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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

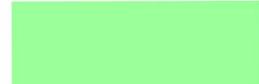


U.S. Citizenship
and Immigration
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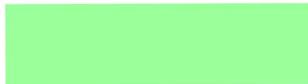


DATE: JAN 09 2015 Office: TEXAS SERVICE CENTER

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 printmaker and fine artist, 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 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 met the requisite criteria for classification as an alien of extraordinary ability.

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 is at the very top in the field of endeavor, and that he 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 and additional evidence. The petitioner argues that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (iii), (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 alien’s sustained acclaim and the recognition of the alien’s 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

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

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

The petitioner submitted evidence from [REDACTED] showing that his work was selected for the [REDACTED] gallery from May [REDACTED] – July [REDACTED]. The petitioner’s evidence included an April [REDACTED] press release from [REDACTED] stating:

[REDACTED] presents [REDACTED] on view May [REDACTED] through July [REDACTED] in its gallery at [REDACTED]. The show consists of seventy-eight prints by seventy-two emerging to established artists, selected from a pool of over 2,500 submissions.

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.

█ was the sole juror for this exhibition, continuing █ tradition of inviting an individual artist to select the █

* * *

█ – Selected by █ is the █ presentation of █ a series of juried exhibitions organized by █ several times each year, featuring prints made within the past twelve months by artists at all stages of their careers.

In addition, the petitioner submitted a document entitled “Award/prize” that contains information about the █ and its mission and history. As the source of the document is not identified, it is not probative. The document states that selection for the █ show “is one of the highest honors that an artist can receive in the █ in New York.” Recognition among the █ in New York, however, is indicative of local recognition, rather than national or international recognition.

On appeal, the petitioner submits an April █ letter from █ stating:

On behalf of █, we offer our congratulations to you for being selected for █
█ - Selected by █
█ The exhibition will be on display at █ May 24 – July █ The opening reception will be held on Thursday, █ with an artists’ and members’ preview from 5 to 6pm and the public opening from 6 to 8pm. We hope you will attend!

█ received over 2,500 submissions from artist and presses worldwide. Out of this varied collection of work, █ chose █ works by █ artists.

The petitioner argues that the director did not properly consider his “selection for the █ and that the █ “annual international competition is one of the most prestigious and oldest competitions in the United States.” The April █ press release and the April █ letter list the petitioner among █ artists whose work was selected for exhibition at the █ gallery, but there is no documentary evidence showing that the petitioner received a prize or an award. 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)). The plain language of this regulatory criterion requires the petitioner’s receipt of “nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Selection for an exhibition does not constitute receipt of a prize or an award for excellence in the field. The regulations include a separate criterion for display of one’s work in the field at artistic exhibitions at 8 C.F.R. § 204.5(h)(3)(vii). Moreover, the information provided about the program from the exhibition organizer, █ is not sufficient to demonstrate the national or international recognition of its awards. USCIS need not rely on self-promotional material. *Cf. Braga v. Poulos*, No.

CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that USCIS did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Without documentary evidence demonstrating that the petitioner has received nationally or internationally recognized "prizes or awards" for excellence in the field, the petitioner has not established that he meets this regulatory criterion.

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

The petitioner did not specifically claim eligibility for this regulatory criterion initially or in response to the director's RFE. Therefore, the director did not make a determination as to whether the petitioner meets this criterion.

On appeal, the petitioner asserts for the first time in these proceedings that his "participation in exhibitions" meets this regulatory criterion. Again, the regulations include a separate criterion for display of one's work in the field at artistic exhibitions at 8 C.F.R. § 204.5(h)(3)(vii). Evidence relating to or even meeting the display criterion is not presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for artistic display and published material about the alien, 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.

Although not mentioned on appeal, the petitioner submitted a [REDACTED] article in [REDACTED] entitled "[The petitioner]: [REDACTED] that is about the petitioner and that relates to his work as a printmaker. There is no documentary evidence showing, however, that [REDACTED] is a major trade publication or form of major media. Accordingly, the petitioner has established that he meets this regulatory criterion.

