



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 30 2014**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on October 19, 2013, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a pianist and music instructor. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

On appeal, the petitioner claims that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. LAW

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

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

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

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

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

(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 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, internationally 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. Evidentiary Criteria²

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

The director determined that the petitioner did not establish eligibility for this criterion. In the petitioner’s brief submitted on appeal, she claims:

[Her] long list of outstanding performances at the numerous musical events plus her remarkable music education contributions to the local communities in the United States . . . should be deemed equivalent to prizes and awards in the field, which have obviously recognized her extraordinary achievements in her field as attested by the

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).

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

experts and educators in her field . . . , despite the lack of formal official certificates titled “awards or prizes.”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized *prizes or awards* for excellence in the field of endeavor.” (emphasis added). The petitioner’s submission of documentary evidence reflecting her participation in musical performances and musical events rather than her receipt of prizes or awards does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). There is no evidence establishing that the petitioner’s participation resulted in any “prizes or awards.” Furthermore, the record of proceeding contains no evidence of any prizes or awards as a music instructor.

It is the petitioner’s burden to establish that the evidence meets every element of this criterion. Not only must the petitioner demonstrate her receipt of prizes and awards, she must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor, which, by definition, means that they are recognized beyond the awarding entity. The petitioner did not submit any documentary evidence reflecting her receipt of prizes or awards, let alone nationally or internationally recognized prizes or awards for excellence in the field.

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

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

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

On appeal, the petitioner claims eligibility for this criterion based on her membership with the [REDACTED]. A review of the record of proceeding reflects that the petitioner submitted an August 8, 2012 email from Dr. [REDACTED] Executive Director and CEO for [REDACTED] to the petitioner thanking her for her 2012-2013 membership with [REDACTED]. The petitioner also submitted a screenshot from [REDACTED] that reflects

the benefits of membership such as peer connections, ongoing education, and resources. The screenshot does not reflect, however, the membership requirements for [REDACTED]

Similarly, regarding [REDACTED] the petitioner submitted a July 30, 2012 email from [REDACTED] Membership Chair of the [REDACTED] to the petitioner welcoming her to [REDACTED] chapter. The petitioner also submitted an October 2012 edition of the [REDACTED], a newsletter for the [REDACTED]. The newsletter provides announcements and events for the chapter, but it does not provide any information regarding membership requirements of the [REDACTED]

Although the documentary evidence submitted by the petitioner reflects that she is a member of the [REDACTED] and the [REDACTED] the petitioner did not submit any documentary evidence reflecting that membership in the associations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Submitting documentary evidence reflecting membership status is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) without documentary evidence demonstrating that membership in these associations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

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

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director determined that the petitioner did not establish eligibility for this criterion. On appeal, the petitioner claims:

[L]ocal and national news media in the forms of various music programs, web and media announcements, notices, posters, pamphlets, etc. widely reported [her] noted performances in her field during numerous national and regional musical events in the United States.

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

The petitioner submitted event programs and promotional material regarding her concert performances. In addition, the petitioner submitted photographs with handwritten captions of her performing and posing in front of musical instruments. Flyers, programs, photographs, advertisements, posters, and other promotional material are not “published material” consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii), as they are not independent, journalistic coverage of the petitioner relating to her work. The material lists her as a performer; there is no discussion of the petitioner or her work. Moreover, the documents do not include the title, date, and author of the material as required pursuant to this regulatory criterion. Furthermore, the petitioner did not submit any documentary evidence demonstrating that that material was published in professional or major trade publications or other major media. Finally, the petitioner did not submit any published material regarding her work as a music instructor.

As discussed above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought.” In this case, the petitioner’s documentary evidence does not reflect published material about her relating to her work in professional or major trade publications or other major media.

