U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-M-R-

DATE: SEPT. 9, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a violist and mandolinist, seeks classification as an "alien of extraordinary ability" in the arts. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before us on appeal. The appeal will be dismissed.

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.

On appeal, the Petitioner submits a brief and additional evidence. The Petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (v), (vi), (vii), and (viii). In addition, the Petitioner states that the Director incorrectly held the petitioner to a higher standard of proof.

We agree with the Petitioner that the standard of proof in this matter is "preponderance of the evidence." The "preponderance of the evidence" standard, however, does not relieve the Petitioner from satisfying the basic evidentiary requirements of the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id. at* 376. In the present matter, the documentation submitted does not demonstrate by a preponderance of the evidence that the Petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), and, therefore, that he satisfies the regulatory requirement of three categories of evidence.

The Petitioner alleges that he "is being treated in a prejudicial fashion by the Service" in violation of his due process rights. The Petitioner states: "The RFE [request for evidence] which was issued in this case is dated 18 July 2014 yet, the very envelope in which these very important documents were mailed to the undersigned has a postmark of 21 July 2014." The record reflects that the Director dated-stamped the RFE on Friday, July 18, 2014, but it was not postmarked until Monday, July 21, 2014. As the RFE was mailed rather than personally served, the Director afforded the Petitioner an additional three days in which to submit his response in accordance with the regulation at 8 C.F.R.

§ 103.8(b). Page 10 of the RFE stated: "You must submit the requested information within eighty-four (84) days from the date of this letter (87 days if this notice was received by mail)." As the Petitioner was afforded an additional three days and his RFE response was timely received by the Director on October 10, 2014, the Petitioner has not shown that his ability to file a timely and meaningful response was affected by the mailing delay of one business day or how the delay demonstrates that he was treated in a prejudicial fashion by USCIS in violation of his due process rights.

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.

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 has 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 sustained acclaim and the recognition of his 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 he 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. at 376 (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").

On appeal, the Petitioner asserts that "USCIS has incorrectly interpreted *Kazarian* as establishing a 'two-part approach where the evidence is first counted and then considered in the context of a final merits determination.'" In *Kazarian*, although the court upheld our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Kazarian*, 596 F.3d at 1121-22.

The court stated that our evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "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)(3). Only

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

> aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20. Thus, it is clear that the *Kazarian* court set forth a two-part approach where we first count evidence and then consider it in the context of a final merits determination.

The petitioner challenges our interpretation and cites to *Buletini v. INS,* 860 F. Supp. 1222, 1234 (E.D. Mich. 1994), in which the court stated:

> Once it is established that the alien's evidence is sufficient to meet three of the criteria listed in 8 C.F.R. § 204.5(h)(3), the alien must be deemed to have extraordinary ability unless the INS sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria, does not meet the extraordinary ability standard.

In contrast to the broad precedential authority of the case law of a United States circuit court (such as with *Kazarian*), we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, the above quote from *Buletini* indicates that the court considered the possibility that a petitioner can submit evidence satisfying three criteria and still not meet the extraordinary ability standard if USCIS provides specific and substantiated reasoning for its conclusion. *See Buletini*, 860 F. Supp. at 1234. The court in *Buletini* did not reject at any time the concept of evaluating the quality of the evidence presented. Specifically, the court in *Buletini* acknowledged that "the examiner must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria." *Id.*

II. ANALYSIS

A. Evidentiary Criteria[2]

> *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. On appeal, through counsel, the Petitioner asserts that he meets this criterion, but the appeal brief does not identify any specific prizes or awards or explain how the Director's findings were in error.

According to the Petitioner's curriculum vitae, he finished in second place in both the 1996 and 1997 . The Petitioner, however, previously submitted a June 2011 statement from

[2] We have reviewed all of the evidence the Petitioner has submitted and will address those criteria the Petitioner asserts that he meets or for which the Petitioner has submitted relevant and probative evidence.

