



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **SEP 17 2014** OFFICE: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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 us 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 composer and tango guitarist. 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 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 letters and other supporting evidence.

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 filed the Form I-140, Immigrant Petition for Alien Worker, on April 15, 2013. An introductory statement submitted with the petition reads, in part:

[The petitioner] is a composer and tango guitarist of exceptional ability who has created a music genre called [REDACTED] which combines the music of Buenos Aires with many other musical influences. His compositions bring together the beautiful melodies and passion of the tango with electronica, pop, rock, folk, and symphonic music. . . .

[The petitioner's] versatility as a[n] exceptional guitarist, composer, and teacher make him the rare musician able to perform at the highest musical levels and also able to

mentor, communicate, inspire and motivate students and audiences. His prodigious talents are critical to the national goals of furthering music, diverse cultures, and the arts, and musically educating our children to become well-rounded, contributing members of society.

I. Exceptional Ability

The first issue under consideration is whether the petitioner qualifies for classification as an alien of exceptional ability in the arts. To establish exceptional ability in the sciences, the arts, or business, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(3)(ii) requires the petitioner to 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; and

(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 above 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).

Where the petitioner fails to submit the required evidence, the proper conclusion is that the petitioner failed to satisfy the regulatory requirement of three types of evidence. *Cf. Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). If the petitioner has submitted the required 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* at 1121, 1122. Only aliens who have demonstrated "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); *see also Kazarian* at 1120.

The introductory statement submitted with the petition indicated that the petitioner meets criteria (A) and (F) listed above, and then cited “comparable evidence” beyond the regulatory standards. The plain wording of the comparable evidence clause requires the petitioner to demonstrate that the above standards do not readily apply to his occupation. If the standards do apply to that occupation, the petitioner’s inability to meet those standards does not trigger the comparable evidence clause. Nevertheless, any evidence outside of the specified standards that reasonably demonstrates exceptional ability will receive due consideration.

Following the director’s issuance of a request for evidence (RFE) on May 8, 2013, the petitioner claimed to meet criteria (B), (D), and (E) in addition to those claimed previously.

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)

In April 2006, [REDACTED] in Argentina awarded the petitioner an “intermediate degree” “in Technology and Music” relating to “composition with electroacoustic aids.” A 2010 transcript from the [REDACTED] shows other music-related coursework in 1997-98 and 2005-2006 at the [REDACTED]

The director, in the RFE, stated that the petitioner had satisfied the regulatory criterion, but also instructed the petitioner to submit qualifying translations of foreign-language documents as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner submitted no further academic documentation in response to the RFE.

In the denial notice, the director stated “the evidence submitted meets this criterion.” The evidence establishes that the petitioner holds an academic degree relating to the petitioner’s area of claimed exceptional ability, thereby meeting the plain wording of the regulation.¹

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-750B, Statement of Qualifications of Alien, the petitioner listed the following past experience:

¹ If the evidence had warranted a final merits determination, then it would be necessary to examine specific aspects of the academic documentation and determine whether the petitioner had shown that his level of education demonstrates exceptional ability. In this instance, however, a final merits determination is not necessary because the petitioner has not facially met at least three of the regulatory criteria.

[REDACTED] 2006-present; 10-60 hours per week
[REDACTED] 2006-2007; 30 hours per week
[REDACTED] Musicos, 2007-2008; 20 hours per week
[REDACTED] 2008-2009; 30 hours per week
[REDACTED], 2010-2011; 35 hours per week

An accompanying résumé listed the same employers, with the dates of employment at [REDACTED] listed as 2007-2008 instead of 2010-2011. The petitioner did not, however, submit letters from employers attesting to the claimed employment. 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)).

Furthermore, the earliest employment claimed in the list above was in 2006, less than 10 years before the petitioner filed the petition in 2013.

In response to the RFE, the petitioner submitted a letter from [REDACTED] president of [REDACTED] stating that the petitioner “has been working for [REDACTED] since 2002” as a “producer and composer.” Mr. [REDACTED] identified [REDACTED] (2003), [REDACTED] (2005), and [REDACTED] (2007) as being “[a]mong [the beneficiary’s] musical productions for this company.” The petitioner had not identified [REDACTED] as an employer when he first filed the petition.

