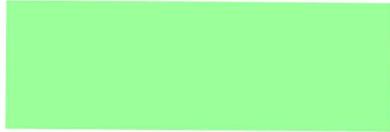


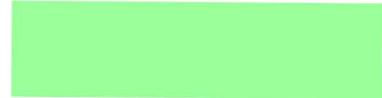


U.S. Citizenship  
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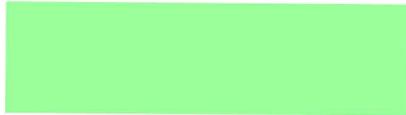
(b)(6)



DATE: **APR 04 2014** OFFICE: TEXAS SERVICE CENTER



IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the arts and/or as a member of the professions holding an advanced degree. The petitioner seeks employment as a “teacher therapist and sculptor.” The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement challenging the director’s finding that the benefit from the petitioner’s work lacks national scope.

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

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The sole stated ground for denial was that the petitioner had not established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*In re New York State Dep’t of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on January 14, 2013. Much of the petitioner’s initial submission concerned her training and work as an artist, rather than as an art therapist. For instance, prominent figures in Georgia’s art community attested, in letters, to the petitioner’s artistic talent and high level of training, but did not mention art therapy.

Some witness letters specifically addressed the petitioner’s art therapy work. [redacted] self-identified as “a professional painter, independent Therapist-expert, [and] participant of European art Therapeutic society,” provided the broadest overview of the petitioner’s efforts:

I would like to underline [the petitioner's] unique, exceptional, extraordinary [s]kills in one of the most difficult sphere[s], about working unceasingly with junior and teenage children. With her entire professional, enthusiastic and positive impulse from 2004 year till today, [the petitioner] runs [an] active teaching job, simultaneously leading and taking part in [a] variety of art projects like: homeless children houses in Georgia and different regions, as well as the organizations helping disabled children

Her unique and extraordinary skills reflect also in 2008 August War between Russia and Georgia, when she worked in a "refugee camp" which experienced the loss during the war, concretely she worked in kindergartens and schools.

She held basics of art therapeutic les[s]ions to the children having "Post Traumatic" condition. She reinforced and cheered their soul and physical world, meaning concentration and hand move (motion) exercises. With the help of art she helps a person to express himself, express her/his inner and hidden feelings, she innovatively uses materials, such as: stone, wood, graphite (black lead), coal, colors.

Since 2004 [the petitioner] has worked in such big and important organizations as:

A brilliant phenomenon of [the petitioner] can be explain[ed] with the fact that during [the] 3 years she worked as a volunteer [in] Haiti with injured children who felt trauma with the horrible earthquake in [2010] where she also used an art therapeutics course. . . . On 24<sup>th</sup> of July 2011 . . . [the petitioner's] work done in society development has been introduced in a famous TV show "

She discussed art therapeutics and art as the media source to have the connect[ion] with children and teenagers. Her creative work differs from others with a rare individuality, confluence of shape and color, and fantastic feel of material.

Two letters from [redacted] attested to the petitioner's work for the [redacted] Foundation. In a September 2, 2008 letter, [redacted] stated that the petitioner had worked for the Foundation since 2004, with projects including the following:

- 1) Planning, arrangement and formation of summer academy in [redacted] and orphan home in [redacted]. During a week the children study to work using various techniques (for example, drawing, plastification, sculpture, music and etc.). . . .
- 2) Collaboration in making colour design and artistic decoration of all premises of [redacted] together with youth, artistic action arranged for opening in

August 2006. Planning , concept and conduction of summer academies together with youth from [REDACTED] in . . . summer 2006.

- 3) . . . [T]wice a week teaching of art to orphan children and warded street children.

At the present moment [the petitioner] collaborates in the following projects:

- 1) Therapeutic institutions for disabled children in [REDACTED] one-week work with children and youth, arrangement of play area in the inner yard.
- 2) [REDACTED] village school, art lessons for village children meant for professional education, creativity development and life joy.
- 3) Representation of [REDACTED] during his visit to Germany, [REDACTED] in [REDACTED], free courses for children and youth.

[REDACTED]  
stated that the organization

conducted a UN-financed emergency project in collaboration with the [REDACTED] Foundation, Germany in Georgia from autumn 2008 to autumn 2009 . . . after the summer war between Russia and Georgia in 2008.

