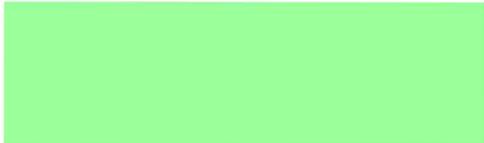
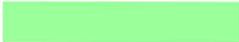


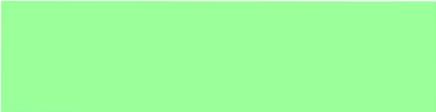
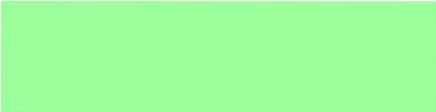
(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **AUG 01 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

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)

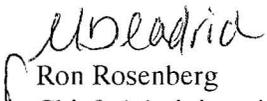
ON BEHALF OF PETITIONER:


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, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before us at the Administrative Appeals Office on appeal. We 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. The petitioner seeks employment as a musical composer, arranger, and artist. 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 holds the equivalent of an advanced degree, 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 legal brief and a letter from a third party.

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 petitioner did not claim to be a member of the professions holding an advanced degree. Instead, he claimed exceptional ability in the arts. Nevertheless, the director did not address the exceptional ability claim and determined that the petitioner “holds . . . the equivalent of an advanced degree.” We will address this issue after discussing the petitioner's national interest waiver application. The director's decision rested solely on the issue of whether the petitioner has 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, Pub. 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 October 29, 2012. The intrinsic merit of the petitioner’s occupation is not in dispute. At issue are the other two prongs of the *NYSDOT* national interest test. An accompanying introductory statement included the following assertion:

In the case at bar, Petitioner has been and continues to be involved in the field of, *inter alia*, Music. . . . The likely impact of his artistic production would aid in diversity, multi-culturalism, and educational directions. Petitioner's work will benefit the US nationally in scope. It does not merely have a limited regional impact.

With respect to the petitioner's impact on his field and the extent to which he would serve the national interest, the petitioner's introductory statement includes the following language:

As evidenced by the documents submitted, Petitioner has a proven history, as opposed to mere projection, record of specific achievements and publications in the Music Arts. As demonstrated through tangible achievements such as degrees, concerts, and recorded works. Petitioner's accomplishments influenced the field as a whole. Please refer to:

[REDACTED]

Finally, Petitioner has been greatly admired for his invaluable endeavors and achievements in the arts. Petitioner's proven innovative style of music and profound knowledge would definitely serve the national interest of the United States. In fact, depriving this great country of such a unique opportunity would be a colossal disservice to the nation.

Petitioner's unique and culturally profound music, among other benefits, will enrich this 'Melting Pot' with various diversified cultures and traditions. It invaluable enhances the American way of life, and facilitates immigrants' integration into their new homeland. Petitioner's countless years of experience and prolific productivity in the field of music will aid in the assimilation of both children and underprivileged immigrants during their struggle to find a sense of self in a foreign land.

The petitioner's academic degrees and ten or more years of full-time experience in the occupation are not facially qualifying factors for the national interest waiver. Rather, they address the underlying classification as an alien of exceptional ability in the arts; *see* 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B). By statute, aliens of exceptional ability are subject to the job offer requirement. *See* section 203(b)(2)(A) of the Act. Therefore, evidence of exceptional ability does not facially establish or imply eligibility for the national interest waived. (A more detailed discussion of the petitioner's exceptional ability claim appears further below in this decision.)

Letters in the record contain general praise for the petitioner's abilities, but no verifiable information about his impact or influence on his field. [REDACTED] on the faculty of the [REDACTED]

I have had the opportunity to do performing with [the petitioner] for the past 6 years, and have always been quite impressed by the level of dedication and professionalism he exude[s]. He is a remarkably skilled and articulate master musician. His background in the traditional music of Persia combined with his forward thinking musical spirit, results in a style of playing and composing that is truly a new world music.

