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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAR 07 2013**

Office: TEXAS SERVICE CENTER

[Redacted]

IN RE: Petitioner:
 Beneficiary:

[Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a singer, songwriter, and musician. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim. The director also found that the petitioner had not established that his entry into the United States will substantially benefit prospectively the United States.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) – (iv) and that he will substantially benefit prospectively the United States. For the reasons discussed below, the AAO will uphold the director's decision.

I. LAW

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien’s sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 580 F.3d 1030 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO’s decision to deny the petition, the court took issue with the AAO’s evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria²

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The AAO withdraws the director’s finding that the petitioner meets this regulatory criterion.

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

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

The petitioner submitted the following:

1. A July 5, 2004 article in *Panorama* stating that the “13 members of the Group Sampao” (including the petitioner) won the [REDACTED] Award” (2003) “for being the most popular band in [REDACTED]” (one of the 23 states in Venezuela);
2. A 2004 Mara Award for [REDACTED] in the [REDACTED] category;
3. A 2006 Mara Award for [REDACTED] for the song “Quisiera”;
4. A 2006 Mara Award for [REDACTED] category; and
5. A 2008 Mara International Award for “Songwriter of the Year” in the “Tropical Music” category.

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Although the petitioner’s initial evidence includes a September 29, 2010 translator certification stating “I hereby certify that I have accurately translated, to the best of my knowledge, the attached *document*, from Spanish into English” [emphasis added], it is unclear which of the above awards (items 1 – 5), if any, to which the translator certification pertains. The submission of a single translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to USCIS shall be accompanied by a certified English language translation.

With regard to item 1, the petitioner submitted a June 30, 2010 letter from Romulo Zabala Raggio, General Director of the Metropolitan Cultural Foundation, Falcon State, Venezuela, stating: “The importance of the national award ‘*Gran* Aguila de Venezuela’ [emphasis added] is a highly coveted reward for artists, musicians and musical groups in our country, becoming a great encouragement for recognition and achievement, and being recognized as the best of their genre.” The petitioner also submitted a June 28, 2010 letter from [REDACTED] President of the Foundation for the Academy of Gaita Ricardo Aguirre of the State of Zulia (FUNDAGRAEZ), Venezuela, stating:

We know of the prestige of the award *Gran* Aguila de Venezuela at the national and international level, thanks to its effective and rigorous methodology utilized to select those who are granted the important award, making it an exclusive award for those outstanding artists and musicians in the country. It constitutes the most important award in Venezuela that recognized the excellence of the arts and/or music and it is compared to international awards like the Grammy and Emmy awards.

[Emphasis added.] The English language translations accompanying the preceding letters from Mr. Zabala Raggio and Mr. Aguirre Gonzalez were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, neither of the preceding letters states that the petitioner himself received a “*Gran* Aguila de Venezuela” award. Moreover, the July 5, 2004 article in *Panorama* (item 1) states: “For being the most popular band in Zulia, Group Sampao, with its contagious vallenato, won the Aguila de Venezuela Award 2003.” According to the aforementioned article, the petitioner’s band won “the Aguila de Venezuela Award,” not the “*Gran*

Aguila de Venezuela” award described in the letters from [REDACTED] and [REDACTED]. Moreover, the article in *Panorama* indicates that the Aguila de Venezuela award received by the petitioner’s band equates to regional recognition in the state of “[REDACTED]” rather than a nationally or internationally recognized award for excellence in the field of endeavor. In addition, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of “the alien’s receipt” of nationally or internationally recognized prizes or awards. The AAO notes that the award was specifically presented to “Group [REDACTED]” and it cannot suffice that the petitioner was part of a large music group (13 members) that earned collective recognition.

In regard to the petitioner’s Mara Awards (items 2 – 5), the petitioner submitted a letter from the “Mara de Oro of Venezuela Foundation” providing general information about the foundation and stating that the “Mara de Oro” award “is the highest award granted by Venezuela at an international level.” The preceding letter, however, does not state that the petitioner received a “Mara de Oro” award. Further, according to the plain language of the non-certified English translations submitted by the petitioner, none of his “Mara Awards” from 2004, 2006, and 2008 were “Mara *de Oro*” awards. Specifically, none of the petitioner’s awards (items 2 – 5) include the words “de Oro.” The petitioner also submitted photographs of various “Mara de Oro” recipients whose awards were different in appearance than those of the petitioner and whose awards include the specific words “de Oro.”

