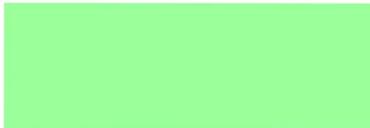




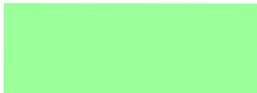
U.S. Citizenship
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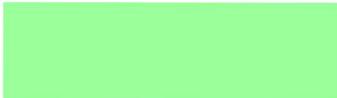


DATE: FEB 12 2015

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:

SELF-REPRESENTED

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner, a fashion producer, seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

For the reasons discussed below, we agree that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who is at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner’s appeal.

On appeal, the petitioner submits a statement contesting the director’s decision. The petitioner asserts that she meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(v), (vii), (viii), and (ix).

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) sets forth a multi-part analysis. First, a petitioner can demonstrate the her sustained acclaim and the recognition of the her achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

II. ANALYSIS

A. Evidentiary Criteria¹

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 had not established eligibility for this criterion. The plain language of this criterion requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” Here, the evidence must rise to the level of original artistic contributions “of major significance in the field.” The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner submitted various letters of support discussing her work in the fashion production field. The director found that the submitted evidence was not sufficient to demonstrate that the petitioner has made original contributions of major significance in the field. On appeal, the petitioner states:

¹ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner asserts that she meets or for which the petitioner has submitted relevant and probative evidence.

Although the submitted evidence (letters) are [sic] from experts in the field, clearly evincing my extraordinary ability relating to this criterion, the Service imposes its opinion disregarding these experts. This is unreasonable and arbitrary. Weight should be given to information provided by these experts, and not be disregarded by an adjudicator who imposes his own opinion.

We note that the director's decision specifically considered statements from references such as [REDACTED]. The petitioner does not explain how the director's analysis of the statements from each of their letters was erroneous, unreasonable, or arbitrary. Furthermore, the petitioner does not point to any other reference letters that demonstrate her eligibility for this regulatory criterion.

[REDACTED] a fashion producer based in New York and Paris, offers an advisory opinion as a peer of the petitioner. [REDACTED] asserts that the petitioner's work includes "major creative contributions on behalf of such leading companies as [REDACTED]" and that her work "benefits trend-setting publications on the order of [REDACTED] and the French, Russian, and Japanese editions of [REDACTED]" but does not identify her specific contributions or explain how they were both original and of major significance in the fashion production field. In addition, although [REDACTED] mentions that the petitioner has worked with "high profile celebrities" and "renowned photographers" and has interviewed well-known fashion designers, he does not provide specific examples of how the petitioner's work has affected the field at a level indicative of original contributions of major significance.

[REDACTED], Chief Executive Officer, [REDACTED] New York, states:

[The petitioner] produces advertising shoots that define the public faces of influential labels like [REDACTED] and her editorials appear in [REDACTED] and numerous others. [The petitioner] also continues to oversee key aspects of such major events as [REDACTED] and Europe's largest AIDS researcher fundraiser, the [REDACTED]. As a versatile artist in the fashion community, [the petitioner] receives frequent invitations to contribute her expert opinion to publications, including [REDACTED] the weekly art and fashion supplement to the major Austrian newspaper [REDACTED]

[REDACTED] mentions that the petitioner has produced advertising shoots, that her editorials appear in fashion magazines, that she has overseen fashion events, and that she has contributed her opinion to fashion publications, but does not specify how the petitioner's original work has influenced the field as a whole or otherwise equates to artistic contributions of major significance in the field.

[REDACTED], an editorial and fashion photographer from New York, states:

Over the next three years, I will be relying on [REDACTED] to handle the photo production for my leading projects. I look forward to utilizing the skills of [REDACTED] [the petitioner] to provide production services in my work for [REDACTED]

[REDACTED] I will require the services of the extraordinary [petitioner] for three to four shoots per month during this time, with each shoot lasting from one to five days plus one week of preparation.

[REDACTED] comments about future projects for which he expects to utilize the petitioner's services, but does not provide examples of how the petitioner's original work is already of major significance in the field.