. . . [The petitioner is] a catalyst for the mixing of cultures, a creator of truly new music, and an emissary for world peace.

Alexander Rahbari, a conductor now based in Austria, stated:

[The petitioner] and I were students of the [REDACTED] . . .

[The petitioner] is a multi-talented professional artist of distinguished merit and has attained distinction in his field due to his distinctive style of music. In his compositions he has introduced and blended the Western music techniques with Iranian music. . . .

His contribution to [REDACTED] music has been well-received and recognized by over a million fans, followers, pupils and musicians.

The petitioner submitted evidence of his past musical career, including advertisements for concerts and evidence that [REDACTED] released recordings of his performances. These materials establish that the petitioner has had an active career, but they do not distinguish him from other musicians to an extent that would justify a waiver of the job offer requirement that typically applies to the immigrant classification that the petitioner has chosen to seek. The submitted materials mostly concern the petitioner's career as a performer and piano teacher, rather than as a composer and arranger (the occupations specified on Form I-140).

The director issued a request for evidence on May 13, 2013. The director instructed the petitioner to "submit any supporting documentation that would establish that the petitioner has a reasonable plan for employment in the United States and has the ability to execute those plans." The director also requested "evidence to establish . . . a past record of specific prior achievement that justifies projections of future benefit to the national interest."

In response, the petitioner submitted a statement and two letters. One letter is from [REDACTED] owner and general manager of [REDACTED], California, who stated:

[REDACTED] is the first musical & cultural center outside of Iran after [the] Islamic revolution of 1979. One of our goals was to promote and support Iranian musicians, vocalists, lyricists, and composers who had been robbed of their future by the Islamic government. . . .

We serve dinner every night with live music and entertainment and serve business luncheon seven days a week. Our business community requires performers who are well known in the community for preserving and improving Iranian music as well as attracting new customers. . . .

[I]t is our pleasure and our honor to extend our warmest invitation to [the petitioner], one of the exceptional and talented names in the Iranian contemporary music. We would be very excited to have [the petitioner] as one of our lead performers and musicians. With his vast musical creativity, knowledge and fame, he is certainly an invaluable addition to [REDACTED]

[REDACTED] general manager of [REDACTED] (“a leading promoter of the Persian musicians, composers, and artists”), stated:

[I]t is my utmost pleasure and honor to . . . extend[] an open invitation to [the beneficiary] to perform at our restaurants and nightclubs located in [REDACTED] and West Los Angeles.

[The petitioner] is one of the most well known pianists, composers, and musicians in the Iranian community. He is very innovative, highly respected, and greatly admired in the field of music.

The statement accompanying the letters contained the following assertions:

As evidenced by numerous documents previously submitted, [the petitioner] has created several albums and is considered a well known composer and pianist. His presence in the U.S. will undoubtedly enrich the music industry and benefit the society in general.

In addition, when [the petitioner] relocates to the U.S., he will be rendering his services, among other things, to the American-Iranian community in Southern California. Not only will he conduct concerts, teach[] piano and perform at various musical and cultural venues, he would also perform at landmark places such as [REDACTED]

Both [REDACTED] virtually provide Music Therapy to the Iranian community of Southern California.

The statement then provided a description of music therapy, “the use of music interventions to accomplish individualized goals within a therapeutic relationship.” Although the petitioner claims that his music makes Iranian immigrants “comfortable and at ease in their new living environment,” the petitioner has not established that he is a credentialed music therapist. Furthermore, Congress created no blanket waiver for music therapists, so the assertion that the petitioner’s music is

therapeutic for Iranian-Americans in Southern California would not qualify the petitioner for the waiver even if the record supported that claim.