In addition, the petitioner submitted a letter from [REDACTED] stating that the petitioner received “the award of Songwriter of the Year, by the Mara de Oro of Venezuela Foundation”; a letter from Lic. [REDACTED] stating that the petitioner wrote a song entitled “[REDACTED]” that “was awarded in 2006 with various important recognitions”; a letter from the President of the “Municipal Institution for the Gaita” discussing the importance of the “Mara de Oro of Venezuela”; a letter from the Editor of *El Venezolano* (a Venezuelan newspaper published in Miami) stating that the “Mara de Oro of Venezuela” is “one of the most prominent awards in Latin America”; and a letter from Luis Moncho Martinez of Venevision stating the “Mara de Oro is important nationally and internationally.” The English language translations accompanying the preceding letters were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, none of the preceding letters specifically states that the petitioner received a “Mara *de Oro*” award.

While the petitioner’s Mara Awards (items 2 – 5) indicate that he was recognized by the Mara de Oro of Venezuela Foundation, there is no documentary evidence showing that his particular awards from the foundation equate to nationally or internationally recognized prizes or awards for excellence in the field. The petitioner did not submit evidence of the national or international *recognition* of his particular Mara Awards, such as national or widespread local coverage of his awards in arts, entertainment, or general media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. There is no documentary evidence showing that the petitioner’s specific Mara Awards were recognized beyond the presenting organization and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

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

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members,

as judged by recognized national or international experts in their disciplines or fields.

The petitioner did not initially claim eligibility for this regulatory criterion. In response to the director's request for evidence, the petitioner submitted a letter from Jesus Colmenares, President, Venezuelan Association of Performers and Producers of Phonograms (AVINPRO), stating that the petitioner has been a member of AVINPRO since March 2009. The petitioner also submitted a document bearing AVINPRO's logo and entitled "What is AVINPRO" that states:

To be part of this organization a musician or an artist has to be a recognized figure with not less than 50 musical recordings.

In addition, the candidate has to present letter from companies that have contacted him and certificates of the records. As a Phonographic Producer all executors who have fixed and commercialized at least 150 records can become member of AVINPRO.

The English language translations accompanying the letter from Mr. Comenares and the "What is AVINPRO" document were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Although the petitioner's response to the director's request for evidence contains a "Certificate of Translator's Competence" certifying "that the attached English language translations are accurate translations of the documents in the Spanish language," it is unclear which of the submitted documents, if any, to which the translator's certification pertains. As previously discussed, the submission of a single translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Regardless, the petitioner has failed to demonstrate that being "a recognized figure with not less than 50 musical recordings" or that being a record producer who has produced "and commercialized at least 150 records" constitute outstanding achievements in the field. Moreover, while the "What is AVINPRO" document lists the association's mailing address in Venezuela and provides an internet link of <http://www.avinpro.com/index.php>, the document is unsigned by an officer of the association and the preceding internet address does not link to the "What is AVINPRO" information.³ It is incumbent upon the petitioner to resolve any inconsistencies in the record by

³ According to Chapter II, Section 6 of the "Statutes" of AVINPRO dated July 2007, the "Association has three categories of members": 1) "Partner performer" who "are actors, singers, musicians, dancers and other persons who act, sing, deliver interpret, or otherwise perform literary, artistic or expressions of folklore, who have published their interpretations phonograms whose name or pseudonym appears linked to the different media that reproduce," 2) "Partner of Phonogram" who "are natural or legal persons, who take the initiative and are responsible for the first fixation of sounds of a performance or interpretation and publication of individual carriers, which reproduce phonograms whose rights belong to them, or which are assigned or licensed in the country," and 3) "Adherents" who are "natural or legal persons not being members, register with the Association and accept the provisions of the Statute to represent within the objectives for which it was created." See <http://www.avinpro.com/descargas/Estatutos%202007.pdf>, accessed on February 6, 2013, copy incorporated into the record of proceeding.

independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* There is no reliable documentary evidence establishing that AVINPRO requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

The petitioner's response to the director's request for evidence also included a letter from Jose Sifontes, Secretary General, Society of Authors and Composers of Venezuela (SACVEN), stating that the petitioner has been a member of SACVEN since April 2008. The petitioner also submitted a document bearing SACVEN's logo and entitled "Society of Authors and Composers of Venezuela (SACVEN)" that states:

Qualifications to be a member

1 - As an author/composer

- 1.1 - Having more than 20 works in the national or international music & entertainment market
- 1.2 - Certificate of registration of works at the National Directorate of Copyright
- 1.3 - Scores (melodic scripts) of the works with which to affiliate

2 - As a music publisher. This application is for a music publisher that has or represents a catalog of 1000 or more works. It must fill it out the entry form that says active editor (upper yellow stripe).