Similarly, [REDACTED], a fashion stylist and advisor from New York, states: "At a rate of two to three times per month over the next three years, I will require the services of [REDACTED] and, in particular, its superb employee [the petitioner]. [REDACTED] is critical to my continued success, and I therefore am eager to begin our collaborations." [REDACTED], a set designer for various fashion labels and publications, states: "One of the key elements in choosing [REDACTED] over other firms is that it will serve as the employer of the exceptionally gifted [petitioner], with whom I hope to work on a regular basis over the next three years. I will require [the petitioner's] expertise for five to seven projects per month" While the petitioner's references above indicate that they will utilize her services for future projects, they do not provide any information regarding the significance of her previous artistic contributions in the field of fashion production.

[REDACTED] an agent with [REDACTED] a firm in New York that represents individuals working in the fashion industry, states:

[The petitioner's] leading role in producing events, photo shoots, and set designs for major clients like [REDACTED] proves that she is truly operating at the top of her field.

[The petitioner] is an expert in bringing together the multifaceted elements necessary for a successful production. The level of talent with whom she collaborates sets her even further apart from others in her field. Regularly partnering with photography legends like [REDACTED] [the petitioner] produces shoots that have starred [REDACTED] and numerous other elite celebrities.

Given her experience and widespread reputation for excellence, it should come as no surprise that magazines like [REDACTED] invite [the petitioner] to interview other leading fashion professionals, such as stylist [REDACTED] and designer [REDACTED] for their many readers.

[REDACTED] mentions that the petitioner has produced events, photo shoots, and set designs for various clients; partnered with renowned photographers; coordinated photo shoots involving various celebrities; and interviewed fashion professionals for [REDACTED] but does not provide specific examples of how the petitioner's work has affected practices in the fashion industry, has influenced the work of other fashion producers, or otherwise constitutes original artistic contributions of major significance in the field.

[REDACTED] Editor-in-Chief, [REDACTED] states:

With [REDACTED] I have regularly enlisted the skills of fashion producer [the petitioner], who has worked on several crucial shoots for our publication, including editorials with [REDACTED] and [REDACTED]. In the course of working together, I have watched her combine original artistry with a deep understanding of the fashion industry to positively influence both the experience of the shoot and the final product. The shoots she oversees are always complete successes, and we are grateful for all she has done for our publication.

[REDACTED] describes the petitioner's work producing photo shoots for [REDACTED] but does not provide specific examples of how the petitioner's original work has influenced the way photo shoots are conducted by others throughout the fashion industry or was otherwise indicative of artistic contributions of major significance in the field. The plain language of this regulatory criterion requires that the petitioner's contributions be "of major significance in the field" rather than limited to the clients for which she has provided fashion production services. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

[REDACTED] a photography agent for [REDACTED] a management and creative content agency in New York, states that she has collaborated with the petitioner "on many shoots for high level publications such as [REDACTED]" [REDACTED] further states:

Diligent, scrutinizing, and inspired, [the petitioner] was vital to the success of these productions, and as a result, she has become one of my most invaluable colleagues. The artists I represent could not agree more.

Leading photographers, among them [REDACTED], rely on [the petitioner's] expertise and stylistic instincts for their prestigious shoots, as do the celebrities they photograph, who include [REDACTED]. Our industry depends upon the exemplary work performed by people like [the petitioner], an individual who goes above and beyond to bring together the talent, visuals, concepts, and technical elements to produce top tier advertisements, editorials, and events.

[REDACTED] comments on the petitioner's talent and expertise as a fashion producer, but does not provide specific examples of how the petitioner's original work rises to the level of artistic contributions of major significance in the field of fashion production.

[REDACTED] a fashion designer in New York, states that she hired the petitioner to produce a "show at [REDACTED]." [REDACTED] continues:

[The petitioner] is an amazing woman, blessed with absolutely every skill a Public Relations professional could need: a truly directional sense of market positioning, a flair for events that capture the imagination, and an impeccable sense of timing in everything she does.