[On] this occasion [REDACTED] international got in contact with [the petitioner] who had been part of the [REDACTED] Foundation team Georgia since 2004 and who had as an artist and art-therapist run many projects with disadvantaged children in orphanages and other places in Georgia.

Out of this background she became part of the [REDACTED]-emergency-team Georgia doing artistic activities with children and youngsters in different idp-centres, villages and in the “buffer-zone.”

Since [the petitioner] became a dedicated and talented colleague[] in this working field, [REDACTED] international asked her to also join its emergency team after the terrible earthquake [in] Haiti in 2010.

So far [the petitioner] has done humanitarian work with [REDACTED] in Haiti three times – in summer 2010, in summer 2011 and in summer 2012.

In a jointly signed letter dated December 30, 2009, [REDACTED] stated that the petitioner “worked as the free collaborator in the [REDACTED] Foundation” from September 27, 2008 to July 17, 2009, in a “program . . . devoted to pedagogic-therapeutic and/or artistic work of children and youth affected by war and especially with refugee children and youth in thirteen various places in Georgia.” Among other duties, the petitioner “gave art lessons to refugee children and youth,” “coordinated construction of a play area,” and “was chief responsible coordinator of a docent team consisting of 5 persons in the course of

implementation of [a] 1-week summer vocational program for children and youth of the village

A letter from [redacted], acting program secretary at the [redacted] indicated that the petitioner "worked at [redacted] from 2006 to 2010 at the [redacted] within the project 'Life Skills Education' as a teacher of sculpture." Copies of short-term contracts in the record show that the petitioner engaged in "Art Training" for [redacted] hired the beneficiary as a "Music and Art Specialist, Art-therapist" for "7 weeks, 28 sessions" in November and December 2009, and again for "5 weeks, 20 sessions" in January and February 2010.

[The petitioner] has many years of working experience in social field. She has worked in IDP/refugee camps in Georgia and on long term projects launched [in] Haiti, where she used Art as a method for the therapy.

In this situation she revealed special spiritual stability, empathy, big organizational and many other skills. Her intercultural and linguistic competence helped her to handle the business. Using this particular knowledge she has managed to help affected children with art therapy. . . .

Her achievements in therapy are very important.

The record does not specify how much of the petitioner's art therapy experience has taken the form of paid employment. Several witnesses indicated that the petitioner worked as a volunteer. Some of the petitioner's projects involved the charity [redacted] but the only documentation from [redacted] that referred to employment are short term contracts. One of those contracts engaged the petitioner from June 27, 2005 to July 2, 2005 (one week), for 680 [redacted]

Only two witness letters included discussion of the petitioner's possible work in the United States, and those letter did not specifically mention art therapy. [redacted] stated:

Our organization is . . . active with programs involving the cultural life of Georgian immigrants, primarily in the arts. We serve both the ethnic Georgian community as well as the general public. . . .

We are very interested to include [the petitioner] in our programs. She has demonstrated an exceptional gift for creative art and for working with children and we feel her work would be a significant contribution to our school program. We have

classes in our school studio as well as in the [REDACTED]. If she is successful in receiving her green card she will take responsibility for designing and presenting an initiative for an expanded arts and sculpture program for the [REDACTED] schools as part of our next year's grant applications with the [REDACTED].

[REDACTED] stating that the petitioner had "worked as a volunteer . . . as an Art Teacher" at the center "for four month[s]." The letter indicated that the petitioner worked with kindergarten students, but contained no mention of art therapy.

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. 8 C.F.R. § 103.2(b)(3). Several of the petitioner's initial exhibits, including most of the witness letters, were originally in foreign languages (Georgian or German). English translations of these documents included the attestation: "This is a true and correct translation: [REDACTED]" This attestation only partially satisfies the regulatory requirement cited above.

The director issued a request for evidence on May 23, 2013. The director stated: "it is unclear how the beneficiary's work [REDACTED] will impart national-level benefits." The director also stated: "Although [the witness] letters and additional evidence show that the beneficiary is an experienced and enthusiastic art teacher, they do not sufficiently establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications." The director instructed the petitioner to submit Form ETA-750B, Statement of Qualifications of Alien, as required by the USCIS regulation at 8 C.F.R. § 204.5(k)(4)(ii). The director also advised the petitioner that many of the petitioner's translated documents did not meet the regulatory requirements at 8 C.F.R. § 103.2(b)(3).