The English language translations accompanying the letter from Mr. Sifontes and the SACVEN document were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner has failed to demonstrate that "having more than 20 works in the national or international music & entertainment market"; submitting "a certificate of registration of works" from the National Directorate of Copyright; providing the musical scores of the works; or having or representing "a catalog of 1000 or more works" as a music publisher constitute outstanding achievements in the field. While the SACVEN document lists the association's mailing address in Venezuela and provides an internet link of <http://www.sacven.org/usuarios/convenios.php>, the document is unsigned by an officer of the association and the preceding internet address does not link to the above "Qualifications to be a member" information.⁴ As previously discussed, it is

Nowhere in AVINPRO's Statutes does the association require outstanding achievements of its members, as judged by recognized national or international experts.

⁴ According to SACVEN's "Requirements for membership" as posted on the association's website, an individual seeking to become a musical member must: "Declare in CD format or other type DEMO as mp3, audio or video files a minimum of two (02) works, original creation of aspiring partner, one of which, at least, must have been publicly exploited by any means or procedure." In addition, "a) The works submitted must contain the lyrics and melody guide in a readable format, and signed with the name of the author and / or composer. b) If the works are registered with the national leadership copyright, submit a copy of the relevant registration. c) Submit a photocopy of all music publishing contracts, assignment or representation of their works, if any." See <http://www.sacven.org/socios/requisitos>, accessed on February 6, 2013, copy incorporated into the record of proceeding.

incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* There is no reliable documentary evidence establishing that SACVEN requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

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

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion.

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁵

The petitioner submitted the following:

1. A July 5, 2004 article in *Panorama* entitled "[redacted] prepares to tour Venezuela." The article, while mentioning the petitioner as a band member of [redacted] is about the music group generally rather than focusing on the petitioner.
2. A September 2010 article entitled "[The petitioner] recording album in Miami" in the "Obituaries" section of *Panorama* and posted online at Panorama.com.ve.
3. A June 12, 2004 article in *Panorama* entitled "[redacted] plays [redacted]." The article is about the band in general and does not focus on the petitioner.
4. A March 3, 2008 article in *Panorama* entitled "[redacted] comes back recharged with their song '[redacted]'" Again, the article is about the band and does not focus primarily on the petitioner.
5. A February 23, 2008 article in *Panorama* entitled "[redacted] renews its music." Once again, the article is about the band in general and does not focus on the petitioner.
6. A June 25, 2002 article in *Panorama* entitled "The essence of the Guataka style." Again, although the article mentions the petitioner as a band member of [redacted] it is about the music group generally rather than focusing on the petitioner.

⁵ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

7. A June 10, 2008 article in *Mi Diario* entitled "Start losing those inches, [the petitioner] from [REDACTED], sweated a lot with *Mi Diario*."
8. A February 29, 2008 article in *Mi Diario* entitled "[REDACTED]"
9. A September 14, 2010 article in *Version Final* entitled "Songwriter [the petitioner], from [REDACTED] is now "[REDACTED]."
10. An October 16, 2005 article in *La Verdad* entitled "Group [REDACTED] comes back recharged." The article is about the band in general and does not focus on the petitioner.
11. An October 20, 2008 article in *Hoy* entitled "[REDACTED] among the cameras." Again, the article is about the band and does not focus primarily on the petitioner.
12. A March 4, 2008 article in *Hoy* entitled "They remain [REDACTED]" Once again, the article is about the band in general and does not focus on the petitioner.
13. A September 23, 2010 article in *El Regional* entitled "[The petitioner] prepared his debut production." The author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).
14. An article in *Stimulo* magazine entitled "A new image." The date and author of the article were not identified as required by the plain language of this regulatory criterion.
15. An article in *Stimulo* magazine entitled "[REDACTED]" Again, the date and author of the article were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).
16. A September 22, 2010 article in *El Periodiquito* entitled "Singer [the petitioner] shows off his new image." Once again, the author of the article was not identified as required by the plain language of this regulatory criterion.
17. A December 2008 online article entitled "[REDACTED]" that was posted at [http://pasadoypresentej.blogspot.com/2008/12/\[REDACTED\].html](http://pasadoypresentej.blogspot.com/2008/12/[REDACTED].html)." Again, the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).
18. A September 2010 online article entitled "[REDACTED] music group" that was posted at www.portadadigital.net. The article, while mentioning the petitioner as a band member of [REDACTED], is about the music group generally rather than focusing on the petitioner.

With regard to items 1 – 18, the English language translations accompanying the articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the partial English language translations submitted for items 1, 3 – 6, 9 – 13, and 16 – 18 were not full and complete translations as required by the regulation at 8 C.F.R. § 103.2(b)(3).