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

The director determined that the petitioner 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 his printmaking skills, artistic qualities, and activities in the field.

Executive Director, New York, stated:

I have known [the petitioner] as a Master Printer for over two years. I wish to state for the record that [the petitioner] is clearly a printmaker of extraordinary skill and ability in the medium. While at the [the petitioner] has printed artwork by internationally recognized artists such as and to name a few. At the world-renowned studios of and [the petitioner] produced artworks for today's major master-artists, such as and many others.

Artworks printed by [the petitioner] have been exhibited in major art galleries and museums in New York and internationally, including the

I recognized [the petitioner's] extraordinary talent the moment I saw him print. He has the depth of experience and incredible knowledge in Printmaking, which enable him to execute extraordinary artworks. His approach to developing imagery, preparing screens, registering multiple layers of images, curating, and archiving fine art prints is meticulous and masterful. He is a perfectionist professional of the highest caliber, which makes him a rare and valuable individual in the U.S. art world, who has already made a distinguished contribution to it.

Ms. mentions that the petitioner "has printed artwork by internationally recognized artists," that he possesses "experience and incredible knowledge in Printmaking," and that "he is a perfectionist professional of the highest caliber," but she 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 printmaking. In addition, Ms. asserts that the petitioner is "a printmaker of extraordinary skill and ability," that he has "extraordinary talent," and that his "extraordinary abilities and accomplishments have placed him in a highly esteemed position in the United States." 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.).

Director of the New York, stated:

I [] started an independent press named where I invite artists of considerable expertise to work with me and create a new body of work in printmaking. . . .

* * *

I have known [the petitioner] as a Master Printer and as an artist for nearly 8 years. [The petitioner] is a printmaker of extraordinary expertise. As a Master Printer, [the petitioner] has printed artwork for world-renowned artists who have achieved great fame such as

[redacted] to name a few. He has worked as a Master Printer at the highly recognized studios of [redacted]. The artwork he produced is included in the collections of major museums, such as [redacted] and [redacted] and has been on display in many distinguished galleries.

I recognized [the petitioner's] extraordinary talent when I saw his printed projects for such famous artists. He has the depth of experience and incredible knowledge in Printmaking to execute extraordinary artworks. He is a professional of the highest caliber, which makes him a rare and valuable individual in the U.S. art world, and he has already made a distinguished contribution to the world of printmaking. Additionally, as an artist his personal artwork reflects the same masterful approach and technical proficiency. For these reasons I invited [the petitioner] to create new body of artwork for [redacted]. I was extremely pleased by the resulting project. Since then, I have also invited [the petitioner] to display his personal artwork in [redacted]. His work has been well extremely received by New York audiences and abroad.

Mr. [redacted] comments that the petitioner has printed artwork for world-renowned artists and that the artwork is included in the collections of major museums, but does not explain how the petitioner's reproductions of others' artwork are "original" and of major significance in the field of printmaking. In addition, Mr. [redacted] does not provide specific examples of how the petitioner's work has impacted the field in the same manner as that of as [redacted], the influential artists for whom the petitioner has made prints, or of how the petitioner's work has otherwise risen to the level of original contributions of major significance in the field. Furthermore, although Mr. [redacted] asserts that the petitioner "has already made a distinguished contribution to the world of printmaking," there is no documentary evidence showing the extent of the petitioner's influence on other printmakers in the field or indicating that the field has specifically changed as a result of his original work so as to demonstrate the major significance of his contributions. With regard to display of the petitioner's artwork at museums and galleries in New York, the regulations contain a separate criterion for display of one's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). Evidence relating to or even meeting the display criterion is not presumptive evidence that the petitioner also meets this criterion. Absent documentation of specific contributions that were of major significance in the field, display of the petitioner's artwork in galleries and museums is not sufficient evidence under this criterion.