The petitioner's response did not address the translation issue. The petitioner submitted a Form ETA-750B that identified her prospective employer as [REDACTED] and her intended occupation as "Art Teacher." The petitioner indicated that all of her past employment experience had involved "using art therapy on refugee children . . . with disabilities [and] deprive[d] children."

The petitioner stated:

After years of working as [an] independent sculptor, I fully concentrated in scope [sic] of children with disabilities and children with needs (Orphans, deprived children and etc.). I discovered that my art has a great influence on such child [sic] and helps her/him improve learning capability, improve social skills and more easily adapt to intense and complex everyday social life.

The petitioner stated that, after volunteering in Georgian refugee camps in 2008 and working in Haiti in 2010-2012, she “decided to make this kind of job [a] full-time job,” indicating that, prior to 2012, art therapy had not been her “full-time job.” The petitioner stated:

During [the] next years I accumulated very unique experience. . . . Such experience and knowledge is so unique, that I could very easily find a job. In reality, I have had many offers and I chose kindergarten level, because at age of 3-7, [a] child is developing many social skills and it is important to help such child at earliest stage.

As it is known now, special education programs are widely extended up on National level. Every district, every city, every state is in shortage of special education specialist, birth to pre-college range.

A shortage of workers is not grounds for approving the national interest waiver, because the labor certification process is already in place to address such shortages. *NYSDOT*, 22 I&N Dec. 218.

The petitioner described her intended work in the United States:

Nowadays I am working as an Art Therapist and Art Teacher at [redacted] and looking for time and resources to join [redacted] through [an] eligible organization, [the] [redacted]

The proposed engagement with the [redacted] projects represents a valuable entry into these programs. We would consider reproducible programs in the [redacted] School System in themselves to have national value. . . [T]he project includes formalizing the approach and results of my work to address a national audience.

The petitioner stated that, given her “credentials as a gifted practitioner” and her “proven successes with disadvantaged children it can be expected that [her] work here will have significant value on a national basis.” The petitioner asserted that a minimally qualified worker “would only suffice for modest programs of a limited and local character with little chance of achieving results comparable to [hers].”

The petitioner submitted four spiral-bound books regarding her past work. Each book consisted primarily of photographs, and three also include brief introductory statements from the petitioner. In one booklet dealing with the petitioner’s work at the [redacted] in [redacted] from 2008 to 2011, the petitioner described her work on an “Art-Therapy project” with children aged 5 to 21 years. The petitioner stated: “The dynamic of the project was very interesting with remarkable results and achievements,” including significant improvements in the

mood of the students, who, at “the end of every art session . . . were impatiently waiting for the next lesson, full of energy and enthusiasm.”

Another booklet dealt with the petitioner’s “Trauma-therapeutical work with Haitian children” in 2012. The petitioner stated that the students, aged 6 to 12, worked with clay using “only their fingers and not . . . any other kind of instrument in terms of increasing finger controlling skills. . . . The result of art therapy was unexpectedly great and positive.”

In a booklet of photographs from [REDACTED] the petitioner made general statements about her strategy and teaching philosophy. She stated, for example: “Training exercises in expressive art with different kinds of materials expands [children’s] inner world. It helps to create new worlds and to enter into deep empathic communion with each other.” The petitioner claimed that the lessons improved the children’s ability to concentrate.

The petitioner submitted several additional witness letters. The witnesses praised the petitioner’s abilities as an artist and expressed confidence that she will accomplish much in the future, and some of them discussed specific art therapy projects such as the petitioner’s volunteer work in Haiti. The witnesses did not, however, establish that the petitioner has already influenced the field of art, or art therapy, as a whole. For example, [REDACTED] who taught the petitioner at the [REDACTED] [REDACTED] praised the petitioner’s “outstanding talents in sculpture, drawing and painting,” and stated:

I believe [the petitioner] will exhibit her distinguished works in many famous galleries. . . .

[The petitioner] would bring a wealth of knowledge and skills for building [a] bright future for children and students. I know she would be an excellent fit for the education: schools, colleges, universities, institutes, [etc.].

[REDACTED] who previously “worked [on] several art projects with the [petitioner],” stated that the petitioner’s “exceptional pedagogical talent and experience, opens up tremendous abilities and opportunities to traumatized children. . . . Her colleagues always find in her a spark of creative genius that works wonders with the children in her groups.”