Regarding items 1, 3 – 6, 10 – 12, and 18, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien . . . relating to the alien's work in the field." Thus, an article that mentions the petitioner but is "about" someone or something else cannot qualify under the plain language of this regulation. *See Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at *1, *9 (S.D.N.Y. Nov. 14, 2012); *also see generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer).

In regard to items 1 – 6, while the petitioner submitted general information about *Panorama* from the newspaper's own website, the English language translation of the information was incomplete and was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105

SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has failed to submit any independent, objective circulation evidence establishing that *Panorama* is a form of major media.

With regard to items 7 and 8, while the petitioner submitted information from *Mi Diario* stating that the newspaper is "a popular regional newspaper," the English language translation of the information was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner has failed to submit any independent, objective evidence establishing that *Mi Diario* is a form of major media. As previously discussed, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680.

Regarding item 9, there is no documentary evidence showing that *Version Final* qualifies as a professional or major trade publication or some other form of major media.

In regard to item 10, the petitioner submitted information from *La Verdad's* website stating that the newspaper is marketed in "the State of Zulia." The English language translation accompanying the online information was incomplete and was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner failed to submit any independent, objective evidence establishing that *La Verdad* is a form of major media. Again, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680.

With regard to items 11 and 12, there is no documentary evidence showing that *Hoy* qualifies as a professional or major trade publication or some other form of major media.

Regarding item 13, the petitioner submitted information from *El Regional's* own website stating that the newspaper has the "largest circulation in the state of Zulia." Once again, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680. The petitioner has failed to submit any independent, objective evidence establishing that *El Regional* is a form of major media.

In regard to items 14 and 15, there is no documentary evidence showing that *Stimulo* qualifies as a professional or major trade publication or some other form of major media.

With regard to item 16, while the petitioner submitted information from *El Periodiquito* stating that the publication focuses on "the population of the state of Aragua and the center of the country," the petitioner failed to submit any independent, objective circulation evidence establishing that *El Periodiquito* is a form of major media. As previously discussed, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680.

Regarding items 17 and 18, the petitioner failed to submit any independent, objective evidence establishing that the websites qualify as professional or major trade publications or other major media.

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

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner did not initially claim eligibility for this regulatory criterion. In response to the director's request for evidence, the petitioner submitted an undated letter from [REDACTED] Head of Production and Programing, [REDACTED] stating: "For his recognition as one of the best young voices of Venezuela, and for his extraordinary vocal, musical and interpretative ability, [REDACTED] invited [the petitioner] to be an integral part of the Jury of the twenty-sixth edition of the [REDACTED] 2008." [Emphasis added.] A statement indicating that the petitioner was merely "invited" to be part of a jury does not constitute evidence of his actual "*participation, either individually or on a panel, as a judge of the work of others.*" [Emphasis added.] For instance, the petitioner failed to submit documentary evidence of an event program from [REDACTED] or published material about the festival identifying him as a participating judge. Thus, the AAO affirms the director's finding that the petitioner's participation in the festival has not been documented.

The petitioner also submitted a January 2010 letter from [REDACTED] President of [REDACTED] stating: "For his musical qualifications, artistic skills and his acclaimed national prestige, [REDACTED] invited [the petitioner] to join the prestigious Jury for the 2007 'Gaita' National Competition and 'Gaitero' Festival, achieving with his support the overall success of the event."

The English language translations accompanying the preceding letters from [REDACTED] and [REDACTED] were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, merely submitting statements asserting that the petitioner was invited to judge the work of others without evidence showing who he judged and their particular field of specification is insufficient to establish eligibility for this regulatory criterion. Rather than submitting contemporaneous documentary evidence of the petitioner's participation as a judge in the [REDACTED] in 2008 and in the "Gaita" National Competition and "Gaitero" Festival in 2007, the petitioner instead submitted brief statements from [REDACTED] submitted in response to the director's request for evidence that attest to the petitioner's invitation. Further, there is no documentary evidence showing the petitioner's specific assessments and the names of the artists whose work he evaluated. 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)). 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 record does not include primary evidence demonstrating the petitioner's participation as a judge for either festival. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.* In this instance, the petitioner has not demonstrated that primary evidence of his participation as a judge from 2007 and

2008 does not exist or cannot be obtained. Accordingly, the statements from [REDACTED] do not comply with the preceding regulatory requirements.

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

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be 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) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he meets this regulatory criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this regulatory criterion.

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

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this regulatory criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

C. Prior P-1 Nonimmigrant Visa Status

The AAO notes that the petitioner has been in the United States as a P-1 nonimmigrant, a visa classification that requires him to perform "with an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time." See section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B). While USCIS has approved a prior P-1 nonimmigrant visa petition filed on behalf of the petitioner, this prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard.

