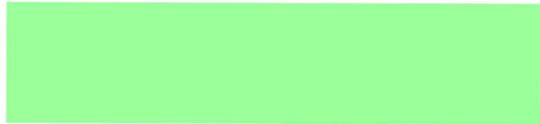


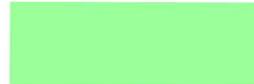


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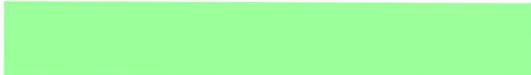
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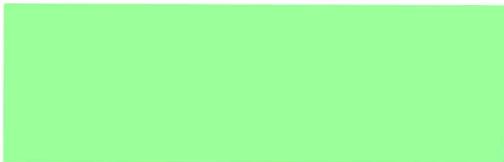


IN RE: Petitioner:
Beneficiary:



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,

for 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 violinist with the [REDACTED]. 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 failed to establish that he qualifies for classification as an alien of exceptional ability in the arts, and failed to establish 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.

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.

I. Exceptional Ability

a. Basic Standards

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(3)(ii) provides that the petitioner must submit evidence that qualifies under at least three of the following categories:

(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

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

If the petitioner has submitted the requisite evidence, USCIS makes a final merits determination as to whether the evidence demonstrates “a degree of expertise significantly above that ordinarily encountered.” 8 C.F.R. § 204.5(k)(2); *see also Kazarian v. USCIS*, 596 F.3d 1121, 1122 (9th Cir. 2010); *Rijal v. USCIS*, 683 F.3d 1030 (9th Cir. 2012) (calling for a final merits determination once the petitioner has met the plain wording of the regulatory requirements). Only aliens whose achievements have garnered “a degree of expertise significantly above that ordinarily encountered” are eligible for classification as aliens of exceptional ability. 8 C.F.R. § 204.5(k)(2); *cf. Kazarian* at 1120.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 29, 2012. The petitioner ultimately claimed to have met five of the six exceptional ability standards at 8 C.F.R. § 204.5(k)(3)(ii), 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)

The petitioner documented several academic degrees, culminating in a doctorate in musical arts from Michigan State University (MSU), awarded in 2009. This evidence meets the regulatory requirements.

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 did not initially claim to have satisfied this requirement, but he did so after the director issued a notice of intent to deny (NOID) the petition on October 18, 2013. The petitioner

cited letters submitted with the initial filing of the petition, and others provided in response to the NOID. The director concluded that the petitioner had met this requirement. The record, however, does not support this finding.

The petitioner submitted letters from officials of the various symphony orchestras in Michigan, and from [REDACTED]. The wording of each letter is nearly identical apart from information about the individual organizations. Each of these letters indicated that “[t]he [REDACTED] is the actual employer,” and arranged to contract the petitioner’s services to the other entities. The letters do not establish full-time employment, and the earliest employment documentation regarding the [REDACTED] dates back only to 2009. These materials, therefore, do not establish ten years of full-time employment experience.

Separate letters from orchestra officials refer to work going back to 2003, less than ten years before the petition’s 2012 filing date. The letters do not attest to full-time experience or even indicate that the orchestras employed the petitioner. The petitioner was a graduate student from 2001 to 2009, and graduate study is not employment.

Other letters attest, in fairly general terms, to earlier work that the petitioner performed, but these letters are not from current or former employers and they do not document full-time employment.

Further letters submitted in response to the NOID also attested to the petitioner’s talent, and offered the general claim that the petitioner has years of experience, but the letters did not attest to at least ten years of full-time employment experience.

For the reasons discussed above, the petitioner has not fulfilled the requirement that he submit letters from current or former employer(s), showing that he has at least ten years of full-time experience in the occupation sought.

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 submitted copies of various contracts which, the petitioner claimed, “demonstrate that [the petitioner] has commanded a competitive salary, or other remuneration for services, which demonstrates his exceptional ability in the field.” A three-year contract with the [REDACTED] guaranteed the petitioner “\$14.20 per half hour of instruction.” A “2012 Season Contract” with the [REDACTED] provided for a fee of “\$2,850.00 (less applicable taxes) for the entire period.”

Agreements with the [REDACTED], both for the 2012-2013 season, refer to “the Current Master Agreement” with [REDACTED] of the musician’s union, but the petitioner did not submit a copy of the Current Master Agreement or otherwise establish any payment terms set forth in that agreement.