[redacted] a renowned American artist who passed away in [redacted] stated:

Since the 1960s, my work has been exhibited in leading museums and public art galleries throughout the United States and Europe

* * *

I wish to share my enthusiasm, and praise [the petitioner's] mastery of the art of printing to anyone and everyone involved with the art world or interested in culture. I have worked with this extraordinary young man on several projects during the last six years. I have come to be

dependent on his uncanny artistry, both with [REDACTED] printing techniques and with [REDACTED]. The combination of skills is rare, possibly unique in time. [The petitioner], therefore, presents the art community an invaluable and essential asset.

Mr. [REDACTED] mentions the petitioner's "mastery of the art of printing," his experience with [REDACTED] printing techniques and [REDACTED] and his rare combination of skills, 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 fields of printmaking or contemporary art. 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 printmaker and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion.

[REDACTED], Curator, [REDACTED] New York, stated:

The print studio Mr. [REDACTED] chose to produce the vast majority of his print editions was [REDACTED] NY. [The petitioner's] skill was an important factor in this choice. [REDACTED] was extremely particular and demanding with regard to the aesthetics of his prints, and his prints are quite complex. [The petitioner] printed many of the editions personally and it was his superior skill that has made [REDACTED] prints among the most important graphics of our time.

Ms. [REDACTED] asserts that the petitioner's superior skill as a printmaker "made [REDACTED] prints among the most important graphics of our time," but she does not identify specific examples of how the petitioner's work has affected the field of printmaking or was otherwise of major significance in the field. 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); *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] New York, comments on the petitioner's skill in the traditional techniques of photo silkscreen, etching and relief printing; his experience in graphic design; his proficiency in the computer programs [REDACTED] and his knowledge of printmaking production practices, but does not provides specific examples of how the petitioner's work has influenced printmaking processes at a substantial number of studios or was otherwise indicative of original 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 studios and clients for which he has worked. *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 painter, artist's bookmaker, and printmaker from New York, stated:

I am writing to say what a great artist, collaborator and printer [the petitioner] is. Since [redacted] we have worked together on 11 individual prints and 2 extensive book projects (which include very complex multiple printing techniques in each book).

It is because of [the petitioner's] insight, talent and sensitivity that the work is of the highest quality and beautifully executed. Last month the [redacted] purchased 2 of the books and 3 of the prints that [the petitioner] and I collaborated on together.

[The petitioner] is a pleasure to work with and has made me a better artist. Any studio would benefit greatly from his presence.

Mr. [redacted] comments on the high quality of the petitioner's work and their artistic collaborations, but fails to provide specific examples of how the petitioner's work has affected practices in the printmaking field, has influenced the work of other printmakers, or otherwise equates to original artistic contributions of major significance in the field. In addition, Mr. [redacted] states that the [redacted] purchased two books and three prints that he and the petitioner worked on together. There is no evidence demonstrating, however, that selling one's artwork equates to original contributions of major significance in the field. Rather, it demonstrates only that the petitioner has the ability to earn a living as an artist or a printmaker. Furthermore, with regard to the [redacted] display and purchase of the petitioner's artwork, the regulations include separate criteria for display of work in the field at artistic exhibitions and for commanding significantly high remuneration in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(vii) and (ix).

[redacted] an owner and founder of [redacted] based research and design organization, stated:

I recommend [the petitioner] as a truly talented silkscreening and printing artist, without hesitation.

He is an extraordinarily talented artist whose superior combination of both creative talent and technical acumen render him a unique asset in the design field. Based on his reputation, I sought him out for collaboration for the production of a limited edition of a select number of original, hand-printed collectible shopping bags for my upscale stores, [redacted] I have two locations, one in [redacted] and one in [redacted] and the bags were used to commemorate the opening of each.