The petitioner also pointed to a translated letter from [REDACTED] the [REDACTED] [REDACTED] indicating that the petitioner had been a [REDACTED] member since September 30, 1994. Memberships in associations fall under a different criterion, discussed further below. The letter did not indicate that the society was the petitioner’s employer, that the petitioner had worked full-time since joining the society, or that ongoing full-time employment is a condition of membership in the society. The letter, therefore, is not qualifying evidence of past full-time experience.

In denying the petition, the director stated “the evidence submitted does not meet this criterion.” On appeal, the petitioner submits new letters and certificates attesting to his employment from March 21, 2002 onward. [REDACTED] expanded on his earlier letter, stating:

[REDACTED] hired [the petitioner] on March 21th [sic], 2002 to work producing three unique discs, [REDACTED] . . .

[The petitioner] used to work an average of 8 hours per day in the studio (from Monday to Friday). . . . On Saturdays, he used to work until 4 pm. . . .

[The petitioner] kept the same 8 hours a day routine, and full time occupation in musical productions, till April 3rd, 2007.

Producer [REDACTED] stated that he “spent 60 hours per week” working with the petitioner during the last few weeks of the above period, from January 29 to April 3, 2007. The letters indicate that the petitioner worked eight-hour days while working on production of the three named albums, but they does not establish that the petitioner worked on these projects without interruption for five years straight.

[REDACTED] Secretary of [REDACTED] stated that the petitioner worked “6 hours daily” as a music teacher from April 9, 2007 to February 28, 2008. This letter documents slightly less than 11 months of part-time employment.

[REDACTED] producer and conductor with the [REDACTED] stated that the petitioner “was contracted as a guitarist specializing in tango,” working “six hours per day Monday through Friday,” from March 3, 2008 to January 2, 2010. This letter attests to 22 months of part-time employment. The petitioner did not claim this experience on his résumé or on Form ETA-750B, or in response to the RFE. Instead, the petitioner initially claimed to have worked 30 hours a week as a composer/arranger at [REDACTED] in 2008 and 2009.

[REDACTED] vice president of [REDACTED] stated that the petitioner “worked full time, during two years and a half, from March 2010 to September 2012 for [REDACTED] Mr. [REDACTED] claimed that the petitioner worked from 9:00 a.m. to 7:00 p.m. “every day, from Monday to Friday,” composing, performing, and performing various production-related tasks that culminated in the [REDACTED] album. The petitioner did not claim this employment until the appeal.

[REDACTED] manager of [REDACTED] stated that the petitioner “spent 1070 working hours in the post-production room” “from May to September, 2012.” The number of hours claimed is consistent with full-time employment over a period of no more than five months, but the petitioner did not claim this employment until the appeal.

Where, as here, the director has notified the petitioner of a deficiency in the evidence and given the petitioner an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

Furthermore, the new claims of employment conflict with the petitioner’s earlier claims, raising doubts as to the petitioner’s actual employment history during the period in question. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

When the director denied the petition on November 13, 2013, the director correctly found that the petitioner had not submitted letter(s) from current or former employer(s) showing that he has at least ten years of full-time experience in the occupation for which he is being sought. The director offered the petitioner a timely opportunity to remedy this deficiency, but the petitioner did not do so until the appellate stage, and the evidence submitted on appeal contradicts the petitioner's previous claims. The new letters that are consistent with the petitioner's prior claims show part-time employment, not the full-time employment required by the plain wording of the regulation. Therefore, the petitioner has not satisfied this criterion.

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 petitioner did not claim to have satisfied this 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 petitioner's initial submission did not address this criterion. Following the RFE, the petitioner submitted copies of itemized documents from [REDACTED] bearing the [REDACTED] logo, showing payments of 9,689.40 Argentine pesos on May 30, 2013 and 7,840.65 Argentine pesos on June 28, 2013. The petitioner stated that these sums reflected sales of his albums on compact disc. Other receipts, also dated mid-2013, show smaller payments.