In the NOID, the director indirectly indicated that the petitioner had not met this criterion, by not listing it among those that the petitioner had satisfied. In response, the petitioner objected that the director provided “no analysis in the NOID of how the evidence was deficient in meeting the criteria.” The petitioner repeated the assertion that he “has commanded a competitive salary, or other remuneration for services, which demonstrates his exceptional ability in the field.” The petitioner’s response to the NOID included no further evidence to establish that he commands compensation at a level that demonstrates exceptional ability. The petitioner claimed to have submitted additional examples of contracts, but the NOID response in the record does not include this evidence. Furthermore, copies of contracts might establish the amount of the petitioner’s compensation, but they cannot, in isolation, show that the amount demonstrates exceptional ability. The plain wording of 8 C.F.R. § 204.5(k)(3)(ii)(D) requires a comparison that is not possible when the petitioner documents only his own compensation.

The submitted evidence does not always specify the amount of the petitioner’s compensation, and when it does, it provides no basis for comparison to permit the conclusion that it demonstrates exceptional ability. The director found, therefore, that the petitioner had not satisfied the requirements spelled out in the regulation.

The petitioner, on appeal, offers a general defense of the exceptional ability claim, but does not address this particular finding. When an appellant fails to offer an 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. 30, 2011) (plaintiff’s claims abandoned when not raised on appeal to the AAO).

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

The petitioner documented his membership in the [REDACTED] of the [REDACTED] which the petitioner identified as “an international union” of musicians. The director concluded that the petitioner had met this criterion, but the record does not support this finding. We will discuss the matter further in the final merits determination.

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 submitted with the petition listed 17 items under this standard, including academic scholarships, listings in directories, and high-ranking finishes in musical competitions. In denying the petition, the director determined that the petitioner failed to show that he “has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to the industry or field.” The director, in denying the petition, stated that the petitioner had not established a “national presence,” or shown that he placed first in musical competitions, but the regulation’s plain wording does not require achievement at that level.

Some of the petitioner's exhibits do not qualify as evidence of recognition as required by the regulation, such as certificates from [REDACTED] and the [REDACTED] [REDACTED] which do not show any specific connection to the field of musical performance. Others, however, clearly relate to specific achievements. The petitioner, for example, won the \$2,500 second prize at the [REDACTED] Michigan, in 2004, and annual \$11,000 music scholarships at [REDACTED] "[i]n recognition of [his] outstanding accomplishments as a musician." The broader significance of this recognition is a matter for the final merits determination. The petitioner appears to have met the plain wording of the regulation, and we withdraw the director's contrary finding.

If the six specified regulatory standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii). The petitioner initially asserted: "comparable evidence must be taken in context with the given field of the arts. The nature of the field does not lend itself to having documentary evidence such as contracts with companies using the [petitioner's] product or licensed technology." The petitioner did not specifically explain how the standards listed at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply to his occupation; he claimed to have met five of those six standards. As shown above, the director found that the petitioner had met three of the standards, thereby triggering the final merits determination described in the *Kazarian* decision. Therefore, we will consider the petitioner's claims of comparable evidence in the context of the final merits determination.

b. Final Merits Determination

As noted above, the director found that the petitioner's membership in the [REDACTED] satisfies the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E). The record, however, does not establish that this membership indicates exceptional ability. The petitioner acknowledges that the [REDACTED] is a trade union, and as such it exists not to recognize high levels of expertise or achievement, but rather to protect the interests of all workers in a particular field. The introductory statement submitted with the petition acknowledged: "it would be unusual for an artist not to be affiliated with organizations in the field regardless of the criteria for membership." In this way, the petitioner stipulated that such memberships are ordinarily encountered in his field. The petitioner did not attempt to show that the [REDACTED] has any restrictions on membership, such that acceptance into membership would be evidence of exceptional ability.

For the above reasons, the petitioner has not shown that his [REDACTED] membership demonstrates exceptional ability.

The various awards and scholarships that the petitioner claimed as evidence of recognition under 8 C.F.R. § 204.5(k)(3)(ii)(F) are limited in nature. The scholarships are specifically for students, who tend to be at the beginning of their musical career if they have been employed at all. The competitions for which the petitioner has provided background information are either for students or for "young musicians," with age ceilings of 35 years of age or younger. Therefore, by winning these accolades, the petitioner has distinguished himself not in the field, but in an age-limited segment of the field which, by nature, excludes the most experienced musicians. These limitations diminish the

evidentiary weight of the awards. Furthermore, the petitioner has not shown evidence of any recent recognition that would establish his standing in the field at the time of filing, rather than several years earlier while he was a student. 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).