., General Organizer of the Venezuela, indicating that the Petitioner achieved a second place finish in the 1996 and a third place finish in the 1997 festival. In addition, the Petitioner submitted a copy of an award stating that he won second place in the 1996 festival, and May 2007 letters from Mr. confirming that he placed second at the 1996 festival and third at the 1997 festival. Moreover, Mr. further stated that the "involved [forty] mandolin players of all the States of Venezuela and even some regions of our neighboring country Colombia." A competition may be open to others from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is nationally or internationally recognized. According to an announcement entitled ' ' "[e]ach State could have only 2 participants in each Category or Level," and that for the "Superior Academic Level," in which the Petitioner competed, participants were "students and mandolin players that are about to finish their studies or those that have a high performance level of the instrument." Although the evidence shows that there were only two participants from each state for each competitive category, the evidence does not show how the two participants were selected or who selected them, the number of musicians eligible to be nominated as one of the two participants, or whether other factors, other than their ability to play the instrument, were considered in the selection of the participants. Ultimately, the Petitioner has not demonstrated through objective or independent evidence such as, but not limited, to media coverage of the festival or award selections, that his second and third place finishes are recognized beyond the entity that organized the .

The Petitioner previously submitted a September 2014 letter from stating that the Petitioner "participated in the live recording of ' in the in 2002. Ms. asserts that the Petitioner played the viola as a member of the an album released by Christian singer In addition, the Petitioner submitted a compact disc cover for Mr. album that identified the as his accompanying orchestra. Ms. further stated that "was nominated to [sic] a in 2003 for and and won a in 2003 for a " 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. The record does not reflect that the two nominations and the were presented to the Petitioner for viola playing rather than to Mr. for the vocal performances on his album. The petitioner has provided no evidence of his individual receipt of the for this album.

Furthermore, the Petitioner submitted a September 2014 letter from President of the stating that was nominated for (2003), (2004), and (2004). Regarding the aforementioned nominations, there is no evidence showing that the Petitioner eventually received any of the awards for which was nominated. Earning nominations is not equivalent to receiving nationally or internationally recognized prizes or awards for excellence in the field. Mr. also stated that "won a " (2003). This

information is not consistent with the information provided in Ms. letter which stated that was "nominated" for a in 2003.

In support of this criterion, the July 2014 letter accompanying the petition listed various "acknowledgement letters" from and , but the submitted evidence does not reflect that that the Petitioner was the recipient of any nationally or internationally recognized prizes or awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally recognized in the field of endeavor and it is his burden to establish every element of this criterion. There is no documentary evidence demonstrating that the honors and recognitions mentioned in the acknowledgment letters were recognized beyond the issuing organizations at a level commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

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

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

The Director determined that the Petitioner had not established eligibility for this regulatory criterion. On appeal, the Petitioner asserts that he meets this criterion, but the appeal brief does not identify any specific association memberships or explain how the Director's findings were in error.

The petitioner previously submitted a June 2011 letter from President of the and President of the , stating: "[The Petitioner] has been chosen to be a member of the and the All members of the are also automatically considered members of the "

The plain language of this criterion requires the petitioner to show that the associations in which the petitioner is a member require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Although Mr. stated that he is aware of the Petitioner's talent and listed the purposes of the , he did not provide any information on the membership requirements for the , the , or the There is no documentary evidence (such as bylaws, a constitution, or membership regulations) showing that the aforementioned societies require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. As neither Mr. June 2011 letter nor any other evidence in the record establish that any of the societies in which the Petitioner holds membership require outstanding achievements or that the outstanding achievements are judged by

national or international experts, 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 had not established eligibility for this criterion. On appeal, the Petitioner asserts that he meets this regulatory criterion and submits further evidence.

The Petitioner previously submitted an April 2011 article about him in [redacted] entitled "[redacted]" The Petitioner also submitted information from the [redacted] news media directory stating: "[redacted] is a daily newspaper in [redacted] Florida, USA covering local news, sports, business, jobs and community events. . . . [redacted] provides news and information for and about the Hispanic community in [redacted] Florida.... Circulation: 63,445 copies." The director stated that this local community newspaper did not qualify as a form of major media. On appeal, the Petitioner submits information from [redacted] stating: "With a total paid daily circulation of over 45,000 and Sunday circulation of over 48,000, [redacted] delivers a market segment that can only be reached in Spanish. . . . The [redacted] is in the [redacted] FL DMA [Designated Market Area]." There is no documentary evidence showing that the circulation of [redacted] elevates it to a form of major media relative to other daily newspapers, or that a newspaper with distribution mostly limited to southern Florida qualifies as a form of major media.