The documented payments occurred after the petition's filing date. 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). 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 documents, by themselves, show only that the petitioner has earned income from his work. Without a documented basis for comparison, the figures do not show that the petitioner's earnings demonstrate exceptional ability.

A copy of the petitioner's 2012 contract with [REDACTED] lacks a translation, and there is no evidence that the terms of payment to the petitioner deviate from the standard terms in Argentinian recording contracts. With no basis for comparison with other recording artists, the petitioner has not shown that his terms of compensation demonstrate exceptional ability (for example, through an exceptionally high royalty rate or large advance on projected royalties).

In denying the petition, the director acknowledged that the petitioner submitted some evidence of remuneration, as described above, but found that the petitioner has not established that the level of that remuneration demonstrates exceptional ability. The petitioner, on appeal, does not contest this 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’s initial submission did not address this regulatory criterion. The petitioner’s response to the RFE included the aforementioned letter from [REDACTED] attesting to his membership since September 30, 1994. Another translated letter indicated that the petitioner had belonged to the [REDACTED] since October 21, 2009. The translation of the letter is inconsistent, at one point translating the organization’s name as [REDACTED] but elsewhere providing the translation [REDACTED].

The director found that the petitioner had satisfied this criterion. The evidence satisfies the plain wording of the regulation.²

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)

A certificate reproduced in the record reads, in part:

[REDACTED]

Another certificate reads, in part:

[REDACTED]

A third certificate, dated 2001, is in Spanish, without the translation required under 8 C.F.R. § 103.2(b)(3). The certificates do not document achievements or significant contributions to the

² Again, the issue of whether the membership is consistent with a finding of exceptional ability would have been a matter for the final merits determination, had the record warranted a final merits determination.

field, and the petitioner has not shown that his participation in these events amounted to significant achievements or contributions to the field.

The petitioner asserted that several third-party letters constitute recognition by peers. We will consider the contents of those letters, but they do not constitute recognition as contemplated by the regulation quoted above. Discussion of the letters will appear below, in the context of the national interest waiver.

In the RFE, the director stated that the petitioner had not met the regulatory criterion. In response, the petitioner submitted additional letters, along with various other exhibits. As evidence of "Argentine Governmental Recognition," the petitioner submitted two translated letters from an unnamed official of [REDACTED] General Office of Cultural Affairs. One letter, dated July 4, 2013, stated: "we have promoted the [petitioner's] music . . . in various countries around the world." The other letter stated that the petitioner's performances "in Washington D.C., New York and Miami between July 15 and 26, 2013, are considered of great Artistic and Cultural Interest by this General Office, considering the prestigious career of this performer." The date of the letter is July 12, 2013, before those performances took place. The letter, therefore, was not a commentary on the known significance of the performances, but rather an assertion that, by their very nature, they would be significant.

Although the letters predated the petitioner's 2013 performances, they did not exist until after the petition's April 2013 filing date. The petitioner's response to the RFE must establish eligibility as of the petition's filing date. *See* 8 C.F.R. § 103.2(b)(12); *see also* *Matter of Katigbak*, 19 I&N Dec. at 49.

The petitioner also cited "contracts with companies using [his] musical talents" as evidence of recognition. The petitioner, however, did not explain how these contracts amount to recognition for achievements and significant contributions to the field, rather than routine business arrangements that establish the terms of business that has yet to be transacted.

The director found that the petitioner had not submitted qualifying evidence of recognition for achievements and significant contributions to the field. On appeal, the petitioner submits more letters, as well as a November 20, 2013 certification stating: [REDACTED] hereby certifies that [REDACTED] is considered of great Artistic and Cultural interest, considering the prestigious career of the [petitioner] through his achievements and contributions in art and modern music fields." The certificate, signed by [REDACTED] director of tourism promotion, indicates that the petitioner "has had our support since 2005 till present time. Our sponsorship [of the petitioner] consists [of] subsidies for travels, participation in local events and economic subventions various [*sic*]." The record contains no first-hand documentation of this sponsorship, and no evidence that government patronage of this kind consisted of grants provided in advance of specified projects or sums paid after the fact in recognition of achievements or significant contributions to the petitioner's field.