* * *

Over the course of her career, [the petitioner] has established herself as one of the premier marketing consultants in fashion. As a public representative, and as a producer of events and

photography that create a brand in the mind of the public, she is absolutely at the top of her profession. In addition, she has excelled as a Creative Director for top advertising firms in the [REDACTED] networks, and as an Editor for branded publications of [REDACTED] (among many others).

[REDACTED] mentions the petitioner's public relations skills, her production of a show at [REDACTED] and her talent as a creative director and editor. There is no documentary evidence showing, however, the extent of the petitioner's influence on fashion production practices in the industry or indicating that the field has specifically changed as a result of her original work so as to demonstrate the major significance of her contributions.

[REDACTED] owner and founder of [REDACTED] an agency that represents young photographic talent in fashion and beauty campaigns, states:

I have connections that have allowed me to serve those I represent all the better. This is true of [the petitioner], as well, who spent almost a decade working for top advertising agencies in Vienna, including offices of the [REDACTED]. She, too, has turned this experience into an advantage for her clients – top designers like [REDACTED]

Of course, [the petitioner] has also served as an Editor with fashion and lifestyle magazines here in Germany, including my own [REDACTED] magazine. Publications like [REDACTED] all have benefited by her deft sense of fashion trends and her gift for creating beautiful editorial campaigns. She helped put together [REDACTED] back in 2006, and so I have witnessed firsthand her professional competence and her gift for compelling artistry.

Today [the petitioner] is redefining the role of publicist, serving not only as a public relations representative for her designers, but also as a sort of in-house Creative Director for them. In this, she is making significant contributions to the success of the independent spirit and making original and important contributions to the nature of her profession.

[REDACTED] comments about the petitioner's job experience with three advertising agencies, her work for various designers, her service as an editor for fashion and lifestyle magazines, and her roles as a publicist, public relations representative, and creative director, but does not provide specific examples of the petitioner's work that have influenced the field in a major way or otherwise equate to original contributions of major significance in the field of fashion production. In addition, [REDACTED] asserts that the petitioner is "making original and important contributions to the nature of her profession." USCIS, however, need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications); *see also Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field).

[REDACTED], a fashion designer, states that the petitioner produces and promotes his “fashion shows and exclusive, off season events.” [REDACTED] continues:

I must say that [the petitioner] has done a phenomenal job. She, as much as anyone, has helped us to express a cohesive vision in everything we do before the public. As importantly, she wields considerable influence with the trend-setters and jet-setters, and any event she curates is a coveted invitation.

In addition to her enviable connections, [the petitioner] is just a brilliant individual: As one might expect given her career of service to major advertising agencies like [REDACTED], she has a unique understanding of media and media people (she was an editor for several European fashion and lifestyle publications). As such, she is a perfect spokeswoman for a designer who wants to preserve a measure of individuality. As I have said, however, media relations are not her exclusive province. Quite simply, she can do it all.

In sum, [the petitioner] is one of few individuals in this industry whom I would call “extraordinary.” Based on her creative gifts, her professionalism and, most of all, based on her success in promoting my collections, I am glad to extend myself in wholehearted support of her visa petition.

[REDACTED] mentions the petitioner’s effectiveness as a producer and promoter of fashion shows, her personal qualities, media relations experience, creativity, and professionalism, but does not identify specific examples of how the petitioner’s work has influenced the field or otherwise constitutes original contributions of major significance in the fashion production 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*, 580 F.3d 1030, 1036 (9th Cir. 2009). In 2010, the *Kazarian* court reiterated that conclusion was “consistent with the relevant regulatory language.” 596 F.3d at 1122. It is not enough to be a talented fashion producer and to have others attest to that talent. An individual must have demonstrably impacted her field in order to meet this regulatory criterion.

[REDACTED], a freelance stylist, states:

[The petitioner’s] high standards of art, her sense of fashion, and her respect for the talent that she assembles on set has made her one of the most sought-after fashion producers in the world. She is a designer’s best ally and a top publicist in the business. That said, she is far more than just a PR [Public Relations] representative, as she generally accepts creative control of her clients’ runway shows and promotional photography. She is curator, advocate, surrogate and creative partner for top designers like [REDACTED] and more.