The petitioner provided statistics regarding the Iranian immigrant community in the United States. The petitioner did not, however, establish his influence over this community, and therefore he did not establish the relevance of the submitted data. The petitioner submitted no evidence to support the claim that his “presence would enormously enhance productivity of the Iranian-American community.” 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 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

In denying the petition on November 5, 2013, the director stated that “the petitioner is responsible for the production of 2 albums released in 2008, but no evidence has been presented concerning the sales of those albums.” The director also noted the petitioner’s submission of evidence regarding his involvement with restaurants and nightclubs in the Los Angeles area. The director concluded: “it appears that the petitioner’s proposed employment is entirely local. . . . The evidence does not demonstrate that the primary focus of the beneficiary’s employment would be national in scope.”

The appellate brief contests the director’s finding, stating: “Music has no boundaries and while a musician is naturally confined to a certain geographic area, his or her works spread throughout the world without limitations in time or location.”

The first two prongs of the *NYS DOT* national interest test focus on the alien’s occupation, rather than the alien’s role within that occupation. The job offers submitted in response to the request for evidence suggest that the petitioner’s performances would be largely confined to the Los Angeles area, but in the abstract, musical composition, arrangement, and performance are not inherently restricted to a local level. Musical works can reach a national or global audience through recordings, live performance tours, and broadcast media including the World Wide Web, whether or not the petitioner’s works in particular have reached such audiences.

An individual employed in musical composition, arrangement, and performance can produce benefits that are national in scope, and we withdraw the director’s finding to the contrary. The question of whether this particular petitioner has, himself, had national impact with his music is a separate question.

The director noted that the petitioner had submitted evidence of local media coverage of some of the petitioner’s performances, but stated: “this type of coverage . . . [does] not show that he has had some impact upon his profession as a whole.” The director acknowledged the letters in the record, but found that “they do not provide any detail concerning his effect upon his chosen profession.”

The appellate brief includes the following assertions:

Petitioner has a unique music style; has greatly impacted his profession and has trained numerous students who are among the best musicians, composers and performers in the world. . . . Petitioner's impact on his field of endeavor is indisputable for he has reconciled classic and modern musical styles. . . .

Petitioner's effect and impact on his chosen field is amply evidenced by several supporting documents submitted heretofore, as well as the attached Exhibit "A."

Exhibit A is a new letter from [REDACTED], who refers to the petitioner as his "venerable colleague and fellow musician." Previously submitted materials show that he is also the petitioner's brother, although he omits this fact from his letter. [REDACTED] states that the petitioner "has in fact westernized and revolutionized oriental music by bridging the gap between these different styles. In so doing, [the petitioner] has trained thousands of music students [in] a new style which is enormously beneficial to the music industry." The appeal includes no evidence to support these claims. *See Matter of Soffici*, 22 I&N Dec. 165.

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 165.

The letters submitted in support of the petition primarily contain general assertions of the petitioner's influence without providing any verifiable details. [REDACTED] devotes more than half of his letter to a discussion of his own credentials, such as the performance of one of his compositions by the [REDACTED] and "the universally acclaimed vocalist, Ms. [REDACTED]" He does not list any comparable achievements by the petitioner. He credits the petitioner with creating an influential new style of music, but provides no evidence of that influence.

The appellate brief claims that "numerous documents previously submitted establish [the petitioner's] unique, unparalleled and exceptional ability and impact upon his field," but the brief does not elaborate by identifying any prior exhibits and explaining how they support this claim.

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 his 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."). 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 an additional reason why the petition cannot be approved. Because we review the record on a *de novo* basis, we may identify additional grounds for denial beyond what the Service Center identified in the initial decision. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The director concluded that “the petitioner holds a bachelor’s degree and has more than five years of post-baccalaureate, progressive experience, the equivalent of an advanced degree.” The USCIS regulation at 8 C.F.R. § 204.5(k)(2) does define the equivalent of an advanced degree in that way, but the statutory and regulatory threshold is not simply holding an advanced degree or its equivalent. Rather, one must be a member of the professions holding an advanced degree. The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines a “profession” as “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.”