Each case must be decided on a case-by-case basis upon review of the evidence of record. Many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Eng'g Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. SUBSTANTIAL PROSPECTIVE BENEFIT TO THE UNITED STATES

The statute requires that the petitioner's "entry into the United States will substantially benefit prospectively the United States." *See* section 203(b)(1)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(iii). The petitioner submitted a June 11, 2011 letter stating:

This is to notify you that I am planning to continue working in my field of expertise as a performer singer, musician, songwriter and singing and voice teacher.

Since the Music Industry field is so extensive I am confident to contribute to the United States of America and the Music Industry and Entertainment Business, as:

Performing singer for the best Latin and International entertainment show rooms, theaters, pub, clubs, fairs, and spectacles around the United States and abroad.

Recording studio session singer to provide backing tracks for other musicians and singers in recording studios and live performances; recording for advertising, film and television; or theatrical productions.

Songwriter, songwriter/producer and staff writer for music publishers, record companies, producers, and other production or recording groups among others.

Singing & voice training teacher working on singing-related jobs, such as vocal coaching, voice lessons, a choral director in a school, church, etc.

In addition, due to my background as musician and songwriter I am confident to prospectively benefit the Music and Entertainment industries of the United States, being part of the rising numbers of Latinos artists in the U.S.A who create new markets for genres like Rock en Espanol, Salsa and Latin Jazz to name just a few genres to which the Latino singer, artist and musicians have made a significant contribution during the last years, in addition to the folkloric rhythms of each Latin-American countries represented in the multicultural environment of the United States.

The petitioner also submitted a letter of support from [REDACTED] a South Florida musician, stating that the petitioner is an important member of [REDACTED] music production staff. In addition, the petitioner submitted a letter from [REDACTED] (Doral, Florida) stating that his company "decided to promote and book events for [the petitioner] in the United States," but [REDACTED] letter does not specify the music venues where the events took place. The petitioner's evidence also included a letter from [REDACTED] in Miami, Florida stating that [REDACTED] has utilized the petitioner's talent at its shows.

The director determined that the petitioner had failed to demonstrate that his entry into the United States will substantially benefit prospectively the United States. Specifically, the director's decision stated:

In addition, when requesting classification as an alien of extraordinary ability, you must establish that your entry into the United States will substantially benefit prospectively the United States. Although you may have achieved some national recognition as a singer/musician in your native country, the record does not contain evidence that you have maintained that recognition. If you were recognized for a particular achievement several years ago, USCIS must determine whether you have maintained a level of acclaim in the field of expertise since you were originally afforded that recognition. An individual may have achieved extraordinary ability in the past but then failed to maintain a comparable level of acclaim thereafter. The requirement that your entry substantially benefit prospectively the United States indicates that Congress does not intend for individuals with extraordinary ability to immigrate to the United States and remain idle. In this case, you have failed to satisfy the burden of proof. . . . Therefore, you have not shown that your entry into the United States will substantially benefit prospectively the United States.

The record reflects that the petitioner entered the United States on January 29, 2010 as a P-1 nonimmigrant. The Form I-140, Immigrant Petition for Alien Worker, was filed on October 2, 2010, more than eight months after the petitioner's entry into the United States. As discussed earlier in the AAO's decision, the petitioner has failed to establish the requisite extraordinary ability through extensive documentation and sustained national or international acclaim. Section 203(b)(1)(A)(i), 8 U.S.C. § 1153(b)(1)(A)(i) and 8 C.F.R. § 204.5(h)(3). Given his failure to satisfy these statutory and regulatory requirements, the petitioner's substantial prospective benefit to the United States cannot be automatically assumed. Subsequent to his entry in the United States in January 2010, there is no documentary evidence demonstrating that he has performed, or will perform, at major music venues in the United States; that the recordings he will release in the United States are expected to generate substantial national sales; that he has been invited to participate in film, television, or theatrical productions garnering national attention; that he has positioned himself to work as a songwriter for national record labels or similar companies having national distribution in the United States; that the work he expects to perform as a vocal coach or

choral director will significantly impact the field at large; or that his work will otherwise “prospectively benefit the Music and Entertainment industries of the United States.” Instead, the documentation submitted by the petitioner indicates that his impact as singer and musician is more likely than not to be limited to various music projects and events in South Florida. Accordingly, the AAO affirms the director’s finding that the petitioner has not demonstrated that his entry into the United States will substantially benefit prospectively the United States.

IV. CONCLUSION

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

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁶ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122. The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁶ The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).