selective, she also makes it clear that she is hiring an individual to perform work, rather than selecting someone to be a member of her association. The petitioner offers no probative evidence that this form of employment constitutes membership in accordance with the regulation. Even if this employment constituted a membership, which it does not, the petitioner has not provided evidence demonstrating that the [REDACTED] requires outstanding achievements

of its prospective Staff Pianists. Ms. [REDACTED] states that the criteria applied to fill this position include “superior pianism, an ability to learn music quickly, substantial prior experience in accompanying, a strong work ethic and an ability to work well with others.” While the position is competitive and requires a demonstrable level of competence, Ms. [REDACTED] does not indicate that she requires outstanding achievements of prospective Staff Pianists as required by the regulation.

Like the petitioner’s previous claim relating to the [REDACTED] she asserts that her employment with [REDACTED] satisfies the membership regulation at 8 C.F.R. § 204.5(h)(3)(ii). Within the appeal brief, the petitioner claims that she possesses “membership by being a Piano Accompanist with [REDACTED] because she is part of a group of teachers and teachers at [REDACTED] would be an association because they are a group of people with the same job.” Again, the petitioner offers no probative evidence that this form of employment constitutes membership in accordance with the regulation. Further, the petitioner’s assertions are not evidence. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Additionally, the Music Director for [REDACTED] does not indicate that this institution requires outstanding achievements of prospective Piano Accompanists.

The petitioner claims her employment as a piano instructor at [REDACTED] qualifies as a membership under this criterion. This claim is not in accordance with the regulatory requirement of a membership in an association. Notwithstanding this evidentiary shortcoming, [REDACTED] also does not require outstanding achievements of its prospective piano instructors. The petitioner provides a letter from the owner, [REDACTED] who indicates that the criteria that she employs when selecting a prospective piano instructor is for the candidate to be an established pianist, have previous teaching experience, and be familiar with all the piano method books. The candidate must also perform for Ms. [REDACTED]. It is clear that employment as a piano instructor at [REDACTED] does not require outstanding achievements of its prospective piano instructors as a condition of employment.

Regarding the [REDACTED] the director noted within his decision that this organization did not qualify because the orchestra did not require “that outstanding achievement is an essential condition for admission, [and] it appears that membership is through an audition or personal selection process.” [REDACTED] the Music Director and Conductor of the [REDACTED] selected the petitioner to serve as the pianist for the orchestra. Mr. [REDACTED] lists three criteria to become a pianist for the orchestra:

1. A performer who is accomplished as both a solo and a collaborative pianist;
2. A pianist who can perform great variety of music styles in a short period of time; and
3. A pianist who can play a piano reduction piece.

Mr. [REDACTED] did not provide detail regarding item 1, that the pianist be accomplished. However, it is clear from Mr. [REDACTED]’s letter, that the criteria for an orchestral pianist do not include that the prospective pianist has accomplished outstanding achievements as a condition of membership. Rather, the position requires a satisfactory level of competence to perform the work.

Finally, the petitioner claims her position as a pianist in the [REDACTED] a three-member musical group. The petitioner provides a letter from [REDACTED] one of the founding group members. Although Mr. [REDACTED] indicates that the petitioner “exhibits the highest level of artistry and musicianship,” he does not indicate that the musical group employs specific criteria for admitting new members to the group. Consequently, the petitioner has not submitted evidence that demonstrates the [REDACTED] requires outstanding achievements of prospective members.

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of 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 director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence, to include two Chinese language articles from [REDACTED] to establish that she meets this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner’s contributions (in the plural) in her field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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). Contributions of major significance connotes that the petitioner’s work has significantly affected the field. See 8 C.F.R. § 204.5(h)(3)(v); see also *Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided numerous letters from experts in her field. The director determined that the petitioner did not meet the requirements of this criterion. On appeal, the petitioner identifies her qualifying contributions under this criterion as incorporating the [REDACTED] for use in her performances and the musical instruction of others, in addition to applying pitch ear training to both solo and collaborative performances enabling the petitioner to better absorb, react, and blend in with the performances of other musicians.

The petitioner cites *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012), asserting that the director substituted his own judgment in the place of the judgment of the authors of the expert letters. *Matter of Skirball Cultural Center* discusses the weight USCIS affords expert opinions in an unrelated nonimmigrant visa classification. The director cited to *Matter of Caron International*, 19 I&N Dec. 791, 795, (Comm'r 1988) within his decision stating: "USCIS may, in its discretion, use such letters [of support] as advisory opinions submitted by expert witnesses. However, USCIS is ultimately responsible for making the final determination of the alien's eligibility . . . Without documentation showing that the beneficiary's work has made a major significance to the field, USCIS cannot conclude this criterion has been met." While the director did not find that evidence in the record explicitly contradicted the letters, the director did infer that the record lacked evidence supporting the conclusions in the letters.

With respect to *Matter of Skirball*, that case involved a regulation that expressly requires the submission of affidavits from experts, holding that USCIS may not reject the factual conclusions of experts if reliable, relevant and probative. The regulation at issue in *Matter of Skirball Cultural Center*, 8 C.F.R. § 214(p)(6)(ii) explicitly requires affidavits or letters from recognized experts attesting to the authenticity of the group. Conversely, the regulation at 8 C.F.R. § 204.5(h)(3)(v) does not specify that affidavits alone may satisfy this criterion. Expert testimony should "assist the trier of fact to understand the evidence or to determine a fact in issue." *Matter of D-R-*, 25 I&N Dec. 445, 459 (BIA 2011). See also *Visinscaia*, 2013 WL 6571822, at *8 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious). Moreover, rather than simply citing *Matter of Caron* as support for rejecting the letters, the director considered the content of a portion of the letters and concluded that they did not specify how the petitioner's contributions were already having an impact in the field. See also *Visinscaia*, 2013 WL 6571822, at *6 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

The petitioner identifies several letters on appeal that she contends establish her original contributions of major significance in her field. Most of the experts discuss her unique technique involving her finger movements, in addition to her unique listening technique. The remaining letters discuss these same techniques that the petitioner applies as an instructor.