The petitioner has not overcome the director's finding that the petitioner did not submit sufficient evidence to establish recognition for achievements and significant contributions to the field.

Beyond the six specified regulatory standards, the petitioner submitted a professionally printed "dossier" including untranslated Spanish text, photographs of the petitioner, and images of documents including his academic records, certificates, and web printouts in various languages, with his name circled. One page consists of claimed quotations from U.S. publications, translated into Spanish. Without the required English translation, the "dossier" has minimal weight as evidence.

The petitioner submitted copies of English-language articles. A [REDACTED] article focuses not on the petitioner, but on [REDACTED] the founder and director of the [REDACTED] that takes place annually in [REDACTED] Virginia. Mr. [REDACTED] stated that his "role in the festival is to help these new artists" such as the petitioner, whom the article described as "a guitarist and composer of [REDACTED]" An article from [REDACTED] promoted the 2011 [REDACTED] listing several participants including the petitioner "with his acclaimed [REDACTED]"

Articles from [REDACTED] announced the U.S. release of a [REDACTED] album. The two articles appeared the same day, May 24, 2012, they include the same photograph of the petitioner, and their text is almost entirely identical, even including the same grammatical error: "[REDACTED] features an array a special guests from Argentina and other countries." These similarities suggest that both articles derive from a common source. That common source appears to be a press release from the petitioner or his record label; the [REDACTED] version of the article begins by stating that the petitioner "is proud to announce the release of his [REDACTED] CD to audiences in the United States." The same language, including the "array a special guests" error, appeared on the web site of [REDACTED] announcing the petitioner's appearance at that venue on June 27, 2012.

A short profile of the petitioner appeared in [REDACTED] promoting his upcoming appearance "at [REDACTED]" The record contains no other information about the publication; a reduced-size color photocopy of a two-page spread from the publication is mostly illegible. Brief listings in other publications announced the petitioner's performances at club venues and festivals. Apart from the materials derived from the petitioner's own press release, the English-language materials in the record do not show significant media discussion of the petitioner or [REDACTED]

The petitioner's RFE response included a three-page "media coverage" booklet, adapted and translated from the previously submitted dossier. The first page is an English translation of claimed quotations from U.S. publications including the [REDACTED] The petitioner indicated that all of the quoted stories appeared between May and July of 2012, but he did not provide exact dates or copies of the quoted articles. The quotations, therefore, appear out of context. Furthermore, the petitioner did not provide the original English quotations.

The second page of the booklet consists of screen captures of the petitioner on various television programs. Added captions identify the networks or local stations, but not the specific shows or broadcast dates. The petitioner indicated that, except for an appearance in Manhattan, all of the depicted appearances took place in Washington, D.C. or nearby areas of Virginia. The third page of the booklet, captioned [REDACTED], consists of five photographs of the petitioner talking to journalists.

The RFE response also included a spiral-bound set of printouts from several web sites offering his albums for sale (including listings on the auction site eBay, offering individual copies of the albums). The printouts do not include sales figures. Therefore, the printouts demonstrate that the petitioner's recordings are available, but they do not establish a sales volume significantly above that ordinarily encountered in the field.

The petitioner has met the requirements of only two of the six regulatory standards for exceptional ability, as shown in the above discussion. Therefore, the petitioner has not made a *prima facie* showing that would warrant a final merits determination regarding the exceptional ability claim. The petitioner has not submitted sufficient evidence to establish exceptional ability in the arts.

II. National Interest Waiver

The remaining issue in contention is 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 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) (NYS DOT), 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, to qualify for the waiver, it cannot suffice for the petitioner to claim a degree of expertise significantly above that ordinarily encountered in his field of expertise.

Although the petitioner cannot qualify for the national interest waiver without an underlying finding of exceptional ability in the arts, the director nevertheless rendered a decision on the merits of the national interest waiver claim.