On his *curriculum vitae*, the petitioner claimed to be the “Winner of the [REDACTED] [REDACTED]” The only prize certificate dated 2001 that the petitioner submitted reads:



It is not clear whether the [REDACTED] is related to, or the same as, the [REDACTED], but the certificate itself shows that the petitioner won in an age-limited category.

In terms of comparable evidence, beyond the six regulatory standards at 8 C.F.R. § 204.5(k)(3)(ii), the petitioner also claimed “sustained national or international acclaim,” a phrase from section 203(b)(1)(A) of the Act that relates to a different immigrant classification, alien of extraordinary ability. The petitioner listed eight (somewhat overlapping) elements of this asserted acclaim, some of which the standard criteria already covered:

- Has appeared with various orchestras and symphonies in addition to solo concerts around the U.S. and the world . . .
- Regularly requested to perform at various functions
- Past and present invitations for performances
- Has been featured as a soloist and concertmaster
- Recipient of eminent award/scholarship prizes . . .
- Offered full music scholarship/awards by top institutions
- Sampling of newspaper articles . . .
- Is a principal violinist (first and second) and a core member of the ensembles for various productions or events, which have a distinguished reputation.

Performance is integral to the occupation of a musician; public performance does not, by itself, establish a degree of expertise significantly above that ordinarily encountered among musicians. The petitioner specifically identified four “organizations of distinguished reputation”: the [REDACTED]

The petitioner claimed leading roles with these organizations, and some of the individuals who wrote letters on behalf of the petitioner asserted that the petitioner has held first or second chair positions in unnamed orchestras, but the record does not provide more specific information on these claims. The petitioner's 2012-2013 service agreement with the [REDACTED] specified his position as "7th Chair Violin I," whereas the [REDACTED] 2009 musician roster showed him in the fifth chair, indicating that his rank had dropped over time.

[REDACTED] personnel manager for the [REDACTED] stated only that the petitioner "was appointed a core member of the [REDACTED] 1st violin section." Dr. [REDACTED] personnel manager for the [REDACTED], stated that the petitioner "plays a vital role in the first violin section." Neither writer specified the petitioner's chair.

Dr. [REDACTED], artistic director of the [REDACTED] "hired [the petitioner] to be the soloist for three performances of [REDACTED]" Dr. [REDACTED] is also an associate professor and orchestra conductor at [REDACTED] where the petitioner was a student at the time of the identified performances.

With respect to claims of media coverage, the petitioner submitted an interview from the [REDACTED] publication [REDACTED] on the occasion of his appearance as conductor and soloist at the State Conservatory of [REDACTED] from which he had previously graduated. A multi-page interview with the petitioner's mother (a composer) in [REDACTED] includes a brief mention of the petitioner, who was "working on his doctoral dissertation." The [REDACTED] newspaper [REDACTED] reviewed a 1996 recital at which the petitioner performed.

In terms of United States publications, the petitioner submitted articles from local newspapers in [REDACTED] identifying the winners of a [REDACTED] a newsletter from the [REDACTED] County [REDACTED] profiling a number of local musicians from the former [REDACTED] an article from the [REDACTED] previewing a [REDACTED] performance that would feature the petitioner; a page from the web site of the [REDACTED] showing photographs of several musicians including the petitioner; and an article from the [REDACTED] identifying the petitioner as a member of a string quartet that played at a campus café. All of this coverage in the United States appeared between 2001 and 2004.

The record shows that audio and video recordings of the petitioner's performances exist on compact disc and DVD. Many of the recordings have generic labeling consistent with private pressings rather than commercial release, but the petitioner issued an album on the [REDACTED] label. The petitioner provided no sales figures for the recordings. His response to the NOID included several pages copied from the September/October 2012 issue of [REDACTED] a publication dedicated to reviews of classical music performances and recordings. The published review of the petitioner's album stated that the petitioner's "violin playing is impressive everywhere. It is no easy task to play this music, and it is a pleasure to hear it played so well." The issue of the [REDACTED] included 152 pages of reviews, and the review in question occupies roughly half a page, indicating that the [REDACTED] publishes hundreds of reviews per issue and likely more than a thousand

per year, justifying the named staff of 49 reviewers. Given this large number of reviews, it is not evident that the [REDACTED] only reviews recordings of particular significance or distinction. The record does not show that the petitioner's work has attracted any other critical attention.