The petitioner did not claim, and the record does not show, that his occupation meets the regulatory definition of a profession. The director did not specifically find that the petitioner’s occupation is a profession. Without such a finding, the assertion that the petitioner holds “the equivalent of an advanced degree” does not show that the petitioner qualifies for the underlying classification of a member of the professions holding an advanced degree. To the extent that the director’s finding implies otherwise, we withdraw that finding.

The petitioner claimed exceptional ability in the arts. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien 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;
- (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.

The petitioner claimed to have met all six of the above regulatory standards, as described below.

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)

The petitioner claims to have earned bachelor's and master's degrees from [REDACTED] citing "Exhibit 2" for support. Exhibit 2 includes the petitioner's résumé, an autobiographical sketch, a capsule biography from the [REDACTED] web site, and *Wikipedia* articles about two of his brothers (including [REDACTED]). None of these items are official academic records of awards from institutions of learning. The only submitted document that meets this requirement is a translated diploma from [REDACTED] confirming that the petitioner earned a bachelor's degree in music in 1970. The petitioner claims a master's degree from the same institution, but submitted no evidence to support that claim. *See Matter of Soffici*, 22 I&N Dec. at 165.

In addition to the aforementioned degrees from [REDACTED] the petitioner's introductory statement also included his "lifetime experience & apprenticeship" under this criterion. Experience falls under a separate regulatory criterion, discussed below. The present criterion is limited to academic degrees.

The petitioner has established that he holds a university degree relating to the area of claimed exceptional ability.

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)

On Form ETA-750, Statement of Qualifications of Alien, the petitioner claimed to have worked full-time as a "Music Artist" since January 1960, when he was 13 years old. The introductory statement submitted with the petition indicates that "Petitioner taught at the [REDACTED]" "has been [a] headlining Persian artist throughout the world," and "began releasing albums [through which] his music became known to the Iranian exile communities around the world." The evidence submitted, which included promotional materials, private correspondence, and other materials, document less than a dozen piano recitals between 1993 and 2012, as well as the release of three recordings (a cassette dated 1990 and two compact discs dated 1995). These materials document intermittent performances and recording sessions, but do not establish ten years of full-time employment; they do not account for the petitioner's activities between the various concerts and sessions. The small number of documented performances and recordings over a span of nearly 20

years does not establish or imply that the petitioner was continuously engaged in such activity for at least ten years as the regulation requires.

In a January 2, 1997 letter originally written to support the petitioner's efforts to immigrate to Canada, [REDACTED] Canada, stated that the petitioner intended "to enter Canada and become fully employed by our company as Music Director and Piano Teacher." This letter predated the petitioner's employment with [REDACTED] the record does not document how long the petitioner worked for the company. Likewise, a January 12, 2010 letter from [REDACTED] describes an offer to employ the petitioner as a composer, but does not attest to past employment, and the petitioner submitted no subsequent evidence to establish that the job offer resulted in employment.

Some of the evidence in the record, such as the letter from [REDACTED] quoted above, describes the petitioner as a piano teacher. The petitioner specifically identified his occupation as a musical composer, arranger, and performer, and experience as a piano teacher is not experience in those areas. The evidence regarding the petitioner's teaching work shows that the petitioner has not exclusively engaged in composing, arranging, and performing music. Therefore, evidence that the petitioner performed those activities over a period of more than ten years is not necessarily evidence that he has ten years of full-time experience in the occupation sought.

For the reasons listed above, the petitioner has not established at least ten years of full-time experience in the occupation as the regulation requires.

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

The introductory statement submitted with the petition included the claim that the petitioner satisfied this criterion, but all of the evidence cited relates to other criteria, such as academic degrees and membership in associations. The petitioner identified no license or certification that he holds. Therefore, the petitioner has not satisfied this regulatory criterion.