The director found that the petitioner's occupation as a composer, performer and producer has substantial intrinsic merit, and that, as a touring musician, the benefit from the petitioner's work is national in scope. The widespread availability of the petitioner's recorded work, on compact disc and on download sites such as iTunes, would also be consistent with such a finding. Therefore, the issue to be decided is whether the petitioner has established a past history of demonstrable achievement with some degree of influence on the field as a whole.

The evidence discussed above establishes that the petitioner is a touring musician and recording artist who has received some media coverage. These factors, however, do not necessarily establish the influence on the field necessary to qualify for the national interest waiver.

The introductory statement submitted with the petition included the following claims:

[The petitioner] will play a vital role in nationally important cultural and educational goals. His singular presence is vital to their success. His well-earned reputation as an exceptional musician who will significantly benefit art and music reveals that he will serve the national interest to a substantially greater extent than would American workers similarly qualified. . . .

The anticipated benefits from [the petitioner's] work derive from his proven record of achievement and his unique and innovative talents, knowledge and background. The professionals involved in his musical career . . . note that more than mere minimum qualifications are required to succeed in the competitive world of professional musicians and in the valuable teaching projects in which he has worked. . . . The loss of his talent and expertise would be contrary to the important national interest of providing quality cultural and artistic experiences to our citizenry.

As indicated above, the petitioner has submitted several letters in support of the petition. Many of the writers limited their comments to discussions of the petitioner's academic or employment experience. Such assertions are not relevant in the context of eligibility for the waiver. Of relevance in this discussion are the letters that distinguish the petitioner from his peers based on something beyond a perceived difference in skill level (because an above-average level of expertise, consistent with exceptional ability, does not suffice to qualify one for the waiver).

The petitioner has not established that certain writers are musicians or music experts. [REDACTED] [REDACTED] advisor to the minister at the [REDACTED] stated:

I met [the petitioner] in June 2011, when he was performing in Washington D.C. At that time, I was working . . . as a Foreign Legal Consultant for [an] international law firm. . . .

When I saw [the petitioner] performing for the first time, I was impressed by his truly outstanding talent and passion for tango music. Afterwards, I have had the privilege to attend several of his shows in the Washington DC area and Bogota (Colombia). I have also read some of his unpublished compositions. I can therefore confirm [the petitioner's] special sensitivity and talent for the beaux-arts.

In my view, [the petitioner] and his work on [REDACTED] have brought and will continue to bring a uniquely modern and highly regarded style to the tango music genre. Nowadays, he is one of the small numbers of prominent tango performers in Argentina and the rest of the American continent.

[REDACTED] an Argentinian realtor now in [REDACTED] Virginia, called the petitioner "an intellectual, academic and musical asset" and stated:

My lifelong passion for music is what brought me into contact with [the petitioner], a recognized figure of Argentina's most distinguished musical talent. For quite some time, he has endeavored in the research of themes shared by the popular Tango music with the equally accepted and more contemporary sounds of American Rock, resulting in a unique blend called [REDACTED] which enjoys international acclaim. [The petitioner] has performed concerts throughout Latin America and various cities in the US, to the delight of the audiences. He wants to reside in the U.S. to further

expand his exploration of American music, and for him to be an ambassador of Latin American Music. In this regard he brings a unique perspective in bridging the cultures of the two countries which would strengthen the bonds between the Americas.

Letters such as those quoted above demonstrate that the petitioner has attracted admirers who enjoy his music. The writers offered the general assertion that the petitioner is “prominent” and has earned “acclaim” in his field, but the petitioner’s initial submission provided no means to establish that the petitioner’s music has been particularly influential or has had an unusually significant cultural impact.

Other writers are more directly involved in music and entertainment. Professor [REDACTED] who taught the petitioner at [REDACTED] in Argentina, stated that he is “not surprised” that the petitioner is “currently developing a distinguished career as a creator and performer, in an artistic search oriented to the merger, the tango and the creation of works with avant-garde techniques and contemporary concepts.”