In addition, the Petitioner previously submitted (1) a May 11, 2014, article entitled "[redacted]" posted on [redacted] (2) a May 5, 2010, article entitled "[redacted]," posted on [redacted] (3) a March 30, 2014, article entitled "[redacted]" posted on [redacted] (4) a September 29, 2011, article entitled "[redacted]" posted on [redacted] (5) a December 19, 2007, [redacted] article, entitled "[redacted] the [redacted]" and (6) a March 25, 2011, [redacted] article entitled "[redacted]"

With regard to the aforementioned articles, the Petitioner has not shown that the preceding Internet websites are those of a printed publication that is major media, nor did he submit objective evidence (such as online readership data) demonstrating that the websites otherwise constitute major media. In today's world, many publications, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. The petitioner did not establish that international accessibility by itself is a realistic indicator of whether a given website is "major media." With regard to the articles in [redacted] and [redacted] the submitted evidence does not show that the newspapers rise to the

level of major media. In addition, at least three of the articles mentioned above are not about the Petitioner. Specifically, the two "[redacted]" online articles and the "[redacted]" article are advertisements or announcements that describe upcoming performances aimed to attract patrons. Such promotional announcements are not about the Petitioner, relating to his work, as required under the plain language of the criterion. In addition, the author of the articles was not identified.

The Petitioner's appellate submission includes an October 22, 2014, article in [redacted] entitled "[redacted]" The Petitioner did not submit an English language translation of the article as required by the regulation at 8 C.F.R. §103.2(b)(3), which provides in pertinent part:

> *Translations*. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Regardless, the October 2014 article in [redacted] was published subsequent to the petition's filing date of July 8, 2014. Eligibility must be established at the time of filing. 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 any articles published after July 8, 2014, as evidence to establish the Petitioner's eligibility at the time of filing.

The Petitioner also submits his biographic profile from the [redacted] website, but the date and author of the material were not provided as required by the plain language of this regulatory criterion. Furthermore, there is no evidence showing that the website 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 director determined that the Petitioner had not established eligibility for this criterion. In the appeal brief, the Petitioner asserts that he meets this regulatory criterion. The Petitioner states that the Director's May 18, 2011, decision on a previous Form I-140 filed in 2010 indicated that he had met this regulatory criterion. The Petitioner asserts that the Director's contradictory findings are another example of how he "is being treated in a prejudicial fashion" by the service center officer who adjudicated the petition. We note that each petition must be decided on a case-by-case basis upon review of the evidence of record. Regarding the previous Form I-140 filed in 2010, our July 26, 2012, appellate decision disagreed with the director's 2011 finding for this criterion and we withdrew the favorable determination. Accordingly, the record does not support the Petitioner's allegation that he has been treated in a prejudicial fashion.

With respect to the current Form I-140, the Petitioner submitted different supporting documentation for this regulatory criterion than what he provided in 2010. Specifically, the Petitioner submitted an April 2014 letter from Orchestra and Piano Director, stating that the Petitioner served as a judge for the school's orchestra's viola seating auditions. In addition, the Petitioner submitted a June 2014 letter from Executive Director, , stating that the Petitioner served as an audition Program Judge. The Petitioner also submitted two letters (dated June 2014 and September 2014) from , , Chairperson, , stating that the Petitioner served as an adjudicator in February 2014 for the for students in . Furthermore, the Petitioner submitted a September 2014 letter from Founder of the , an after-school program that provides children with training from professional musicians and music educators, stating that the Petitioner was "part of a panel committee which evaluated and selected 5 members of the to represent [the] United States at the , France in May 2014."

The Director expressed concern that the preceding evidence was more akin to providing musical instruction to students with lesser skills and experience rather than judging other professional musicians working in the field. Although the Director's concerns would be relevant to a final merits determination, we find that the submitted documentation is sufficient to demonstrate the Petitioner's participation, either individually or on a panel, as a judge of the work of others in the field. Therefore, the Director's determination on this issue will be withdrawn. 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 regulatory criterion. On appeal, the Petitioner asserts that he meets this criterion, but the appeal brief does not identify any original contributions of major significance or explain how the Director's findings were in error. The plain language of this regulatory 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" and must be "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 numerous letters of support discussing his talent as a violist and mandolinist and his music performances. With regard to the reference letters, the Director stated that "none identified any specific original contributions to the field of viola or mandolin performance that have influenced the field." The Director determined that the submitted evidence was not sufficient to demonstrate that the Petitioner has made original contributions of major significance in the field.

