

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: JAN 06 2015

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal. Subsequently, the petitioner filed a motion to reopen and reconsider. The motion is granted and the petition remains denied.

The petitioner, a musician and vocalist, 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 aliens 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. Specifically, the director determined that the petitioner's evidence had met only the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv) and (vii).

On motion, the petitioner submits a brief and additional evidence. The submitted evidence includes documentation showing that the petitioner previously submitted a brief in support of his appeal. The petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), and (viii). In addition, the petitioner contends that he has submitted comparable evidence of his eligibility pursuant to the regulation at 8 C.F.R. § 204.5(h)(4).

For the reasons discussed below, we agree that the petitioner has not established his 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 he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim as of 2012 when he filed the petition, or even subsequently. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

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, 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).

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

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 failed to establish eligibility for this regulatory criterion.

¹ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

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The petitioner submitted an August 24, 2012 letter from Mr. [REDACTED] Program Officer, [REDACTED] Pakistan, stating:

[The petitioner] was admitted to this college/university to 1st year class on the basis of music. As a member of the [REDACTED] he was called to act as secretary of the society for its working from 1980 to 1981. In order to serve as secretary of this prestigious music society we require an accomplished harmonium/keyboard player along with his singing ability so that he can deal with the other students members [sic] technically and grammatically who have an aptitude towards singing or instrument playing. In these early two years [the petitioner] performed and acted so well that he was called again to act as secretary of this renowned society in the session 1982-83.

During his stay as a secretary he proved himself as an accomplished student of music not only in organizing the performances of the students but also enabling them to work as a team.

In addition, the petitioner submitted information in the [REDACTED] about the [REDACTED] and their performances, but there is no documentary evidence of the society's specific membership requirements. Although Mr. [REDACTED] described the position requirements for serving as secretary, he did not provide any evidence of the membership requirements of the society, and whether its membership is judged by recognized national or international experts in their disciplines or fields. Also, a position with an association is not a membership level in that association. Moreover, the petitioner has not established that the requirements for serving as secretary of the [REDACTED] constitute outstanding achievements. The petitioner has not shown that being an accomplished harmonium/keyboard player and demonstrating ability as a singer in the student music program at [REDACTED] equate to outstanding achievements.

The petitioner submitted two articles dated March 5, 2004 in the [REDACTED] (India) identifying him as a delegate of the [REDACTED]. Neither article provides information regarding the union's membership requirements. There is no documentary evidence showing that the [REDACTED] is an association with members that requires outstanding achievements of its members, as determined by recognized national or international experts in the field.

The petitioner submitted a May 8, 2012 letter from [REDACTED] Program Manager, [REDACTED] stating: "[The petitioner] is associated with [REDACTED] for the last 30 years as vocalist in category 'AA.' He sings light and semi-classical songs and possesses a melodious voice. During this period, we found him hard-working, talented and committed to his work." In addition, the petitioner submitted a map showing the [REDACTED] radio coverage areas and a webpage listing the chronological history of the [REDACTED] and [REDACTED]. The submitted evidence does not establish that the petitioner holds membership in the [REDACTED] or that the corporation requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. Submitting documentary evidence reflecting the petitioner's employment or involvement with a particular organization without evidence reflecting that the petitioner is a member of an association that requires outstanding

achievements of its members, as judged by recognized national or international experts, is insufficient to meet the plain language of the regulation. The plain language of this regulatory criterion requires the petitioner to show “membership in associations” rather than his employment or involvement with organizations or businesses.

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

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

The director determined that the petitioner failed to establish eligibility for this regulatory criterion.

The petitioner submitted a July 11, 1994 article in [REDACTED] entitled [REDACTED] [REDACTED]” but did not identify the author of the material as required by this regulatory criterion. In addition, the petitioner submitted a June 8, 1992 article in [REDACTED].” The petitioner also submitted a March [REDACTED] article in [REDACTED] entitled “ [REDACTED]” but the article is about Mr. [REDACTED] and a program celebrating his work rather than the petitioner. The plain language of this regulatory criterion, however, requires “published material about the alien.” Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). The petitioner’s evidence also included webpages from [REDACTED] internet site stating that the publication is “the largest circulated newspaper of the region.” USCIS, however, need not rely on general self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff’d* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media). There are no objective circulation figures showing that [REDACTED] is a form of major media.

