



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **SEP 29 2014** Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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.

The petitioner’s priority date established by the petition filing date is November 19, 2013. On January 22, 2014, the director issued the petitioner a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on April 28, 2014. On appeal, the petitioner submits a statement regarding his eligibility. For the reasons discussed below, we uphold the director’s ultimate determination that the petitioner has not established his eligibility for the classification sought.

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*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the decision to deny the petition, the court took issue with the 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 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 did not 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, we 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 not satisfied the regulatory requirement of three types of evidence. *Id.*

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).

II. ANALYSIS

A. Fair and Consistent Standard

Within the appeal, the petitioner refers to the application of a fair and consistent standard and points to a USCIS policy memorandum dated August 18, 2010.² The petitioner then notes that he holds a nonimmigrant visa in a similarly phrased classification. The August 18, 2010 policy memorandum, which USCIS subsequently updated with a December 22, 2010 memorandum on the same subject,³ discusses a “consistent standard” for Form I-140 adjudications but makes no mention of an overall “fair and consistent standard” encompassing both immigrant and nonimmigrant petitions with a similarly phrased standard. As discussed below, the standard for the nonimmigrant visa that the petitioner holds is not the same standard as the one for the immigrant classification he now seeks.

B. Previously Approved O-1 Nonimmigrant Petition

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. First, the regulatory requirements for an immigrant and non-immigrant alien of extraordinary ability *in the arts* are dramatically different. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as simply “distinction,” which is further defined as follows:

Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as “a level of expertise indicating that the individual is on of that small percentage who have risen to the very top of the field of endeavor.” While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in the nonimmigrant regulation at 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Rather, separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in 8 C.F.R. § 214.2(o), does not appear in 8 C.F.R. § 204.5(h). As such, the petitioner’s approval for a non-immigrant visa under the lesser standard of “distinction” is not evidence of his eligibility for the similarly titled immigrant visa.

In addition, it must be noted that 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);

² Evaluation of Evidentiary Criteria in Certain Form I-140 Petitions (AFM Update AD 10-41) (Aug. 18, 2010).

³ Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the *Adjudicator’s Field Manual* (AFM) Chapter 22.2, AFM Update AD11-14 (Dec. 22, 2010).

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 Form I-129 nonimmigrant petitions than Form 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, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

We are 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 Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our 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 had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309 *7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir.2007); *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 177 (D.Mass.2000) (Dkt.10); *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp.2d 800, 803 (E.D.La.1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

C. Evidentiary Criteria⁴

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

Regarding the director's determination that the petitioner's grant from the [REDACTED] is not an award, the petitioner points out that, according to the foundation's website, the grant has two criteria; recognizable artistic merit and financial need. The website also states that the foundation "was established in 1985 for the sole purpose of providing financial assistance to individual visual artists of established ability." The petitioner has not demonstrated that established ability and recognizable

⁴ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

artistic merit rise to the level of excellence as required by the regulation. Moreover, the website makes clear that both financial need and ability are factors, not one or the other.

The petitioner also claims that the [REDACTED] recognized the quality of his work and is not a financial need-based grant. The petitioner relies on the June 7, letter from [REDACTED] Executive Director of the [REDACTED] which congratulates the petitioner on his receipt of the [REDACTED] and references the quality of the petitioner's work among the 24 candidates for the grant. The petitioner did not, however, submit the actual award criteria. On his resume, the petitioner lists his affiliation with the [REDACTED] under education. The petitioner submits an article from [REDACTED] stating that the [REDACTED] grant is a travel grant "to be given annually to deserving students registered at [REDACTED] to underwrite one year of travel in Spain for study in the art of painting." Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, and financial aid awards cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor. Therefore, the petitioner did not establish that his grants are nationally or internationally recognized prizes or awards for excellence in the field. Moreover, the petitioner did not submit any documentary evidence beyond the awarding entities to demonstrate that the field at the national or international level recognizes the grants as awards or prizes for excellence in the field.