* * *

It takes both artistic instincts and a flair for organization in order to produce top-quality photographic campaigns. [The petitioner] does this work on behalf of an elite clientele of designers. She shoulders all the worry, scouting the ideal partners for a shoot, securing their

availability and making sure the production meets strict deadlines and that it expresses the artistic goals of the collection. Notably, even the most controlling designer's expectations never exceed her own, as she is a discerning and demanding critic.

comments about the petitioner's talents and organizational skills as a fashion producer, but does not explain how the petitioner's campaigns and productions have affected the field as a whole or otherwise constitute original artistic contributions of "major significance" in the field of fashion production.

, a fashion designer who launched the collection, states:

[The petitioner] has designed any number of events for us, and she has generated a great deal of press interest surrounding the launch of . In doing so, she has ensured that our message is accessible, even as it conveys our line's unique sensibility.

[The petitioner] has been an elite public representative for years now, and for some of the most inventive designers in the world. On their behalf, she has distinguished herself as one of the most effective publicists in the industry and as one of its most creative. Her flair for marketing is by now internationally known, as is her gift for creating signature events. Perhaps less discussed, however, is the extent to which we, as designers, rely on her creative input in developing our collections. Presentation is everything in this business, and it is therefore vital to have someone like [the petitioner] involved every step of the way. The bottom line counts, and in [the petitioner] we find a businesswoman thinking like an artist, and a public advocate who never loses touch with her artistic curiosity.

states that the petitioner worked to generate interest surrounding the launch of her company's collection and that the petitioner "has distinguished herself as one of the most effective publicists in the industry," but does not provide specific examples of how the petitioner's work as a fashion producer has influenced the work of others in the industry, or has otherwise impacted the field at a level indicative of original artistic contributions of major significance. Again, the plain language of this criterion requires that the petitioner's contributions be "of major significance in the field" rather than limited to projects for her clients. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

a fashion designer, states:

[The petitioner] has long served as an agent with one of the truly innovative PR firms serving the fashion industry. I am a client, and I have been consistently impressed with her creativity, her foresight and her professionalism. She works with style in service to strategy, and she commands the trust of opinion makers on either side of the Atlantic. As such, she is the ideal representative for a European designer looking to launch a collection in the United States or, alternately, for Americans who want to do business in the EU [European Union].

comments on the petitioner's creativity, foresight, professionalism, working style, and trustworthiness, but does not explain how the petitioner's work has affected the industry at a level commensurate with artistic contributions of major significance in the field.

[REDACTED], a makeup artist, states:

[The petitioner] is one of those people who know[s] how to nurture good ideas, and she has a seemingly endless supply of her own. With a background in advertising, she approaches fashion and fashion production with a critical eye and an astute sense of audience. As such, she is more than just a publicist; she is a valued partner and an important strategist for her designers, helping them to make choices that build healthy brands.

She is an amazing ally for designers like [REDACTED] and many others. They trust her with their reputation, and, as often, with oversight of the editorial and promotional shoots that are the lifeblood of fashion. It is in this context that I first became acquainted with her, and so I know the difference she can make, both in terms of the quality of the pictures and the attitude of everyone involved. People want to work with and for her, and so she gets the very best we have to offer.

[REDACTED] comments on the petitioner's ability to nurture and provide good ideas, her background in advertising, her importance as a brand strategist, and her work with various designers. There is no documentary evidence showing, however, that the petitioner's work has impacted the fashion production field in a major way, or that her work has otherwise risen to the level of original contributions of major significance in the field.

[REDACTED] a lingerie designer, states:

I am writing to . . . recommend the extraordinary ability of [the petitioner], who produced my most recent show during [REDACTED]. She is an amazing woman and a valued collaborator for many of my influential colleagues.

[The petitioner] has become one of the top publicists in the world, but obviously she is not your everyday PR flak. She serves, rather, as a sounding board and consultant for her clients, participating in all aspects of marketing. Personally, I trust her as a surrogate, someone who will express my design aesthetic with the same passion I would, and I am not alone in this: she works as well and as centrally with [REDACTED] and with celebrity designer [REDACTED].

I should say that [the petitioner] is unique in one other respect: she can speak to influential editors in their own language.