[REDACTED] “an independent expert on early childhood and a founder of [REDACTED], a worldwide model for mix[ed] age kindergarteners,” worked with the petitioner in Haiti. She stated that the petitioner’s “pedagogical abilities, adaptability, and exceptional talent to her work with the traumatized children are incredible.”

[REDACTED] stated: “One of [the petitioner’s] very important and successful missions that she had is that in the years 2008 and 2011, in [REDACTED], she taught Art Therapy to the Children in the [REDACTED].” [REDACTED] provided details about the nature of this work (such as

identifying the artistic styles used), but did not explain why this work stands out as being “very important” when compared to other art therapy initiatives.

\_\_\_\_\_ described the petitioner’s recent work there:

For the improvement of skills for early childhood, [the petitioner] usually uses art (based on art therapy methods) as media possibilities with [the children] to express themselves through painting, drawing and clay modeling. [The petitioner] became the leader of our group projects. . . .

The excitement she put into [art lessons] has given the younger generation and their parents the passion to want to continue their child’s success of developing and improving their skills.

The director denied the petition on October 9, 2013, stating that “the activities of an Art Therapist/Teacher meet the requirements of ‘substantial intrinsic merit,’ but that “the evidence shows that the beneficiary’s proposed employment will not be national in scope.” The director acknowledged that the petitioner “is a competent Art therapist and teacher whose skills and abilities were of value to her former employers,” but found that the petitioner had not established a past history of achievement with influence on her field as a whole. The director also cited *NYSDOT* to show that a claimed shortage of qualified workers is not grounds for approving the waiver.

On appeal, the petitioner states that she submitted “five different contracts from international organizations, a [*sic*] numerous recommendation letters, Independent expert opinions, excerpts from Media and etc. [The director] was silent about [these] numerous documents.”

The listed documents established that the petitioner has volunteered in various locations, working with children who faced challenging circumstances, but the director had not disputed the petitioner’s past experience. Rather, the director found that the petitioner had not established the national scope of the benefit arising from the petitioner’s employment, or the petitioner’s influence on her field.

The director had stated that the petitioner had submitted “no documentary evidence” to support \_\_\_\_\_ claim that the petitioner will, in the director’s words, “develop school residency programs throughout \_\_\_\_\_” The petitioner, on appeal, states that the director “skipped many [pieces of] evidence,” but identifies no specific letter or document that would support the specific assertion in question. Even if implementation in a single city were evidence of national scope and influence on the field as a whole, \_\_\_\_\_ statements rested heavily on conditional assertions. He did not state that the petitioner had developed such programs in the past, or that school systems had implemented them. Rather, he stated that, in the event that the petitioner receives permanent resident status, \_\_\_\_\_ would then attempt to secure grant funding in order to further develop the petitioner’s programs.

After quoting from witness letters, the petitioner questions how the director can acknowledge her “important role” in her projects without also finding “significant impact.” There is, however, no conflict between these conclusions. An important role in a specific project, such as the petitioner’s trips to Haiti, has significant impact on that particular project, but it does not necessarily have a significant impact on the field of art therapy in general. The petitioner did not show that her work with orphans, refugees, and disabled children had a wider effect, beyond the individual children whom she had taught or assisted. The petitioner also did not demonstrate that her work has shaped the way other art therapists or teachers practice their work. Successful local application of existing art therapy methods is not impact on the field of art therapy.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYS DOT*, 22 I&N Dec. 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person who holds an advanced degree in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

Review of the record reveals additional grounds for denial of the petition. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In the decision notice, the director stated: “The evidence shows that the beneficiary qualifies for the requested classifications [*sic*] as a member of the professions holding an advanced degree or an alien of exceptional ability.” The director provided no further discussion of the matter. The record does not support the director’s summary conclusion.