An online listing for the petitioner's album on [REDACTED] quoted the [REDACTED] review, and invited submission of reviews from buyers, but indicated "[t]here are currently no reviews." The existence of a commercially released recording does not establish exceptional ability. The petitioner has not established that [REDACTED] is a major recording company or that his album's critical or commercial reception distinguishes it from the works of other artists in the genre.

The director denied the petition on December 7, 2013, stating that the petitioner had met the plain wording of three evidentiary standards, but that the evidence, as a whole, did not pass the final merits determination. The director acknowledged that the petitioner had documented many musical performances, but found that "[o]bjective evidence has not been submitted to clearly show that the petitioner has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business."

On appeal, in the appellate brief, the petitioner claims:

[The petitioner] is known throughout the world for his extraordinary accomplishments. [The petitioner] is currently considered to be one of the best violinists in the world and is in great demand by U.S. based organizations to hear his playing. It is evident through his academic and professional achievements that by any standard, he has achieved extraordinary recognition in the field.

The petitioner does not discuss the regulatory standards for exceptional ability, instead revisiting the criteria for extraordinary ability and asserting that "[h]is performances and his magnetic presence have earned him popularity and acclaim that reach far beyond the concert hall." The petitioner identifies previous submissions in a footnote, but does not explain how that evidence establishes his exceptional ability in the arts or supports the claim that he "is currently considered to be one of the best violinists in the world." Demand for his services is largely focused in Michigan, and he has not submitted any evidence to show the commercial success, either in record sales or ticket sales, that would be expected from the world-renowned figure he claims to be. The petitioner has established that he is an experienced and well-trained musician, but he has not demonstrated the level of expertise necessary to qualify as exceptional.

At various times in this proceeding, the petitioner has asserted that he is "a person holding an advanced degree." The petitioner does hold an advanced degree, but, by statute, the classification in question is for a member of the professions holding an advanced degree. On appeal, the petitioner specifically claimed:

[The petitioner] is an advanced degree professional. He holds his Ph.D. degree and has over 17 years of rich professional experience in the field. As such, he is an individual to be classified as a person holding an advanced degree. . . . [The

petitioner] qualifies based on his advanced degree and no further analysis need be provided.

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.” Section 101(a)(32) of the Act lists “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” The petitioner’s occupation is not listed. He teaches violin part-time, but he has not shown that he does so at an elementary or secondary school, college, academy, or seminary.

The petitioner has not established that a baccalaureate degree is the minimum requirement for entry into the occupation of violinist. He has not shown, for instance, that the lack of a bachelor’s degree would prevent a violinist from performing in public or in a recording studio. The petitioner holds advanced degrees, but this does not establish that such a degree is required. [REDACTED] director of the [REDACTED] indicated that his school “has 55 highly trained faculty members. Ten have doctorate degrees, 21 have masters degrees and 14 have bachelors degrees.” Those numbers add up to 45, indicating that ten faculty members do not have such degrees. This letter, on its face, indicates that a baccalaureate degree is not a minimum requirement for a teaching position at the school. Therefore, the record does not support the claim that the petitioner qualifies for classification as a member of the professions holding an advanced degree.

II. National Interest Waiver

The remaining question is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. The petitioner cannot qualify for the waiver without qualifying for the underlying immigrant classification, but the director addressed this issue in the denial rather than regarding it as moot.

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 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 introductory statement submitted with the petition reads, in part:

[The petitioner] is substantially contributing to the field of music through his performances as a violinist. There has been a void in this field and [the petitioner], through his exceptional musical abilities, will continue to play a significant role in the strengthening of this field of the arts in America, which arts will substantially benefit, improve, and expand cross-cultural understanding, improve the U.S. education and youth programs, and improve environmental consciousness and the economy by making the U.S. fine arts more accessible. Furthermore, he will share his expertise in music, which might not otherwise be utilized in our society.

The petitioner first arrived in the United States in 1999, and he appears to have been in the United States for most of the time since then. The record does not show that his past efforts here have had the results described above, and he did not explain why his future endeavors would have a greater impact than his past work.

The petitioner stated:

[The petitioner] has . . . established himself as a leading artist nationally with a concentration in the Michigan area. . . .

[The petitioner's] work is inspiring the artistic community from Michigan and beyond. He is known for his extraordinary accomplishments and contributions . . . as a violinist. He is currently considered to be one of the best in the world and is in great demand by U.S. based organizations. . . . [H]e has unique tools and a high level of expertise. . . .

[The petitioner's] dynamic talent has earned his popularity and acclaim that reach far beyond the concert hall. . . .

The work that [the petitioner] performs as a violinist also has the potential to change the way our society views classical music. . . .