The petitioner submitted a March [REDACTED] article in [REDACTED] entitled [REDACTED]” but did not identify the author of the material. In addition, the article is about a student music program and not the petitioner. The petitioner also submitted an April [REDACTED] article in [REDACTED] mentioning that the petitioner and eight other [REDACTED] students participated in a “half an hour music program” which [REDACTED] broadcasted. The aforementioned article, however, is about the [REDACTED] radio program rather than the petitioner. The petitioner submitted another article in [REDACTED] but did not identify its title, date, and author. Furthermore, the article is about [REDACTED] and not the petitioner. Moreover, there is no evidence showing that [REDACTED] is a professional or major trade publication or form of major media.

The petitioner submitted an April [REDACTED] article in [REDACTED] entitled [REDACTED] [REDACTED]. In addition, the petitioner submitted a list of numerous news outlets posted on the “Raising Pakistan” online forum that includes [REDACTED]. There are no circulation figures showing the readership of [REDACTED] relative to other news publications in Pakistan to demonstrate that the newspaper is a form of major media.

The petitioner submitted a March [REDACTED] article in [REDACTED] entitled [REDACTED] but did not identify the author of the material. In addition, the article is about a delegation from the [REDACTED] and its visit to [REDACTED] India. The article is not about the petitioner and only briefly identifies him among the eleven attending delegates. Furthermore, there is no circulation evidence showing that [REDACTED] is a form of major media.

The petitioner submitted a March [REDACTED] article in [REDACTED] entitled [REDACTED] but the article is not about the petitioner. Rather, the article is about a peace outreach undertaken by members of the [REDACTED]. In addition, there is no documentary evidence showing that [REDACTED] is a form of major media.

The petitioner submitted a January [REDACTED] article in [REDACTED] entitled [REDACTED] that listed the petitioner among a number of students who worked “for the betterment of the [REDACTED] in the session 1983-84.” The article is about the [REDACTED] and not the petitioner. In addition, there is no evidence showing that [REDACTED] is a professional or major trade publication or form of major media.

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

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

The evidence supports the director’s finding that the petitioner meets this regulatory criterion. For example, the petitioner judged music competitions of the [REDACTED].

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

The director determined that the petitioner failed to establish eligibility for this regulatory criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field.” (Emphasis added.) Here, the evidence must rise to the level of original artistic contributions “of major significance in the field.” The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner points to the April [REDACTED] article in [REDACTED] entitled [REDACTED] as evidence that the petitioner meets this regulatory criterion. The article states:

A cultural show was arranged at [REDACTED] in the honor of a delegate from friendly neighbor country China. Hundreds of people witnessed the program.

Several singers presented their songs. Later on a young singer was invited to amuse the audience with a [REDACTED] song [REDACTED]. Chinese guests though could understand a little meaning via translation of the song but they enjoyed the tune and rhythm a lot. They were amused by the singing of the young singer. Name of this passionate amateur singer was [the petitioner]. He sings eagerly and looks familiar with the art of music. He was advised several times to become a professional singer but he refused and liked to be an amateur singer. After completing his education he plans to have a good job and continue singing as a part-time hobby. He has also got chances to sing outside Lahore and earned several certificates of appreciation.

Two of his brothers also are keen in music. He has joined a group of non-professional singers consisting of some good veteran singers. This step has highlighted his capabilities of singing. Presently he is a student of B.Sc. final year. No ceremony of the college is held without his participation. Songs sung by him have become popular. He is well versant with the art of singing. He himself composed the music/tunes of several songs. He can rightly be called as the spirit of the college music society.

The professional singers admit his potential and techniques of singing. . . . [The petitioner] disclosed that he has sung songs in several ceremonies during the last 8-10 ten years. He also sang a song in stage show [REDACTED] and the audience applauded him a lot. In addition, he also performed in TV program ' [REDACTED] ' He said that there are a lot of educated amateur singers. However, they should be provided chances to sing in TV programs and in art councils. This will add up to melodious singing in addition to satisfying the amateur singers. Amateur singers of today might be the successful artists of singing in future providing rhythmic and melodious voice to the listeners.

The article refers to the petitioner as a "passionate amateur singer" whose songs "have become popular," but does not establish that the petitioner's work was of major significance in the field. In addition, the article mentions that the petitioner has composed several songs, that professional singers have acknowledged his potential, that he sang in the stage show [REDACTED] and that he performed for the [REDACTED] television program. There is no documentary evidence showing, however, the extent of the petitioner's influence on other musicians in the field, or demonstrating that the field has specifically changed as a result of his original work, so as to establish the major significance of his contributions. Furthermore, the April 27, 1984 article in [REDACTED] was previously addressed under the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii). Evidence relating to or even meeting the published material criterion is not presumptive evidence that the petitioner also meets this criterion absent evidence that the article is relevant to a determination of the major significance of the petitioner's contributions. 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. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

The petitioner also points to four letters of support discussing his talent as a musician and education, his involvement with [REDACTED], his work as a music coordinator for radio station [REDACTED] and his other activities in the field.