In view of [the petitioner's] association with some of the world's leading studios, I was most honored of his acceptance of this project I could not be happier with the results we saw from using [the petitioner's] work at our opening. [The petitioner's] bags were an invaluable asset to establishing brand identity and leaving an impression in the minds of my customers.

[redacted] comments on the petitioner's talent as a silkscreening and printing artist, but does not provide specific examples of how the petitioner's work has affected the arts community at a level indicative of original artistic contributions 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 projects for his clients. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

[REDACTED], President, [REDACTED], a fine art print publisher and print gallery, New York, stated: "[The petitioner's] work is amazing. His skills and techniques, both free hand sketching and with various computer programs for example, [REDACTED] are exceptional." Mr. [REDACTED] mentions the petitioner's mastery of printmaking skills and techniques, and his effective use of computer programs, but there is no documentary evidence showing that the petitioner has developed any original printmaking techniques, that a substantial number of print galleries have implemented the petitioner's specific practices and innovations, or that his work has otherwise risen to the level of contributions of major significance in the field.

[REDACTED] a painter and graphic artist residing in New York, stated:

[The petitioner] and I had worked on project called [REDACTED] which is a[n] international [REDACTED] [The petitioner] and I collaborated to create a poster and graphic design together for our event. The minute we started to work together, I understood that he's a thorough and complete artist himself. His sense of color and touch on silk screen simply astonished me. His level of skill and talent excel in the field. His attention to detail is simply magnificent. He consistently performed at level of great professionalism and transcends exceptional standards.

Mr. [REDACTED] comments on his collaboration with the petitioner on the [REDACTED] project and mentions the petitioner's design skills and talent, 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] President of [REDACTED] a New York State registered independent film production company, stated:

I had pleasure of working with [the petitioner] in 2005. On various projects we worked together, with his drawing, graphic design, and art direction, he showed true originality and astonishing sense of creativity in every aspect. With variety of materials he employed, he really worked magic, creating breathtaking imagery. I've been in production business for a long time, and I could tell that he's a rare talent and a true innovator. The execution of the job was nothing but perfect and that shows his superb professionalism and unshakable sense of responsibility. I can assure that [the petitioner] is a top artist and is making a huge difference in the field.

Mr. [REDACTED] discusses his work with the petitioner and asserts that the petitioner is a "top artist" who "is making a huge difference in the field," but does not provide specific examples of the petitioner's artworks that have influenced the field or otherwise constitute original artistic contributions of "major significance" in modern art. Again, USCIS 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. There is no documentary evidence demonstrating that the petitioner has significantly influenced other artists and printmakers in the field, that any of his specific works are widely viewed as

masterpieces of contemporary art, or that his original work otherwise equates to artistic contributions of major significance in the field.

an employee of a sound production company in Japan, stated:

In 2001, I hired [the petitioner] to design the logo for

* * *

Both his designs and his technical skill were completely different from those of the designers I had seen, and his work caught my eye right from the start.

The design that [the petitioner] created for us was innovative and original, simple and easily accessible, and left a truly lasting impression on the mind of the viewer.

From the very beginning, [the petitioner] brought to the table a variety of unique ideas, and was openly and politely receptive to our opinions of them. For this reason, my explanations of the vague ideas we had in mind for the direction of the project were well received and easily followed. In addition, [the petitioner] was able to provide us with creative ideas that had not even occurred to us, and in the end was able to create a truly original design that appealed to all. It was stunning to watch the process. Our most important point for the design, the idea of putting invisible sounds into a visible image, was fulfilled to more than our highest expectations.

Furthermore, the creation of the logo was almost impossibly smooth and quick. [The petitioner's] ability to consolidate and organize the myriad of idea[s] is truly a testament to his knowledge of computers and organizational skills. His ability to concentrate, as well, was impressive throughout.

What was most meaningful to me about [the petitioner's] work was his passion for design. We at too, work in a creative industry, and [the petitioner's] overwhelming enthusiasm for his work was noticed and appreciated by all.