[REDACTED] identified previously as the director of the [REDACTED] stated that, before meeting the petitioner, he “was already aware of [his] music because it was broadcast to all 120 countries where Argentina has embassies, including the United States.” Mr. [REDACTED] asserted that the petitioner is “[o]ne of the finest artists to participate in our festival during the past two years. . . . His mastery of his music, the quality of his compositions, and his noble heart in volunteering to help raise money for Argentine schools has made him a much anticipated, trusted and beloved artist.” Mr. [REDACTED] asserted that the petitioner’s “musical approach is unique and original. I have not heard anything quite like its vibrancy and appeal. I have witnessed the remarkable growth of his career both in Argentina and here in the United States.”

[REDACTED] international spokesman for the [REDACTED] stated that the petitioner provided “active support [for] the [REDACTED] carried out between the years 2009 and 2010.” Mr. [REDACTED] stated that the petitioner “carried out important initiatives in favor of the [REDACTED]” but he did not describe those initiatives except to state that the petitioner provided assistance “concern[ing] several of the musical proposals . . . from different countries.” Web printouts indicate that the petitioner recorded music video clips to promote the [REDACTED] Other printouts describing the event are in Spanish without the translations required by the regulation at 8 C.F.R. § 103.2(b)(3).

The letters quoted above attest to the petitioner’s skill, originality, and social conscience, but they do not explain how the petitioner stands out in a way that would satisfy the special benefit of the national interest waiver. By statute, exceptional ability in the arts is not sufficient grounds for the waiver, and therefore the petitioner cannot qualify for the waiver simply by establishing a high level of ability and skill as a musician, composer and producer.

In the May 8, 2013 RFE, the director stated that the petitioner must establish “a past record of specific prior achievement with some degree of influence on the field as a whole.” The petitioner’s response to the RFE focused on his exceptional ability claim, although the accompanying cover letter contained the claim that “[h]is creation of an original genre, [REDACTED] has influenced modern Tango music all over the globe.” The petitioner submitted no documentary evidence of this claimed global influence, but he did submit additional letters, most of them in Spanish with certified translations.

Musician [REDACTED] stated:

[The petitioner] is a professional who is developing a genre uncommon in this country. He has, in fact, performed with my ensemble . . . one of his musical pieces written for a symphony orchestra, interesting for its elegance and originality.

. . . I cannot say that there is anyone here doing what [the petitioner] is doing in this musical genre. That is why I think it would be of tremendous benefit for Americans to have him here to impart his knowledge within some institute or university.

[REDACTED], Italy, stated:

I am the founder and president of Associazione [REDACTED] an international project that organizes workshops and courses for children and young musicians in different countries and cities all around the world.

Based on my experience in the field of music, I can assert that [the petitioner’s] talent and music make an extraordinary contribution for cultural exchanges and musical development of young musicians.

. . . As an exceptional teacher, [the petitioner] makes a substantial benefit to the students by sharing his musical techniques and skills.

[The petitioner’s] specialty in [REDACTED] (a particular technique that demands long years of hard learning) makes him a unique and rare professional who should be, in my opinion, of national interest for the United States of America. This technique is appreciated by many musicians all over the world.

Musician and producer [REDACTED] of Barcelona, Spain, who met the petitioner during a 2009 tour and subsequently collaborated with him, asserted that the petitioner “will go far as an artist and attain great heights, not only as a creator and composer, but as an instructor in this area.”

The above writers asserted that the petitioner would benefit the United States by teaching music students. While the petitioner claims past experience as a teacher, his initial waiver claim did not indicate an intention to teach in the United States. Rather, on Part 6, line 3 of Form I-140, the

petitioner indicated that he would “[c]ompose and perform a new, contemporary genre of world music called [REDACTED]. Instructed on line 9 of that same part of the petition form to provide his intended work address, the petitioner did not identify any “institute or university.” Instead, he asserted that he “[p]erforms concerts all over the world.”