The petitioner submitted two letters dated October 19, 2012 from [REDACTED] Secretary [REDACTED] Pakistan. In his first letter, Mr. [REDACTED] states:

[REDACTED] is working to preserve our cultural heritage and to salvage the dying embers of cultural lineage.

It has sponsored many musical programmes full of vigor and enthusiasm and literary evenings since its inception in 1986. On its credit are music festival arranged in 1993, 1994, 1995, 2001 and coronation of leading artists of the nation.

Now [REDACTED] is going to organize 4-day music festival on 6th November to 9th of November in which the leading instruments and vocalists of Pakistan will perform and enthrall the audience.

Let me express that [the petitioner] is the founder member of [REDACTED] and he is the part and parcel of our team. He is not only the excellent singer but also the music critic. He has done his master in Music from [REDACTED] which is great honor for [REDACTED] and it[s] members.

He had judged so many music shows organize[d] by different other organizations and by [REDACTED] as well.

He can teach music as he delivered so many lectures and held workshop on music, organized by [REDACTED], after leaving university.

He [is] our asset and we say him ambassador of our music culture.

Mr. [REDACTED] mentions that the petitioner is a founding member of [REDACTED] an excellent singer, and a music critic. In addition, Mr. [REDACTED] comments that the petitioner received his master's degree in Music from [REDACTED], that the petitioner has judged music shows, that he has delivered lectures and held a music workshop, but does not provide specific examples of how the petitioner's work has influenced the field of music at a level indicative of original contributions of major significance. The plain language of this criterion requires that the petitioner's contributions be "of major significance in the field" rather than limited to the organizations with which he is affiliated. *See Visinscaia*, 4 F.Supp.3d at 134 (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).

In his second letter, Mr. [REDACTED] states: "[The petitioner] is the front-rank vocalist of Pakistan who can sing different genders of singing with ease and prowess. He is not only the melodious singer but also musicologist who has done [h]is master in music from [REDACTED]'. It is not enough, however, to be a talented singer and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion. *See id.* There is no

documentary evidence showing that the petitioner's songs have affected the music industry, have substantially influenced the work of other vocalists, or otherwise constitute original contributions of major significance in the field.

The petitioner also submitted a letter from [REDACTED], Director of radio station [REDACTED] Pakistan, stating:

This is to certify that [the petitioner] had been working with mast [REDACTED] one of the most popular radio stations in Pakistan as a music coordinator since 2002 which is also remarked as the year in which this fine institute was established. [The petitioner] has been working with us as a Music coordinator.

* * *

I myself am a graduate from [REDACTED] and hold a Master's Degree in Philosophy and Music. [The petitioner] arranged the music library and organized different workshops with RJs [Radio Jockeys]. He himself is a melodious singer and composer. He inducted new and creative ideas in music programs which helped greatly to promote the brand.

[The petitioner] not only served mast [REDACTED] but national Radio and Television as well. In various cultural shows [the petitioner] has promoted folk music of [REDACTED] He was an asset not only to [REDACTED] but to the Pakistan Music Industry.

Ms. [REDACTED] comments on the petitioner's work as a music coordinator for [REDACTED] and mentions that he arranged the station's music library, organized workshops with RJs, and introduced creative ideas in music programs, but she does not provide specific examples of how the petitioner's original work has influenced the music industry or was otherwise of major significance in the field. Again, the plain language of this criterion requires that the petitioner's contributions be "of major significance in the field" rather than limited to his employer. In addition, while Ms. [REDACTED] asserts that the petitioner is a "melodious singer and composer," she does not identify specific examples of the petitioner's compositions or recordings that have influenced the field as a whole or otherwise constitute original artistic contributions of major significance in the field. Vague, solicited letters from colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d at 1122. In 2010, the *Kazarian* court reiterated that our conclusion that that petitioner did not meet the contributions criterion was "consistent with the relevant regulatory language." 596 F.3d at 1122. Furthermore, USCIS 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). Ms. [REDACTED] further states that the petitioner "promoted folk music of [REDACTED]" served "national Radio and Television," and "was an asset . . . to the Pakistan Music Industry." Ms. [REDACTED] however, does not explain how the petitioner's work has affected the field of folk music and there is no documentary evidence showing that the petitioner's work was of major significance in the field.