Regarding the originality of the Taiwanese technique, [REDACTED] a popular euphonium performer in Japan, states that most pianists utilize a different finger movement technique than the petitioner, which makes her unique. Mr. [REDACTED] does not indicate that the petitioner was the first, or even the only, pianist to utilize the "Taiwanese technique." Although [REDACTED] a Bulgarian composer, indicates the petitioner is performing the Taiwanese technique in "a very new, very original way," neither Mr. [REDACTED] nor the petitioner provide an indication of what new ways she was employing the technique that would demonstrate that her methods are original. For example, she did not provide media coverage of any new techniques that she devised, nor has she produced instruction manuals or books relating to a new technique. While the petitioner's technique may be a unique one, she has not demonstrated that it is original. She does not produce probative evidence that she is the artist that created the technique, that she was the first to employ such techniques, nor is there probative evidence

on record establishing that she is utilizing it in a manner that is distinct from how others have employed it in the past. While Mr. [REDACTED] asserts generally that other pianists in Japan are adopting her finger independence technique and Mr. [REDACTED] confirms seeing “other pianists” observe the petitioner to adopt her style, the record lacks letters from those the petitioner has instructed who are utilizing these unique techniques.

The letters from [REDACTED] indicate that the petitioner is teaching piano students and the petitioner claims she is having an impact in the field through these students. However, the petitioner does not provide evidence demonstrating that her instruction at multiple institutions constitutes a contribution in her field that is of major significance. For example, the record lacks evidence that a large number of the petitioner’s students have employed the technique with a great amount of success. Simply instructing students, without a substantial display of success shown by the students, is insufficient to demonstrate that the petitioner has significantly impacted the field through her instruction. In fact, the media articles on record contain no information relating to those the petitioner has instructed.

While the use of the Taiwanese technique may set the petitioner apart from many other pianists, neither she, nor the experts in her submitted letters, provide an explain of how these unique factors have impacted the field, which are corroborated with probative evidence. Regardless of the field, the plain language of the phrase “contributions of major significance in the field” requires evidence of an impact beyond one’s employer and clients or customers. *See Visinscaia*, 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). For these techniques to have had a significant impact within the field, we would expect the petitioner to be able to document the widespread adoption of these techniques by both novice as well as established pianists, and we would expect such adoption to go beyond those the petitioner has instructed. The petitioner has not demonstrated any such impact.

The petitioner submits media articles as corroborating evidence in support of the claims that her methods are not only original in her field, but also of major significance. The first article from [REDACTED] titled, [REDACTED] is dated March 12, with no year provided. This article discusses the petitioner’s history in the music field and extols her abilities; however, the article lacks any indication that the petitioner’s use of the Taiwanese Pentatonic Scale is original in the field. The article also does not corroborate the expert letters that claim the petitioner’s use of the Taiwanese Pentatonic Scale has had any impact within the field of music. Also absent from this form of media is any reference to the petitioner’s application of pitch ear training. The petitioner’s appellate brief states that this article: “[W]ould have been read by numerous pianists around the globe and made a significant impact on how they approach piano performance.” The petitioner’s unsupported assertions do not constitute evidence. 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 final form of corroborating evidence in support of the expert letters is an article from the [REDACTED] dated December 11, 2012, and titled, [REDACTED]. The only mention of the petitioner in this article is to identify her on the piano, and to assess that the venue’s acoustics and

the petitioner's piano performance drowned out the other instruments. This article does not support the claims asserted within the expert letters discussed above, and consequently does not corroborate the experts' claims.

Additionally, the regulations contain a separate criterion regarding published material about the petitioner. 8 C.F.R. § 204.5(h)(3)(iii). We will not presume that evidence relating to or even meeting the published material criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published material and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. Published news articles are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they reference original contributions of major significance.

The petitioner submitted numerous additional reference letters praising her exceptional talents as a pianist. Talent and experience in one's field, however, are not necessarily indicative of original artistic contributions of major significance in the field. The reference letters do not provide specific examples of how the petitioner's work has significantly affected the field at large or otherwise constitutes original contributions of major significance.

The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. 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. at 1136.

Vague, solicited letters from local colleagues that do not specifically identify 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 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated the conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and are considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact" but rather is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in

issue). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Additionally, each letter submitted in support of the petitioner's eligibility claim appears to have been drafted in response to the petitioner's efforts in attaining permanent resident status in the United States. While letters authored in support of the petition have probative value, they are most persuasive when supported by evidence that already existed independently. In this matter, while the petitioner submitted published material about her in major media, the materials themselves do not corroborate the letters as the material does not reference the originality of the petitioner's technique or its influence.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

Within the proceeding, the petitioner asserts that her public piano performances constitute "artistic exhibitions or showcases" under 8 C.F.R. § 204.5(h)(3)(vii). 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. *See Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). *See also Visinscaia v. Beers*, 2013 WL 6571822, at *8. As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

B. Summary

The petitioner has not satisfied 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 have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[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.³ Rather, the proper conclusion is that the petitioner has not satisfied 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

³ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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).