The petitioner showed that she holds a foreign degree equivalent to a “Combined Bachelor’s and Master’s Degree in Fine Arts with a specialization in Sculpture from a regionally accredited educational institution in the United States,” but the possession of an advanced degree does not establish that the petitioner is a member of the professions holding an advanced degree. The petitioner’s intended occupation must meet the regulatory definition of a profession. “Profession” means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for

which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

Art therapy appears to constitute a profession, but the petitioner has not established that she has any employment prospects as an art therapist, or holds the credentials of an art therapist.<sup>1</sup>

The record indicates, instead, that she seeks employment at a day care center, using some of the methods of art therapy in the context of employment as an art teacher. The statutory definition of a profession includes “teachers in elementary or secondary schools, colleges, academies, or seminaries,” but not at day care centers. According to the Department of Labor’s *Occupational Outlook Handbook*, the entry-level degree for preschool teachers is an associate’s degree rather than a bachelor’s degree.<sup>2</sup> While the petitioner holds a degree in sculpture, there is no evidence that a bachelor’s degree is required for entry into the occupation of sculpting. Therefore, the “sculptor” element of the petitioner’s intended employment is not a profession.

For the above reasons, the petitioner has not established eligibility for classification as a member of the professions holding an advanced degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which the petitioner must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

- (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
- (C) A license to practice the profession or certification for a particular profession or occupation;
- (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

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<sup>1</sup> New York State, where the petitioner resides and intends to work, lists the licensure requirements for “Creative Arts Therapists” at <http://www.op.nysed.gov/prof/mhp/catlic.htm> (printout added to record March 27, 2014). According to the Art Therapy Credentials Board, Inc., “[a] master’s degree is required for entry level practice in art therapy. Minimum educational and professional standards for the profession are established by the American Art Therapy Association, Inc. (AATA) a membership and advocacy organization.” Source: <http://www.atcb.org/home/whatis> (printout added to record March 27, 2014).

<sup>2</sup> Source: <http://www.bls.gov/ooh/healthcare/recreational-therapists.htm> (accessed March 20, 2014).

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates “a degree of expertise significantly above that ordinarily encountered” in the arts. 8 C.F.R. § 204.5(k)(2). *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court’s reasoning persuasive to the classification sought in this matter.

In the present proceeding, the petitioner’s evidence relates, or purports to relate, to the exceptional ability criteria as follows:

*An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)*

As noted above, the petitioner holds a combined bachelor’s and master’s degree in sculpture from [REDACTED]. This degree satisfies the plain wording of the regulation.

*Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)*

The petitioner has not met this criterion. She has not specifically documented any full-time employment experience, and the earliest employment-related documentation in the record dates from June 2005, less than seven years before the petition’s January 2013 filing date.

*A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)*

A “Reference” certificate from the Rector of the [REDACTED] “conferred on [the petitioner] the qualification of the Professional Artist with having [sic] the right of the pedagogical practice in the higher institutes.”

*Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)*

The petitioner's short-term employment contracts specify the compensation to be paid, but the petitioner did not claim or establish that these amounts demonstrate exceptional ability.

*Evidence of membership in professional associations.* 8 C.F.R. § 204.5(k)(3)(ii)(E)

The petitioner submitted no evidence relating to this criterion.

*Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.*  
8 C.F.R. § 204.5(k)(3)(ii)(F)

The record indicates that the petitioner received a "presidential scholarship for especially talented children" at age 20, but the record does not show that the petitioner received this scholarship as recognition for achievements or significant contributions to the industry or field. Rather, the scholarship appears to have been merit-based financial aid for the petitioner's then-ongoing studies.

The above discussion does not indicate that the petitioner satisfied the plain wording of at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, there is no need for a detailed final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated that the beneficiary has "a degree of expertise significantly above that ordinarily encountered." It is worth noting, however, that the evidence that meets the regulatory criteria does so with respect to the petitioner's work as an artist, rather than an art therapist. Also, while the "Reference" certificate from the Rector of the [REDACTED] appears to constitute a license to teach art in Georgia, the petitioner has not explained or established how this licensure demonstrates "a degree of expertise significantly above that ordinarily encountered" in her field. If the license is a required credential for all art teachers in Georgia, then all qualified art teachers hold that credential in Georgia. In that event, possession of such a license would not distinguish her from others in the field. Rather, it would represent a degree of expertise at, rather than significantly above, that ordinarily encountered among art teachers.

In the request for evidence, the director requested additional information regarding any awards that the petitioner claimed to have received. The petitioner's response did not address that instruction.

For the reasons stated above, the petitioner has not submitted sufficient evidence to establish that she qualifies for classification as an alien of exceptional ability in the arts.

The AAO will dismiss the appeal 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.