In addition, the petitioner submitted an April 17, 2013 letter from Mr. [REDACTED] stating:

[The petitioner] who graduated from [REDACTED] and served as secretary of [REDACTED] was such a skilled person, that the moment he left the college, was offered by these above mentioned forums for public performance on media and stage. These performances not only gave him the public acknowledgement and popularity but also he became part and parcel of our public heritage in the musical arts regular programs on Radio, Television and Art Council.

Based upon . . . my knowledge and review of [the petitioner's] performances [and] his reputation, I can say without hesitation that [the petitioner] has risen to the very top of his field in the arts. There are very few artists of this caliber in Pakistan.

Mr. [REDACTED] points to the petitioner's music education and skills, but does not provide specific examples of how the petitioner's original work was of major significance in the field. With regard to the petitioner's performances in the media and on stage, the regulations contain a separate criterion regarding commercial successes in the performing arts. 8 C.F.R. § 204.5(h)(3)(x). As the petitioner's musical performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x), they will be discussed separately within the context of that regulatory criterion. Regardless, there is no evidence showing that the petitioner's performances have affected the field of music in a major way, have topped recording charts for a substantial period of time, or have otherwise risen to the level of original contributions of major significance in the field. In addition, Mr. [REDACTED] asserts that the petitioner "has risen to the very top of his field in the arts, but repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, 1997 WL 188942, *1, *5 (S.D.N.Y. Apr. 18, 1997).

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 and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). 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 he 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 established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion and the director's determination on this issue will be withdrawn. 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).

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

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

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

The director determined that the petitioner failed to establish eligibility for this regulatory criterion.

The petitioner submitted two letters dated October 19, 2012 from Mr. [REDACTED] stating that the petitioner was a founding member of [REDACTED] and that he participated as a judge of its music shows and competitions. Mr. [REDACTED] does not explain the petitioner's duties and responsibilities as a founding member. In general, a leading role is demonstrated by evidence of where the petitioner fits within the hierarchy of an organization or establishment, while a critical role is demonstrated by evidence of the petitioner's contributions to the organization or establishment. The petitioner did not provide an organizational chart or other similar evidence to establish where his roles as a founding member and music judge fit within the overall hierarchy of the association. The submitted evidence fails to demonstrate that the petitioner's specific duties and responsibilities were commensurate with performing in a leading role, and does not establish that he contributed to the organization in a way

that was significant to its success or standing. Furthermore, there is no documentary evidence showing that [REDACTED] has a distinguished reputation.

The petitioner submitted an August 24, 2012 letter from Mr. [REDACTED] stating that the petitioner served as a student member and secretary of the [REDACTED] and “proved himself as an accomplished student of music not only in organizing the performances of the students but also enabling them to work as a team.” In addition, the petitioner submitted a letter from the “Incharge” of the [REDACTED] stating: “This is to certify that [the petitioner] worked as General Secretary of the [REDACTED] during the session 1979-81.” The letter from Mr. [REDACTED] states that the petitioner “organized student performances” and enabled “them to work as a team,” but does not specify any of the petitioner’s other duties and responsibilities as General Secretary. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). The petitioner also submitted a December 21, 1989 article in [REDACTED] school newspaper, providing information about the school’s [REDACTED]. The article states that Mr. [REDACTED] “was appointed as the musical instructor” of the society in 1974 and that he provided “keen guidance and supervision” of the students. Although the submitted evidence shows that Mr. [REDACTED] has performed in a leading and critical role for the society, the submitted documentation does not provide sufficient specificity or detail to demonstrate that the petitioner’s role in helping Mr. [REDACTED] organize student performances was leading or critical.

The petitioner submitted an additional article about the [REDACTED] in [REDACTED] but did not identify its title, date, and author. The article states that “the society won two gold medals, two shields and several certificates of appreciation” from 1982-83 and lists the petitioner’s name among nine of the society’s “prominent singers.” The article did not identify the organizations that presented the two gold medals, two shields, and certificates of appreciation. The self-promotional material in [REDACTED] newspaper is not sufficient to demonstrate that the school’s music society has a distinguished reputation beyond [REDACTED]. The petitioner also submitted an April 27, 2011 article in [REDACTED] entitled “[REDACTED]”. The article announces the [REDACTED] concert and then briefly mentions the [REDACTED].