The Petitioner's documentation included a letter from , Executive Director, stating: "[The Petitioner] has been an extraordinary asset to the development of | programming. His extensive skills and teaching methods has [sic] brought outstanding results in our string orchestras and have significantly impact [sic] the lives or our students." Ms. described the Petitioner's work for , but did not provide specific examples of how the Petitioner's teaching methods or playing techniques have affected education programs at various other music schools, have influenced the work of other instrumentalists, or otherwise equate to original 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 places where he teaches. *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).

Violist and Teacher, Florida, asserted that the Petitioner "is a musician and performer of extraordinary abilities." 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, *1, *5 (S.D.N.Y. Apr. 18, 1997). It is not enough to be a talented musician and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion.

Assistant Professor and Director of Orchestral Studies, mentioned the Petitioner's "preparation of a new method to teach string instruments to young children using interesting visual animations," but did not identify any specific examples of how the petitioner's work has influenced the field of music pedagogy or otherwise constitutes original 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*, 580 F.3d 1030, 1036 (9th Cir. 2009). In 2010, the *Kazarian* court reiterated that this conclusion is "consistent with the relevant regulatory language." 596 F.3d at 1122.

Owner of Florida, asserted that the Petitioner's "technical Viola Bow-Arm Method style and design is exceptional for Bow technique practice." In addition, Mr. stated: "There is not book that address [sic] bow technique with such detail like [the Petitioner's] in the market, and that is why I consider it a major significant contribution to the field." The record, however, does not include any documentary evidence showing that various music schools have adopted the Petitioner's methodology as part of their teaching curricula, that the Petitioner's work has been frequently cited by music scholars, that his practice technique has been successfully marketed in the music industry, or that the Petitioner's work otherwise equates to an artistic contribution of major significance in the field.

, Professor of Viola and Chamber Music, stated: "[The Petitioner] is contributing to the cultural climate of South Florida by his very active presence on the Classical and Pops stage. Several area orchestras enjoy his expertise on the viola." With regard to

the Petitioner's musical performances, there is no documentary evidence showing the extent of the petitioner's influence on other violists 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.

, a professional singer and musician, stated: "[The Petitioner] has accompanied me on live performances, has also participated in some of my recordings, and has done so with excellence." The petitioner, however, did not submit evidence showing that their music collaborations have affected the field of music in a major way, have topped the recording charts for a substantial period of time, or have otherwise risen to the level of original contributions of major significance in the field.

, owner of , stated that the Petitioner "participated in the CD [compact disc] recording of release[d] November 1, 2011, by the artist " In addition, Mr. asserted that the Petitioner was the "principal Viola player" on the album that reached number one in the "Latin Pop Album" category in November 2011 and January 2012. The Petitioner submitted the CD cover for Mr. pop music album which identified more than fifty other musicians who similarly contributed to the album. The Petitioner has not shown that his participation as part of the orchestra on Mr. album stood apart from that of the numerous other instrumentalists or that his viola performances on the album have affected the Latin pop music industry at a level indicative of an original contribution of major significance in the field.

President and Founder of the described the Petitioner as "a highly educated and accomplished violist" and indicated that he performed with her group as principal violist for albums the group recorded for singer entitled "Volare" and "White Christmas." There is no documentary evidence showing that the Petitioner's viola performances on the albums have notably influenced the field or have otherwise risen to the level of artistic contributions of major significance in the field.

In the appeal brief contesting the Director's decision, the Petitioner does not point to any reference letters that demonstrate his eligibility for this regulatory criterion. The remaining letters submitted in support of the petition, written by the Petitioner's educators and music project collaborators, include statements and assertions similar to those previously discussed. Accordingly, they will not be specifically and individually discussed in this decision.

Regardless, none of the submitted letters establish that the Petitioner meets this regulatory criterion. 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. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *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 alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The Director determined that the Petitioner had not established eligibility for this criterion. On appeal, the Petitioner asserts that he meets this regulatory criterion and submits further evidence.