Regarding the Certificate of Award from [REDACTED] the petitioner asserts that this award is international by the nature of the organization's title and the international pool of candidates. National and international recognition results, not from the entity that issued the prize or the award, but through the awareness of the accolade in the eyes of the field nationally or internationally. A petitioner may document such recognition in a variety of ways; for example, through media coverage. A national or international level competition may issue lesser awards that merely receive local or regional recognition, which do not meet the plain language requirements of this criterion. Furthermore, unsupported conclusory letters from those in the petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized. In addition, the international pool of candidates is not determinative. The regulation requires that the award be nationally or internationally recognized.

Regarding the [REDACTED], on appeal the petitioner only states that this competition was "among 1574 artists with 221 artists chosen, and at this time I was 26 years old." This statement does not address the regulatory requirements of national or international recognition.

Regarding the [REDACTED] prize, the petitioner points to a letter from Dr. [REDACTED] City of New York, and a letter from [REDACTED] of the [REDACTED] as evidence that he received the award. The petitioner did not, however, provide primary evidence that he received this award. The regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. An example of secondary evidence might be media reports of the competition results. Affidavits attesting to awards, therefore, would need to “overcome the unavailability of both primary and secondary evidence.” The petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, and therefore the letter is insufficient evidence pursuant to 8 C.F.R. § 103.2(b)(2). [REDACTED] prize will, therefore, not qualify as sufficient evidence under this criterion.

As such, the petitioner has not submitted evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

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 director discussed the evidence submitted for this criterion and found that the petitioner did not establish his eligibility. On appeal, the petitioner agrees that he has not satisfied this criterion’s requirements, and does not contest the director’s findings. Therefore, the petitioner has abandoned his claims under this criterion. *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 submitted qualifying evidence under this 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.

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must be about the petitioner and the contents must relate to the petitioner’s work in the field under which he seeks classification as an immigrant. The published material must also appear in

professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director's decision put the petitioner on notice that the foreign language evidence he submitted under this criterion was not accompanied by translations into English that meet the regulatory requirements for such evidence. Further, the director cited and quoted the regulatory requirements for foreign language documents. However, the petitioner did not remedy this deficiency in his appellate filing and asserts: "Although no detail translation was submitted with the foreign article, each article contained information in English as to what the article represented, and the Service should not discount these articles, simply because a 'detailed translation' was not provided." The translations of the published material does not comply with the terms of 8 C.F.R. § 103.2(b)(3), which states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." 8 C.F.R. § 103.2(b)(3). Accordingly, these articles are not probative and will not be accorded any evidentiary weight in this proceeding.

Regarding the articles in English, the director discussed the article titled, "Art league shows off some of its true colors" from the [REDACTED] and the article from the website, [REDACTED]. The director determined that the [REDACTED] article was not primarily about the petitioner, and that although the [REDACTED] article was about the petitioner, the record lacked evidence to demonstrate that this website qualifies as a form of major media. The article from the [REDACTED] is about an art exhibit and discusses the petitioner in three sentences of the article. The published material itself is not about the petitioner. The regulation requires that the published material be "about the alien" and relate "to the alien's work in the field." It is insufficient that the published material mentions the petitioner. 8 C.F.R. § 204.5(h)(3)(iii): *see Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012); *see also generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The article in [REDACTED] does not bear the article's uniform resource locator, or URL, normally displayed on printed website pages. The article is about the petitioner and related to his work in the field. It also contains the title, date, and author. Given the absence of the URL on the printout, however, the petitioner has not established that this version of the article appeared online. Regardless, the petitioner has not established that the website constitutes a major trade publication or other major media. The petitioner's appeal brief asserts that [REDACTED] is a "major media outlet in [REDACTED] New York." The record, however, lacks evidence that [REDACTED] is an online version of media