The [REDACTED] has a long history of annual concerts. It was founded somewhere in the 1930s but with the name of “[REDACTED]”. Later it was revived in the 1950s and renamed “[REDACTED]” by Dr. [REDACTED], former college principal and professor of zoology. After his death in the late 1980s, it was renamed “[REDACTED]”.

The submitted information provides the history of the [REDACTED] but it is not sufficient to demonstrate that the society has earned a distinguished reputation.

The petitioner submitted two articles dated March [REDACTED] in the [REDACTED] (India) identifying him as a delegation member of the [REDACTED]. The two articles entitled, “[REDACTED]” identify the petitioner among eleven delegates participating in a mission to encourage educational exchange between [REDACTED] India. We note that the latter article states that [REDACTED] is the “leader of the team.” The

petitioner did not provide evidence to establish where his role as a delegation member fit within the overall hierarchy of the [REDACTED]. The submitted documentation does not show that the petitioner's specific duties and responsibilities were commensurate with performing in a leading role, and does not establish that he contributed to the organization in a way that was significant to its success or standing. Furthermore, the articles focus on the exchange mission and are not sufficient to demonstrate that the [REDACTED] has a distinguished reputation.

The petitioner submitted a letter from Ms. [REDACTED] stating that the petitioner worked as a music coordinator for [REDACTED] radio station, [REDACTED]. Ms. [REDACTED] further states that the petitioner "arranged the music library and organized different workshops with RJs." The petitioner did not submit documentation to establish where his role as a music coordinator fit within the overall hierarchy of the radio station. The submitted evidence fails to demonstrate that the petitioner's specific duties and responsibilities were commensurate with performing in a leading role, and does not establish that he contributed to the station in a way that was significant to its success or standing. In addition, while Ms. [REDACTED] asserts that [REDACTED] radio station "is one of the largest radio networks of Pakistan" and that the station received a "[REDACTED]" in 2010 and 2011, there is no documentary evidence to support her claims. 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 light of the above, the petitioner has not established that he meets this regulatory criterion.

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

The petitioner submitted evidence of his music performances which fall under this regulatory criterion. For example, the petitioner submitted a May 28, 2012 letter from [REDACTED] Executive Programs Manager, [REDACTED] stating that the petitioner has performed in "regional language and network programs on [a] contractual basis." In addition, the petitioner submitted an August 1, 2012 letter from the Deputy Director of the [REDACTED] stating that the petitioner "participated in numerous musical programmes arranged by this institution as well as by other private organizations." This regulatory criterion, however, focuses on volume of sales and receipts as a measure of the petitioner's commercial success in the performing arts. Therefore, the fact that a petitioner has recorded music or performed before an audience is insufficient, in and of itself, to meet this criterion. The evidence must show that the volume of sales or receipts reflect the petitioner's commercial success relative to others involved in similar pursuits in the performing arts. The petitioner, however, failed to submit documentary evidence of "sales" or "receipts" demonstrating that his specific song compositions and music performances were indicative of his commercial successes in the performing arts. Accordingly, the petitioner has not established that he 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. Comparable Evidence

In the appeal brief, the petitioner requests that the documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) be considered as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The petitioner states: “The Decision stated that Mr. [REDACTED] has not met this criteria [sic]. It requested contracts with companies, licensed technology or patents. Please note that such do not apply to [the petitioner] since he was not provided these nor required to have these under the Pakistani norm for musical artists.”

The director’s request for evidence under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) criterion, however, was not limited only to “contracts with companies, licensed technology or patents.” For example, the director provided suggestions for various other types of evidence that the petitioner may submit, including, but not limited to:

- Documentary evidence that people throughout the field currently consider the petitioner’s work to be important;
- Evidence that the petitioner’s major, significant contributions have provoked widespread public commentary in the field;
- Objective documentary evidence of the significance of the petitioner’s contributions to the field; and
- Evidence of the petitioner’s work being implemented by others.

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten categories of evidence “do not readily apply to the beneficiary’s occupation.” Thus, it is the petitioner’s burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to his occupation and how the evidence submitted is “comparable” to the specific objective evidence required at 8 C.F.R. § 204.5(h)(3)(i) – (x).

The petitioner points to comments in the April 17, 2013 letter from Mr. [REDACTED] as evidence that the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) does not readily apply to the petitioner’s occupation. Mr. [REDACTED] states:

Pakistan is a developing country that is why all the institutions here are in a developing stage. Obviously the conditions and the format which we have, cannot be compared with the developed world like Europe and USA. Particularly the disciplines of performing art are in a tender age of development and various religious and conservative elements of social norms are hindering in its rapid upbringing.