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 introductory statement states: "When tak[ing] in[to] consideration that the current Islamic government prohibits Petitioner from performing in his own native land, the high attendance of his shows and records sales worldwide illustrate Petitioner is compensated much more than other musicians in his field." The statement also indicated that the "[p]etitioner earned more than \$100,000 for his services over the three year life of his contract" with [REDACTED]. The petitioner did not submit evidence to support any of the above claims. Therefore, these claims have no weight as evidence. *See Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, regarding the claim that the "[p]etitioner earned more than \$100,000 for his services over the three year life of his contract," the petitioner has not shown that roughly \$35,000 per year is an amount that demonstrates exceptional ability in his occupation.

The petitioner did not establish the relevance of the unsupported claim that he is not allowed to perform in Iran. He did not explain how this circumstance would affect his earnings when performing or recording in other countries.

The petitioner has not submitted any documentation of his compensation, and has not shown that his compensation demonstrates exceptional ability.

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

The petitioner claimed two memberships under this criterion. The petitioner claimed membership in the [REDACTED] which the introductory statement acknowledged to be a "Labor Union," and in the [REDACTED]. The record does not contain any evidence that the petitioner is a member of the [REDACTED]. The [REDACTED] provided a letter of consultation when [REDACTED] sought an O-1 nonimmigrant visa on the petitioner's behalf, because the regulation at 8 C.F.R. § 214.2(a)(2)(ii)(D) requires such a letter, but the letter does not refer to the petitioner as a member of the [REDACTED].

The petitioner did submit copies of membership certificates from the [REDACTED] each expiring after one year. The most recent certificate shown in the record expired on November 21, 2005. The certificates, therefore, do not establish membership at the time of filing in October 2012. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). *See also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Furthermore, the certificates refer to the bearer as "a professional music teacher" and "a recognized teacher of the piano." The petitioner, however, had claimed exceptional ability as a musical composer and arranger, an occupation related to, but distinct from, teaching music.

An expired membership in one professional association that is not an association of composers or arrangers does not establish that, as of the filing date, the petitioner held membership in professional associations to establish exceptional ability as a composer/arranger.

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 introductory statement listed six factors under this criterion. One of these six factors is the petitioner's membership in the [REDACTED] which falls under a separate criterion addressed above. The petitioner did not establish that the [REDACTED] grants membership as a form of recognition for achievements and significant contributions to the field.

The petitioner claimed that the previously discussed letter from the [REDACTED] satisfies this regulatory criterion. The [REDACTED] provided the letter in support of a nonimmigrant visa petition in keeping with

the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(D). The letter stated: “Based on the applicable statutory and regulatory requirements regarding extraordinary ability in the arts as a compose[*sic*]/arranger/musician, [the petitioner] appears to meet the standard of distinction set forth at 8 CFR § 214.2[(o)] [*sic*].” The letter supported a nonimmigrant visa petition for an alien of extraordinary ability, but the letter itself is not recognition for achievements or contributions.

Dr. [REDACTED] president of the [REDACTED] California, wrote a letter to an unspecified U.S. Consulate on May 25, 1999, requesting “assistance . . . in expediting [the petitioner’s] travel into the United States” in order “to participate in [a Foundation] program in Los Angeles.” The letter referred to the petitioner as “a renowned Master of [REDACTED] but a letter to a consulate, presumably in support of a nonimmigrant visa petition, is not recognition for achievements or contributions.

The petitioner performed at a 2006 fundraising gala to benefit the [REDACTED]. The petitioner did not explain how his involvement in this event constitutes recognition, and he does not identify any related achievements or contributions to his field.

The petitioner cited the letters from [REDACTED] as further evidence of recognition. As quoted above, in the context of the national interest waiver, these letters contain general praise for the petitioner’s skill and experience, but do not constitute recognition for identifiable achievements or contributions.

The petitioner has not submitted evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The petitioner claimed to have met all six regulatory criteria for exceptional ability, but the above discussion shows that his submitted evidence meets only one of the criteria. The petitioner, therefore, has not established that he qualifies for classification as an alien of exceptional ability in the arts.

We 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.