[REDACTED] states that the petitioner produced her line's [REDACTED] show and mentions the petitioner's skills as a top publicist, marketing consultant, and fashion editor, but does not explain how the petitioner's original work has affected the field as a whole or otherwise equates to original contributions of major significance in the field.

[REDACTED], Project Coordinator of [REDACTED] states:

[REDACTED] is Europe's largest and most spectacular annual charity event dedicated to the fight against HIV and AIDS. It attracts huge interest in the media and is broadcast live on

Austrian National TV prime time, aired delayed in Germany. . . . This past year, [the petitioner] organized international press and VIP's going to the [redacted] on a dedicated plane sponsored by [redacted] and we have already signed her up to do it again next year.

For us, [the petitioner] proved that she is an absolute visionary when it comes to balancing the artistic and strategic concerns of so complex and prominent an endeavor. [The petitioner] has established herself as one of the best public relations consultants working anywhere in the world today.

[redacted] states that the petitioner "organized international press and VIP's going to the [redacted] on a dedicated plane sponsored by [redacted]" but does explain how coordinating a charter flight to an annual charity event in Austria rises to the level of original artistic contributions of major significance in the field. In addition, [redacted] asserts that the petitioner is "one of the best public relations consultants working anywhere in the world today." USCIS, however, need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 17; *see also Visinscaia*, 4 F.Supp.3d at 134-35.

[redacted] Marketing and Development Director for [redacted] a public relations company focused on artistically oriented organizations, states:

[The petitioner] is an individual of extraordinary ability and one of the most important professionals in high fashion publicity and marketing today. I base this conclusion upon a review of the beneficiary's career, which includes major creative contributions on behalf of some of the most highly regarded designers of haute couture and high fashion ready-to-wear collections. Her clients include major trend-leaders such as [redacted] [redacted] to name but a few. I have also considered the positive media coverage she creates through her work on their behalf, which includes attention in the pages of [redacted] and countless others.

* * *

I readily certify that [the petitioner] has maintained a level of superior artistic and professional achievement which has won her sustained national and international acclaim. In my professional opinion, she is an important and extraordinary artist with a truly original vision.

[redacted] asserts that the petitioner is an "extraordinary artist" and "an individual of extraordinary ability," and that the petitioner has garnered "sustained national and international acclaim." Merely repeating the language of the statute or regulations, however, does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.). In addition, [redacted] identifies several of the petitioner's clients and points to coverage in fashion magazines that the clients' products garnered with the help of the petitioner, but does not identify specific examples of how the petitioner's work has affected the industry or was otherwise of major significance in the fashion production field.

The petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. at 17. In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988) (holding that an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner’s eligibility. *Id.* *See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Without additional, specific evidence showing that the petitioner’s 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 she meets this regulatory criterion.

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

The director determined that the petitioner had not established eligibility for this criterion.

The petitioner submitted an October 23, 2013 letter accompanying the petition stating:

[T]he normal mode of showcase for the work of [the petitioner] is via publications, fashion shows, large scale events and world-wide advertising campaigns. [REDACTED] Europe’s largest AIDS research fundraiser had 40,000 individuals attend. [The petitioner] was directly responsible for the production of this event. There can be no question that her work has been and is today, shown around the world to countless millions of individuals as demonstrated by the vast list of publications her work has appeared in.

With regard to the [REDACTED] the submitted evidence does not support the petitioner’s claim that she “was directly responsible for the production of this event.” For example, [REDACTED] the Project Coordinator of [REDACTED], only mentioned that the petitioner “organized international press and VIP’s going to the [REDACTED] on a dedicated plane sponsored by [REDACTED]” [REDACTED] did not specify the petitioner’s responsibilities at the [REDACTED]. In addition, the petitioner submitted a news release from the [REDACTED] Press Office identifying [REDACTED] as the “Organizer of [REDACTED]” The news release further states that the “event will feature runway shows from renowned and globally recognized American designers [REDACTED], [REDACTED].” There is no documentary evidence showing that the petitioner’s work was on display at the [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