The Petitioner submitted documentation reflecting that he authored a dissertation submitted in fulfillment of his Doctor of Musical Arts degree at the in 2013. According to a September 2014 letter from Director of the provided in response to the Director's RFE, the Petitioner's doctoral dissertation, entitled " ," is accessible in the university's "Libraries' Scholarly Repository" and "has been downloaded 1,594 times." The submitted evidence reflects that the University of Miami's Libraries' scholarly repository is a digital archive of the university's students' dissertations and not a professional or major trade publication or form of major media. Accordingly, there is no evidence demonstrating that the Petitioner's doctoral dissertation was published in a professional or major trade publication or form of major media.

In addition, the petitioner submitted evidence showing that he authored three children's books and In response to the Director's RFE, the Petitioner provided an August 2014 email from the United States Copyright Office reflecting that he submitted a "registration claim" for his three books on August 25, 2014. On appeal, the petitioner submits an October 2014 email from a company that prints books on demand for self-publishing authors, thanking the Petitioner for his book order and stating that he was "officially published." The Petitioner has not demonstrated that his three children's books are scholarly articles in professional or major trade publications or other major media. Furthermore, the submitted evidence does not demonstrate that the Petitioner's books had been published as of July 8, 2014, when the petition was filed. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

In light of the above, 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's RFE informed the Petitioner that this regulatory criterion "is intended for visual artists," but the Petitioner's response did not address the issue. Accordingly, the Director determined that the Petitioner had not established eligibility for this regulatory criterion. On appeal, the Petitioner asserts that he meets this regulatory criterion, but he does not offer any arguments or evidence to overcome the director's determination on the issue.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." The petitioner is a musician. When the Petitioner plays before an audience, 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. In addition, to the extent that the petitioner is a musician, it is inherent to his occupation to perform and play music.

The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.[3] 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 v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). 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).

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

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

The Director determined that the Petitioner had not established eligibility for this regulatory criterion. On appeal, the Petitioner asserts that he meets this criterion, but the appeal brief does not identify any of the Petitioner's leading or critical roles for organizations or establishments that have a distinguished reputation, or explain how the Director's findings were in error.

The July 2014 letter accompanying the petition specifically mentioned the Petitioner's work for the "[redacted]" The September 2014 letter from [redacted] stated that the Petitioner is one the "Florida-based Teaching Artists" who serve on the [redacted] faculty. Mr. [redacted] further stated:

[3] 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), which focuses on volume of sales and receipts as a measure of the petitioner's commercial success in the performing arts.

> Only 25 professionals are chosen annually, out of a competitive pool of accomplished applicants. Prior to working with students, Teaching Artists attend a Teaching Artists Training Program which provides them with comprehensive and meaningful professional development and practical tools that serve to empower them to become 21st century teaching artists, thereby creating a thriving culture of teaching artists in South Florida.

In addition, the June 2014 letter from asserted that the Petitioner "has brought outstanding results in] string orchestras and have significantly impact [sic] the lives of our students." Ms. does not provide specific examples of any results achieved by string students at who were instructed by the Petitioner after he completed the aforementioned training program. Moreover, neither of the preceding letters explains how the Petitioner's students performed at a higher level than those of the other Teaching Artists.

In general, a leading role is demonstrated by evidence of where the petitioner fits within the hierarchy and duties of an organization or establishment, while a critical role is demonstrated by evidence of the petitioner's contributions to the organization or establishment's operational viability. The Petitioner did not provide an organizational chart or other similar evidence to establish where his role fit within the overall hierarchy of or its student orchestra. The submitted documentation does not differentiate the Petitioner from the other teaching artists so as to demonstrate his leading role, and does not establish that his instruction contributed to the orchestra in a way that was of substantial importance to its success or standing. Furthermore, there is no documentary evidence showing that the orchestra has a distinguished reputation relative to other orchestras in the United States.

Finally, although the Petitioner has also submitted evidence showing that he has performed with the and other musical groups, the Petitioner has not shown that he has performed a leading or critical role for these organizations or establishments, or that these organizations or establishments have a distinguished reputation.

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 director determined that the Petitioner had not established the eligibility for this criterion. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 2011) (plaintiff's claims abandoned when not raised on appeal). 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.

III. CONCLUSION

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

Had the Petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the Petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that the Petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the Petitioner has not demonstrated the level of expertise required for the classification sought.[4]

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

ORDER: The appeal is dismissed.

Cite as *Matter of R-M-R-*, ID# 13044 (AAO Sept. 9, 2015)

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[4] 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).