Mr. comments about how the petitioner used his design skills and creativity to develop a logo for but does not provide specific examples of how the petitioner's artwork has influenced the work of other contemporary artists and designers, or has otherwise impacted the field at a level indicative of artistic contributions 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 projects for his clients. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

On appeal, the petitioner contests the director's finding that the reference letters did not "provide any specific examples how [the petitioner] has made a contribution of major significance to the field." The petitioner asserts that the director disregarded the expert opinions and made an "unreasonable" determination contrary to USCIS policy. The petitioner points to an August 18, 2010 USCIS interim policy memorandum (PM) entitled "Evaluation of Evidentiary Criteria in Certain Form I-140

Petitions (AFM Update AD 10-41)” that provided an update to Chapter 22 of the Adjudicator’s Field Manual (AFM) concerning the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner contends that the preceding PM requires that petitions be adjudicated fairly and “with a consistent standard” and that USCIS adjudicators should “not impose their layman opinion contrary to [] experts in the field.” Although it appears that only “consistency in decision-making” is specifically mentioned in the aforementioned memorandum, we agree with the preceding principles mentioned by the petitioner. We do not find, however, that the director’s analysis violated any of those principles. Regardless, a subsequent December 22, 2010 PM entitled “Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the *Adjudicator’s Field Manual (AFM)* Chapter 22.2, *AFM Update AD11-14,*” rescinded and superseded the guidance in the August 18, 2010 memorandum, stating that USCIS “officers should take into account the probative analysis that experts in the field may provide in opinion letters” and that “letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.”

In addition, the petitioner points to his “contributions made to different artists in the field,” his exhibitions, sales to the public, and the letters of support mentioning his contributions in the printmaking field. Again, with regard to the petitioner’s exhibitions and sales to the public, the regulations include separate criteria for display of work in the field at artistic exhibitions and for commanding significantly high remuneration in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(vii) and (ix). Furthermore, regarding the petitioner’s contributions to different artists in the field and the letters of support mentioning his contributions, 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 evidence supports the director’s finding that the petitioner 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 evidence supports the director’s finding that the petitioner 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 petitioner did not specifically claim eligibility for this regulatory criterion initially or in response to the director's RFE. Therefore, the director did not make a determination as to whether the petitioner meets this criterion.

On appeal, the petitioner asserts for the first time in these proceedings that his remuneration meets this regulatory criterion. The petitioner states: "[A]s a Master Printer with ten years of experience, my prints sale [sic] from \$300.00 to \$3,000.00." The petitioner, however, failed to submit documentary evidence to demonstrate the actual earnings he received for the sale of his prints. 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 further states: "I have contracted with the [REDACTED] for an hour[ly] rate of \$50.00. Furthermore[,] I am contracted for payments of \$60,000.00 annually" In response to the director's request for evidence, the petitioner submitted a December 27, 2013 letter of contract from [REDACTED] stating that effective January 1, 2014 he "will be paid \$50 per hour." The petitioner's execution of the contract, however, post-dates the filing of the Form I-140 petition on September 26, 2013. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider the December 27, 2013 contract as evidence to establish the petitioner's eligibility at the time of filing.

In addition, the petitioner submitted an August 2, 2012 contract with [REDACTED] stating: "[REDACTED] agrees to employ [the petitioner] for no less than 40 hours per week as an artisan [REDACTED] [REDACTED] also agrees to remunerate [the petitioner] at the sum of \$60,000.00 per year divided into 26 bi-weekly payments of \$2,307.00." The petitioner, however, offers no basis for comparison showing that he has received significantly high remuneration relative to others in his field. The petitioner must present evidence of objective earnings data showing that he 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).

In light of the above, 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. 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 his eligibility for immigrant classification as an alien with extraordinary ability. Further, approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

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

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

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

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of 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.²

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 appeal is dismissed.

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 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).