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

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

The director determined that the petitioner did not establish eligibility for this criterion. On appeal, the petitioner claims that “[d]uring her coaching and teaching [of] the young music players, [she] has served as judge of their technical skills and performances.”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence of the alien’s participation, either individually or on a panel, *as a judge of the work of others* in the same or an allied field of specification for which classification is sought.” (emphasis added). Serving as a music instructor as part of one’s job responsibility in a classroom setting does not constitute participation as a judge of the work of others in the field. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Teaching in a classroom setting does not meet the elements of this criterion. The petitioner has not submitted any documentary evidence, for example, reflecting that she served on a panel judging a music competition.

For the reasons discussed above, the petitioner did not demonstrate that she served as a judge of the work of others in the same or an allied field of specification for which classification is sought with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner did not 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 director determined that the petitioner did not establish eligibility for this 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.” Here, the evidence must rise to the level of original contributions “of major significance in the field.” The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

On appeal, the petitioner claims eligibility “by the fact that she has received numerous invitations to perform at various concerts and musical events.” The petitioner lists various performances that are reflected on the submitted announcements of concert events and promotional material such as a dual piano recital with [REDACTED]. The petitioner did not establish, however, how her performances constitute original contributions of major significance in the field. The petitioner did not submit any documentary evidence demonstrating the impact or influence of her performances on the field, so as to establish original contributions of major significance in the field consistent with the plain language of this regulatory criterion. Submitting evidence that the petitioner has performed at various concert venues is insufficient to demonstrate eligibility for this criterion without submitting supporting evidence that her performances have impacted the field in a significant way.

The petitioner also claims eligibility for this criterion based on the submission of several recommendation letters and claims that the “[t]estimonies offered by prominent experts in the field have all substantiated [her] original contributions, outstanding ability, and the importance of her musical performance.” The letters, however, do not identify the petitioner’s original contributions and how they have been of major significance in the field. For example, Dr. [REDACTED] stated that the petitioner “brings a unique and inspired approach to her performance and teaching.” Dr. [REDACTED] did not elaborate on the petitioner’s approach or state that it is an original approach. Dr. [REDACTED] also did not explain how the petitioner’s approach has been of major significance in the field. Further, [REDACTED] indicated that “[f]rom back in her student days (2008), [the petitioner] has been a dedicated worker, and went on to contribute a great deal to the community over the next several years.” Mr. [REDACTED] provided no further information describing what the petitioner has contributed and how it has affected the community. Furthermore, Dr. [REDACTED] indicated that the petitioner performed “at [REDACTED] as part of the [REDACTED].” Although the petitioner’s performance may be considered original, Dr. [REDACTED] did not indicate how the petitioner’s performance at the college has been of major significance to the field as a whole. Similarly, Reverend [REDACTED] stated that the petitioner “has brought recital performances to [REDACTED] to expand the knowledge of music to others in the congregation and has adjusted her student lessons in order to play at the funerals of members.” Reverend [REDACTED] only described the petitioner’s influence on the [REDACTED] rather than the impact or influence of the petitioner’s work on the field as a whole.

The letters highly praise the petitioner for her musical talents and abilities. For instance, [REDACTED] stated that “[s]ince [the petitioner] has great interpersonal, analytical, and communication skills as a natural collaborator, she distinguishes herself to be a competent accompanist and the quintessential chamber musician”; [REDACTED] stated that the petitioner “has all the personal attributes essential for ensemble playing: patience, flexibility, the ability to listen, sensitivity, and refinement”; [REDACTED] offered praise for the petitioner’s “skills as a pianist and for her strong instincts as a collaborative artist working with a wide range of other music students”; and [REDACTED] stated that the petitioner’s “abilities as an ensemble player are far beyond most musicians I have encountered.” None of the letters, however, indicated how the petitioner’s skills are original contributions of major significance in the field. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner’s skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. That issue would properly fall under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Assoc. Comm’r 1998).