The professional forums of performance display are under the governmental control and these are Radio, Television and Art Councils. All of these three forums are placed in the Provincial Capital of Pakistan. These forums provide opportunity of performance to an artist who has skill, public following and fan following whether he is a singer, play actor,

comedian or compere. Any one of these artists who appears on National Radio, Television or at the Art Council platform is engaged by a contract verbally or written and paid as a professional by these establishments. Thus, in order to perform at these prestigious venues, one has to have a solid reputation as a famous and well-recognized performer with a [sic] significant achievements.

All of these forums start engaging these artists in many programs according to their categories and this is how an artist in Pakistan becomes an asset of heritage. This medium takes him to a public acclamation. These media performances may be called as an evidence of his record of public following.

Mr. [REDACTED] asserts that Pakistan is a developing country, that the performing arts there are hindered by religious and conservative elements of social norms, and that the government controls performance forums. These factors, however, do not establish that the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) does not readily apply to Pakistani performing artists. There is no persuasive evidence showing that Pakistani performing artists are unable to demonstrate original artistic contributions of major significance in the field. Where a petitioner is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3).

Had the petitioner demonstrated that he was eligible for the provisions of the regulation at 8 C.F.R. § 204.5(h)(4), which he has not, the petitioner has not established that the April 27, 1984 article in [REDACTED] and the information provided in the four letters of support he submitted are comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(v) that requires "original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field" or is otherwise probative. The petitioner has not explained how the evidence he claims as comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(v) is of the same caliber as that required by the regulation.

In addition, the petitioner requests consideration of the following documents as comparable evidence of his extraordinary ability:

1. A certificate from [REDACTED] Deputy Director, [REDACTED], Pakistan [REDACTED] auditorium on April [REDACTED];
2. The two letters dated October 19, 2012 from Mr. [REDACTED] stating that the petitioner was a founding member of [REDACTED] and that he participated as a judge of its music shows and competitions;
3. The petitioner's Master of Arts degree in Music from the [REDACTED] (2008);
4. A January 4, 1985 article in [REDACTED] entitled [REDACTED] that listed the petitioner among a number of students who worked "for the betterment of the [REDACTED] in the session 1983-84";

5. An April [redacted] article in [redacted] stating that the petitioner and eight other [redacted] students participated in a “half an hour music program” that was broadcasted by [redacted];
6. A March [redacted] article in [redacted] entitled [redacted] that is about Mr. [redacted] and an arts program celebrating his work;
7. An August 10, 1985 letter from the [redacted] requesting that the petitioner perform at its 108th meeting on August [redacted];
8. A February 2008 Certificate of Appreciation stating that the petitioner “was a member of the contingent of [redacted] Pakistan which participated in [redacted]; and
9. A compact disc of the petitioner’s music.

Again, the petitioner has not demonstrated that the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to his occupation. The submitted evidence shows that multiple categories of evidence at 8 C.F.R. § 204.5(h)(3) readily apply to performing artists. Furthermore, the petitioner has not explained how items 1 through 9 are “comparable” to the specific objective evidence required at 8 C.F.R. § 204.5(h)(3)(i) – (x). In this instance, items 1, 2, 5, and 7 – 9 are relevant to the commercial successes in the performing arts criterion at 8 C.F.R. § 204.5(h)(3)(x). In addition, item 2 is relevant to the judge of the work of others criterion at 8 C.F.R. § 204.5(h)(3)(iv), which the petitioner has met, and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). Further, items 4 – 6 are relevant to the published material about the alien criterion at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the submitted evidence has already been considered under those four regulatory criteria and was found insufficient to meet them. Lastly, with regard to item 3, the petitioner has not demonstrated that meeting the academic requirements for earning a degree in one’s field is evidence of extraordinary ability. In a precedent decision involving a lesser classification than the one sought in this matter, we have held that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien’s ability to benefit the national interest. *In re New York State Dep’t of Transp*, 22 I&N Dec. 215, 219, n.6 (Act. Assoc. Comm’r 1998). Thus, academic performance is certainly not comparable to sustained national or international acclaim and achievements that have been recognized in the field as set forth in the regulation at 8 C.F.R. § 204.5(h)(3), designed to demonstrate eligibility for this more exclusive classification.

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.

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.² For example, much of the evidence relates to the 1980s and the petitioner's most recent accomplishment is a performance at a community center in 2011, which is not consistent with sustained acclaim.

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, that burden has not been met.

ORDER: The petition remains denied.

² We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d at 145. 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).