In response to the director's request for evidence, the petitioner submitted an April 23, 2014 letter stating: "Every runway show, fashion editorial or photo shoot is an artistic creation and that is exactly what [the petitioner] is responsible for producing. There is simply no question that her work has been displayed in countless artistic exhibitions and showcases in the fashion industry around the world"

The director noted that the petitioner did "not create the product" on display and, therefore, did not meet the plain language requirements of this regulatory criterion. On appeal, the petitioner states:

[T]he Service state[d] that I have not met this criterion as not "meeting the plain language of this criterion" challenging my contribution as not evidence of my work in the relating "exhibitions," as my contribution was on behalf of the artists themselves. That as my role involved the advertising and sale of the artist's work, that my contribution cannot be considered as "display of the alien's work." And again, the Service imposes its opinion, that to meet this criterion one must show that such artistic work be for the purpose of "present[ing] art work for public viewing." One must question the conclusion of the Service, in limit[ing] artistic work to "viewing."

The plain language of this regulatory criterion, however, requires "display" of the petitioner's work in the field at artistic exhibitions or showcases. There is no documentary evidence showing that the petitioner's work has met these requirements. Performing marketing responsibilities, scheduling photographers and models, and offering consultations do not meet the elements of this regulatory criterion.

In light of the above, the petitioner has not established that she meets this regulatory 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 had not established eligibility for this criterion.

As previously mentioned, the petitioner submitted a letter from [REDACTED] Editor-in-Chief, [REDACTED] stating that the magazine "regularly enlisted" the petitioner's skills as a fashion producer, that the petitioner "has worked on several crucial shoots for [the] publication, including editorials with [REDACTED]," that the petitioner's work "positively influence[d] both the experience of the shoot and the final product," and that "the shoots she oversees are always complete successes." Accordingly, the petitioner appears to have performed in a critical role for [REDACTED]. The petitioner, however, did not submit any documentary evidence showing that [REDACTED] has a distinguished reputation. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner also submitted a letter from [REDACTED] Marketing Director, [REDACTED] stating: "I reached out to [the petitioner] to producer [sic] all of our campaign and catalogue shoots. Our new campaign featuring [REDACTED] is an incredible success and this also [sic] due to the hard work of [the petitioner]." Thus, the petitioner appears to have performed in a critical role for

The petitioner, however, did not submit any documentary evidence showing that [REDACTED] has a distinguished reputation.

In addition, the petitioner asserts that she has performed in a leading or critical role for [REDACTED]

[REDACTED] With respect to the petitioner's assertion, the director's decision stated:

[The petitioner] does not have a leadership role for any of these organizations. It must therefore be demonstrated that that her role has somehow been critical to at least some of these organizations. The petitioner was requested to provide evidence describing how her role has been critical to these organizations.

In addition, the director indicated that "suggested evidence" could include letters from former clients indicating "at least some increase in sales that could be attributed to the petitioner." The director determined that the petitioner's list of clients alone was not sufficient to support her statement that she performed in a leading or critical role on their behalf. The director further stated:

The petitioner failed to provide evidence to support [her] statement. Letters from these companies would have been helpful. Additionally, if it could have been shown that a majority of her high profile clients continuously offer her ongoing contracts, it would have at least suggested a role of some importance. This type of evidence was not submitted.

On appeal, the petitioner mentions her salary "in excess of \$170,000.00" as evidence for this regulatory criterion. The regulations, however, include a separate criterion for commanding a high salary in relation to others in the field at 8 C.F.R. § 204.5(h)(3)(ix), and the petitioner's earnings will be addressed there. The issue here is not the petitioner's salary, but whether she has performed in a leading or critical role for organizations or establishments with distinguished reputations.