The opinions of the petitioner’s references are not without weight and have been considered. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Thus, the content of the references’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a musician who has made original contributions of major significance in the field. *Cf. Visinscaia v. Beers*, --- F. Supp. 2d ----, 2013 WL 6571822, at *6, *8 (D.D.C. Dec. 16, 2013) (concluding that USCIS’ decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

The petitioner has submitted insufficient documentary evidence demonstrating that her work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, it also requires those contributions to be of major significance. Vague, solicited letters that repeat the regulatory language but do not explain how the petitioner’s contributions have already influenced the field is insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). In 2010, the *Kazarian* court reiterated that the USCIS’ conclusion that the “letters from physics professors attesting to [the petitioner’s] contributions in the field” were insufficient was “consistent

with the relevant regulatory language.” 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner’s status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Without supporting evidence, the petitioner has not met her burden of establishing her present contributions of major significance in the field. Moreover, 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).

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

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The director determined that the petitioner did not establish eligibility for this criterion. On appeal, the petitioner claims:

Different from researchers and scientists who[se] achievements are usually measured by the books or articles they have authored, as a noted musician and instructor, [her] publications are her outstanding performances and effective instruction in numerous regional, national and even international musical events

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.” The petitioner did not submit any evidence reflecting that she has authored scholarly articles in the field of piano playing or music instruction in professional or major trade publications or other major media. The petitioner’s performances and instruction are not the same as authorship of scholarly articles in professional or major trade publications or other major media consistent with the plain language of this regulatory criterion.

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

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

The director determined that the petitioner established eligibility for this criterion. Based on a review of the record of proceeding, we must withdraw the favorable findings of the director for the artistic display criterion. 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.” The petitioner is a performer. Not every performance is an artistic exhibition designed to showcase the performer’s art. Considering a performance under this criterion would effectively collapse the criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(viii). *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)). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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. *Id.* at *1, *7. 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). Therefore, the director's decision finding that the petition has met the artistic display criterion is withdrawn.

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

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.

On appeal, the petitioner refers generally to the recommendation letters discussed under the original contributions criterion. Although the letters briefly highlight some of the petitioner's performances, they do not provide specific information establishing that the petitioner performed in a leading or critical role. For instance, Mr. [REDACTED] indicated that the petitioner “participated in [REDACTED] that was presented by three members of [REDACTED] piano faculty.” Mr. [REDACTED] did not indicate the petitioner's specific role and how it was considered to be leading or critical. Mr. [REDACTED] did not, for example, compare the roles to the other participants, so as to demonstrate that the petitioner's role was leading or critical.

Moreover, Mr. [REDACTED] stated that the petitioner “has been an invaluable part of the [REDACTED] community as an accompanist and coach” and has “been a central part of the opera and musical theatre performances here at [REDACTED]” Again, Mr. [REDACTED] did not provide any further details describing how the petitioner performed in a leading or critical role at [REDACTED]. There is no evidence that distinguishes the petitioner from the other musicians, coaches, or instructors, so as to reflect that the petitioner's role is leading or critical.

Furthermore, Dr. [REDACTED] indicated that the petitioner “is a valuable asset to the [REDACTED] piano department.” Although Dr. [REDACTED] stated that the petitioner's “energy and enthusiasm have helped our piano grow and flourish,” Dr. [REDACTED] did not explain how the petitioner helped grow the piano department. Besides indicating that the petitioner is an active performer, Dr. [REDACTED] did not elaborate on the petitioner's roles or responsibilities and how they have significantly contributed to the piano department that would be reflective of a leading or critical role.

The letters provide insufficient information to establish that the petitioner has performed in a leading or critical role consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). As discussed above, vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's roles were leading or critical is not persuasive evidence and simply repeating the statutory language does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *see also Ayr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *5.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the organizations or establishments have a distinguished reputation. On appeal, the petitioner claims that “[a]ll these institutions/organizations enjoy a distinguished reputation both nationally and internationally.” The petitioner did not submit any documentary evidence to support her assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” The burden is on the petitioner to establish that she meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the petitioner has not demonstrated that she meets the plain language of this regulatory criterion.

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

B. Summary

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

III. CONCLUSION

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

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

final merits determination.³ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

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

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

ORDER: The appeal is dismissed.

³ We conduct appellate review on a de novo basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).