Obtaining the best performers and getting the best teachers with the strongest skills in front of our students is the key not only to giving young people the chance to live full and rewarding lives, but also to improving the economy and the society. Although our nation faces a "teacher shortage," more to the point would be that the nation faces a distinct "skills shortage" among those who do enlist to serve as teachers. . . .

Requiring labor certification would stifle [the petitioner's] ability to significantly move forward in this evolving field. . . . In order for [the petitioner] to most significantly benefit the field and the nation, he must be able to adapt to this ever-changing field and to be involved [in] various aspects of artistic community, which would be significantly hindered by the requirement of a Labor Certification.

Much of the petitioner's supporting evidence has already received consideration above, in the discussion of his claim of exceptional ability in the arts. These materials do not substantiate the level of impact and influence claimed in the introductory statement. That introductory statement relied heavily on excerpts quoted from a number of letters submitted with the petition.

Three of those writing on behalf of the petitioner have known him since the 1990s. [REDACTED] a cellist with several symphony orchestras in southern California who has "known [the petitioner] for over 20 years," called the petitioner "one of those very rare people for whom nothing is impossible. He is an amazing, world-class, virtuoso, whose musical interpretations are always very original and highly convincing."

The other two writers who met the petitioner in the 1990s first encountered him at a 1993 competition in [REDACTED] now assistant concertmaster of the [REDACTED] [REDACTED] called the petitioner "an outstanding violinist with extraordinary talent," who "plays with a kinetic energy and versatility that is rarely found."

[REDACTED], now the Chamber Ensemble coordinator at [REDACTED] deemed the petitioner to be "one of the most talented and accomplished violin player[s] in the field today. . . . His performing style is an astonishing combination of a brilliant technique and a heartfelt sound, coupled with strength and artistic magnetism." Mr. [REDACTED] asserted that "[t]here is currently a shortage of good violin teachers within the state of Michigan, along with the rest of the nation." A local labor shortage is not grounds for the waiver, because the labor certification process is already in place to address such shortages. *See NYS DOT*, 22 I&N Dec. at 218.

██████████ the petitioner's violin teacher at ██████████ stated that the petitioner "has a unique ability to touch the audience with his warm personality and moving performances. . . . He is able to engage his audience in ways that many other artists cannot."

██████████, a professor at ██████████ stated that the petitioner's "playing is first-rate," and cited "the distinct lack of talented and creative individuals."

Dr. ██████████ attended ██████████ and, like the petitioner, has played for various orchestras in Michigan. She stated: "When [the petitioner] joined our orchestras he, from the very start, revealed himself as a professional of great expertise and utmost mastery."

██████████, assistant principal violinist with the ██████████, encountered the petitioner at the ██████████, Missouri. He deemed the petitioner to be "a violinist of the highest caliber. His playing style [is] unique and he plays with an easy wit that is unmatched by others."

The writers quoted above appear to be sincere in their opinions of the petitioner's skills, but the record does not show that these opinions prevail beyond the petitioner's circle of mentors and collaborators.

In the October 2013 NOID, the director stated that the petitioner had not established that his work, concentrated in Michigan, has had "national influence on the field."

In response, the petitioner asserted that, "[s]ince the filing of the petition, [he] has also begun employment with Masterful Musicians . . . in ██████████ CO." The petitioner continues to reside in Michigan, and to claim employment with several organizations in Michigan. As noted above, the regulation at 8 C.F.R. § 103.2(b)(1) requires the petitioner to establish eligibility at the time of filing the petition. USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Furthermore, the petitioner submitted no evidence or information about the nature of his employment with Masterful Musicians. More persuasively, the petitioner asserted that the benefit from his work is not restricted to Michigan, because he has toured nationally and internationally.

The petitioner repeated the earlier assertion that "[r]equiring labor certification would stifle [the petitioner's] ability to significantly move forward in this evolving field." The petitioner asserted that his "extraordinary work in the field is recognized by the experts and the public at large, as demonstrated by the included letters of support, contract, press releases and requests from organizations to perform." The record shows that the petitioner has an active performing career, but this is not evidence of "extraordinary work."