The petitioner has not established an influential career as a music teacher, but even if he had, this new emphasis on teaching, rather than on composition and arranging, is a significant change from his initial assertions. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998); *see also Matter of Katigbak*, 14 I&N Dec. at 49.³

[REDACTED] general manager of [REDACTED] Bolivia, stated:

The artistic journey [the petitioner] is on, as well as his ability to inspire others, will most certainly have a tremendous impact on the new generation of American musicians. Stimulation of artistic creativity and the possibility of a society more musically educated and aware is this composer’s distinguishing mark. No one is better equipped than him to reach Americans with these ideas. At a time when popular music is lacking new forms, I am certain that [the petitioner] will be able to ignite the flame with his fusion.

This composer and guitarist concentrates on a genre that was originally born out of the depths of his artistic being which spread out and touched many other people. [REDACTED] is a musical genre that involves various cultures and at the same time, mixes sounds from distinct parts of the world. This is surely a result of the music having made the rounds in different countries and cultures.

In his native Argentina, he has earned the support of the most important artists in the history of Argentine music. And in Bolivia, where he was our special guest for inauguration of the [REDACTED], he filled the space with his ecumenical compositions which the people really related to and appreciated.

The letter quoted above provides more detail about the claimed musical significance of [REDACTED] but the record contains no documentary evidence to establish the impact that [REDACTED] has had in the United States. The petitioner has performed in the United States in the past, and his recorded music is available internationally, but the record does not show that [REDACTED] has attracted significant attention in the United States or that other artists have adopted the genre.

³ Also, instruction of individual students lacks national scope. *See NYS DOT*, 22 I&N Dec. at 217 n.3.

In the November 2013 denial notice, the director acknowledged the petitioner's evidence and concluded that the genre of [REDACTED] "is still in development and its impact [on] the field has not been established."

On appeal, the petitioner submits additional letters, most of them certified translations from Spanish. [REDACTED] Buenos Aires, was one of the petitioner's university instructors and later collaborated with the petitioner on a recording project. Mr. [REDACTED] states that [REDACTED] "has many distinctive features that make it unique within its genre," and "has set important musical precedents and started a new trend." Mr. [REDACTED] cites no evidence to show that the "new trend" is taking hold, or to support his claim that a composition by the petitioner was one of several "selected in an international convention to set new music to the National Bar Association's theme song." Unsupported claims have no weight as evidence. *See Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, the petitioner has not established that writing a piece of music on commission is inherently an important or influential contribution to the arts.

[REDACTED] a piano teacher at the [REDACTED] studied alongside the petitioner at [REDACTED] and has subsequently "worked with him several times." Mr. [REDACTED] states that the petitioner's "contributions to music are so exceptional that they surpass other composers in the field. He has made important contributions to tango, which in turn have impacted music as a whole." Mr. [REDACTED] describes technical aspects of the petitioner's music such as time signatures and dissonance, and asserts that the petitioner "had to resort to special musical notations . . . because no conventions existed for writing many of the specific effects that he wanted to play on the instruments." The record does not establish the extent, if any, to which other composers have adopted the petitioner's new notations.

Professor [REDACTED] states that [REDACTED] includes several important innovations, including "heavy inclusion" of the bandoneon ("an instrument that has been part of tango for over one hundred years") and "innovations to the way the bandoneon is played." Prof. [REDACTED] asserted that [REDACTED] "was a semifinalist in the 2012 . . . [REDACTED] . . . , one of the largest composition competitions in the US and the world." The petitioner submitted no evidence from the organizers of the competition to corroborate this claim. *Id.*

Professor [REDACTED] Argentina, participated in the recording of a [REDACTED] album in 2009. Prof. [REDACTED] claimed that [REDACTED] is "a style which has become widely known for several years and is established as a major trend in Argentina and the rest of the world." The record lacks evidence to support this assertion.

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. at 165.

Some of the writers' assertions are uncorroborated claims of fact, whereas others are subjective opinions. A number of writers have asserted that [REDACTED] is a significant cultural contribution, but the documentary evidence in the record does not establish its claimed impact. The petitioner asserts that [REDACTED] is essentially a new genre of music, but he has not shown that this genre has made a significant place for itself in the musical landscape of the United States. The assertion that it will do so in the future is speculation rather than a verifiable assertion of fact.

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. *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.").

Eligibility for the waiver rests on more than an articulated level of skill or success in a given occupation. 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.

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.