In addition, the petitioner states:

[B]y listing my list of clients, it is obvious that my contributions are major to their organization, and to require sales records are [sic] not something that is going to be offered by these clients. The list of the clients, [sic] make it reasonable that the Service should be aware of these organization[s] and their major contributions and sales in the field. Evidence of their sales should not be a reason for denial of this criteri[on], and obviously I would not be contracted by these clients if my work was not extraordinary

The director, however, did not require evidence of the petitioner's clients' sales records. Rather, "sales records" were a type of evidence that the director "suggested" could help the petitioner demonstrate her eligibility. In addition, the petitioner's assertion "that the Service should be aware of these organization[s] and their major contributions and sales in the field" is not without merit. The petitioner

bears the burden of establishing 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). With regard to the aforementioned individuals, organizations, and publications, the petitioner did not submit any letters of support or other evidence originating from them that discuss the specific work performed by the petitioner and how her role as a fashion producer was leading or critical to the organizations. There is no documentary evidence differentiating the petitioner's role from that of the other staff and contractual service providers, let alone from that of the organizations' management, so as to demonstrate her leading role. In addition, the submitted evidence does not 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, senior managers, or editors discussing the significance of her specific contributions to the above organizations and establishments beyond their need to hire fashion producers to coordinate their photo shoots or other promotional campaigns. Lastly, the petitioner did not submit documentary evidence showing that the aforementioned organizations have a distinguished reputation.

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

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The director determined that the petitioner had not established eligibility for this criterion.

The petitioner submitted her 2012 and 2013 U.S. Individual Income Tax Returns reflecting partnership income from her company, [REDACTED] of \$171,343.00 and \$366,859.00, respectively. The petitioner also submitted the petitioner's [REDACTED] Employment Agreement that identifies the petitioner as a Partner and Chief Executive Officer (CEO). The submitted documentation, however, does not indicate the amount of the petitioner's income attributable to her fashion producer salary versus her partnership income and CEO compensation.

In addition, the petitioner submitted July 2013 – June 2014 "Online Wage Library" Foreign Labor Certification "Wage Results" for the New York, Chicago, and Los Angeles areas indicating that the Level 4 (fully competent) yearly prevailing wage for producers and directors in the stage, television, radio, video, and motion picture occupations was \$148,346.00, \$91,603.00, and \$176,634.00, respectively.² The petitioner, however, must submit evidence showing that she has earned a high salary or other significantly high remuneration relative to others in the field, not just a salary that is above the amount paid to the majority of fully competent producers and directors in the New York, Chicago, and Los Angeles areas. Furthermore, the accompanying descriptions for the producer and director occupations were not similar to the petitioner's job duties as a fashion producer such that the salaries for those occupational categories would represent appropriate bases for comparison in demonstrating that the petitioner's salary was high in relation to others in the field.

² A "prevailing wage" is defined as "trade and public work wages paid to the majority of workers in a specific area." See <http://www.businessdictionary.com/definition/prevailing-wage.html>, accessed on January 12, 2015, copy incorporated into the record of proceeding.

The petitioner also submitted data from [www. \[REDACTED\]](#) listing “Fashion Production Manager” salaries from four companies that had job openings in New York in 2007. This limited data is not timely and does not present a sufficient basis for comparison in showing that the petitioner’s 2012 and 2013 salaries were high relative to those of others in the field.

In addition, the petitioner submitted the following:

1. Job listing data from [www. \[REDACTED\]](#) stating that the “average” fashion production salary as of October 22, 2013 was \$64,000.00;
2. Job listing data from [www. \[REDACTED\]](#) stating that the “average” fashion show production salary as of October 22, 2013 was \$53,000.00; and
3. Job posting data from [www. \[REDACTED\]](#) for fashion production coordinator salaries in New York stating that the “average” fashion production coordinator salary as of October 22, 2013 was \$55,000.00.

The petitioner’s reliance on average salary data compiled from job openings is not a proper basis for comparison. First, the petitioner must submit evidence showing that she has earned a high salary or other significantly high remuneration relative to others in the field, not just a salary that is above average in her field. Furthermore, the submitted salary data is limited to only current job vacancies and excludes data for filled positions.

The petitioner must present evidence of objective earnings data showing that she has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *See Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *see also Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers). The submitted evidence does not show that the petitioner has earned a high salary or other significantly high remuneration for services in relation to others in her field.

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

B. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

C. Prior O-1 Nonimmigrant Visa Status

The record reflects that the petitioner is the beneficiary of an approved O-1 nonimmigrant visa petition 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 her 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 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. *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 individual’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 individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor.

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

very top of the field of endeavor,” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.³

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. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.

³ We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep’t of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).