The petitioner submitted additional letters which, like the earlier letters, are from individuals with ties to the petitioner and his employers. Dr. ██████████, who has "known [the petitioner] since

his childhood,” ranked the petitioner as “truly a violinist of the highest caliber [who] has long been recognized for his extraordinary talent in the field.”

who has played with the petitioner “in several orchestras” in Michigan, contended that the orchestras recruit talent at an “extremely high level,” and that the petitioner “is also a distinguished teacher” and “an accomplished conductor.”

professor at stated that the petitioner “is an individual of extraordinary and rare talent. Through his art, he has reached a high level of achievement in the field. . . . [He] has the uncanny ability to invoke a variety of moods through his playing.”

identified previously as director of the called the petitioner “an accomplished musician” and “a wonderful instructor.”

director of stated that the petitioner’s “continued work in [the arts] will have a direct and beneficial impact” educationally and economically. The petitioner submits no verifiable evidence that his efforts in the United States over the past several years have already had measurable effects in these areas. Without such evidence, the claim that his future efforts will have those effects is only speculation.

personnel manager of the asserts that the petitioner’s success in the “rigorous audition process . . . indicates he is a talented leader in his field.”

Dr. , president of claimed that the petitioner “is recognized by many top names in the music industry and is highly sought after to contribute to musical collaborations.” The record does not substantiate this claim. Dr. did not establish that the petitioner’s album on has attracted significant critical attention or sales.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The 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 considered above contain numerous claims regarding the petitioner’s level of achievement and recognition, but the documentary evidence in the record fails to support these claims.

The director, in denying the petition, stated that the record failed to substantiate many of the claims in the submitted letters; that the petitioner’s work is largely confined to Michigan, with no showing of wider benefit; and that “[t]he record does not establish that the petitioner has had a significant influence [on] the field of endeavor that would justify a waiver of the job offer requirement.” The director granted only the first prong of the *NYSDOT* national interest test, pertaining to substantial intrinsic merit.

On appeal, the petitioner contests the director’s finding regarding the national scope of the petitioner’s work. The national scope prong of the *NYSDOT* national interest test concerns the occupation rather than the petitioner individually. The petitioner works mainly in Michigan, but has performed elsewhere, and has commercially released recorded work. There is nothing inherently local about musical performance, as is evident from the international fame of some well-known musicians. It is possible for the work of a musician to produce benefits at the national level. Whether the petitioner, individually, has done so is a question for the third *NYSDOT* prong. We withdraw the director’s finding that the petitioner’s work lacks national scope.

The petitioner asserts: “Through his performing and teaching he is currently enhancing the academic programs of various institutions . . . and is substantially benefiting, improving, and expanding cross-cultural understanding, improving the U.S. education and youth programs, and improving environmental consciousness and economy by making the U.S. fine arts more accessible.” The petitioner provided no verifiable evidence of these effects, or to show that his impact in these areas has exceeded that of others in his field to an extent that would justify a waiver of the job offer requirement.

Rather than establish the impact of his album, the petitioner notes that it was reviewed in “America’s oldest classical music review magazine.” The reputation of the [REDACTED] does not convey significant cultural impact on the hundreds of recordings reviewed in each issue of that publication.

The petitioner asserts: “national interest waivers are usually granted to those who have exceptional ability . . . and whose employment in the United States would greatly benefit the national” [*sic*]. Setting aside the finding that the petitioner has not established exceptional ability in the arts, aliens of exceptional ability, who will substantially benefit prospectively the United States, are presumptively subject to the job offer requirement. See section 203(b)(2)(A) of the Act. Eligibility for the waiver is a second, higher threshold, described in *NYSDOT* (as no definition appears in the relevant statute or regulations). Assertions of exceptional ability, therefore, do not demonstrate eligibility for the waiver.

The writers of many of the letters in the record offer subjective praise for the petitioner's talent as a musician and the effect of his playing on an audience. The record offers nothing concrete to establish that the petitioner has influenced his field as a whole. Evidence of ongoing employment is not evidence of impact or influence. The petitioner and those writing on his behalf cannot establish that impact simply by calling him a top musician, and calling his employers leading organizations in his field. The record does not establish a wider consensus on these points.

The petitioner need not establish national acclaim to qualify for the national interest waiver; that standard applies to the higher "extraordinary ability" classification at section 203(b)(1)(A) of the Act. Nevertheless, the petitioner has chosen to rely on assertions of such acclaim, and USCIS cannot approve the petition unless the petitioner's assertions are found to be true. *See* section 204(b) of the Act. The gap between the claims in the letters and the documentation in the record prevents such a finding.

The petitioner has established that he is an experienced musician and teacher, who has earned the respect of his colleagues. He has not, however, 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. *NYSDOT*, 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 he qualifies for classification as an alien of exceptional ability in the arts, or that a waiver of the requirement of an approved labor certification will be in the national interest of the United States. 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.