with a national reach. For example, the Cable News Network (CNN) is nationally and internationally broadcast, and as a result, the CNN website is significant. The petitioner has not presented any evidence to establish that the content from [REDACTED] attracts users at a level consistent with a major trade publication or other major media. The petitioner bears the burden to establish eligibility, and in this instance he does not provide any evidence regarding the reputation of the website. National or international accessibility by itself is not a realistic indicator of a given website's reputation. Further, the petitioner's assertion that this is a form of major media is not evidence. 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The remaining English language materials are either not about the petitioner, but rather promote exhibits in which he participated, or appear in [REDACTED] which appears to be a newsletter for [REDACTED]. While the petitioner asserts that [REDACTED] "is written for those in the field of art," he has not documented that the newsletter has a distribution or circulation consistent with a major trade publication or other major media.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. See 8 C.F.R. § 204.5(h)(3)(v); see also *Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner did not meet the requirements of this criterion. The petitioner identifies three expert letters on appeal that he asserts demonstrate his eligibility under this criterion.

Professor of [REDACTED] provides the first letter in which he states that the petitioner:

has made a distinct and powerful impact upon the contemporary practice of painting. His innovations have been prolific and influential, and he commands the ongoing attention of curators, critics and art connoisseurs around the world.

. . . [The petitioner] reinvented origami . . . The charm of the folded shapes comes forth strongly in his works, bringing forth a sense of existence and an expressive force much stronger than other collages can muster. By combining this technique with his masterful painting practice [the petitioner] has introduced a stunning innovation into the art world. His method of painting is direct and lucid, and carries the medium forward into entirely new areas. . . . [H]e [has] introduced another innovation, a method that utilized further folding and bending of the canvas' shape, bringing out its interior qualities.

Dr. [REDACTED] also discusses the petitioner's success in the sales of his artwork. While the petitioner's methods may be unique in the art world, Dr. [REDACTED] has not described how the petitioner's work has influenced the field aside from being distinct from other artwork. Within the appellate statement, the petitioner states that Dr. [REDACTED] demonstrates the petitioner's eligibility by stating his work "is represented in many collections" and that he "is a favorite of collectors around the world." However, the petitioner does not explain how being represented in collections or being a favorite of collectors is having a measurable impact in his field. While any art with exposure such as the petitioner's art can be viewed as contributing to the field, he must also demonstrate that his contributions are of major significance in the field. To rise to the level of contributions of major significance, the petitioner's work can be expected to have an influence on similar artists. *Visinscaia*, 2013 WL 6571822, at *6 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Executive Director of [REDACTED] states:

[The petitioner] is an important and substantial innovative force in the painting and general arts worlds. Using acrylic paints, canvases and wood frames, he explores and creates intensely original techniques of collage and origami, which is the Japanese traditional folding paper work. He has effectively demolished any stereotypical ideas about ways a canvas can or cannot be used, and even the way simple paint pigments can be used. He has developed a striking imaginative style by taking his profound consideration and tremendous vision.

Mr. [REDACTED] also discusses the petitioner's exhibitions and success at selling his artwork. Mr. [REDACTED] closes stating: "[The petitioner] has claimed his place among the most elite international artists, and is an influential and important figure in contemporary art." However, neither Mr. [REDACTED] nor the petitioner provide sufficient detail regarding his influence in the field, that would equal the level of influence necessary to meet this criterion's high standards of contributions of major significance.

USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990). Mr. [REDACTED] does not indicate the manner in which the petitioner's work has influenced the visual arts field.

[REDACTED] an artist, art teacher at [REDACTED] and art book author, states:

[The petitioner] has emerged as a special and original presence in the art world. With his innovations in painting, he is contributing importantly to art in general. His reputation has rapidly caught the attention of many groups of artists, curators, and critics, and he has become well established as an important, noteworthy artist.

Mr. [REDACTED] continues to describe the petitioner's unique methods of creating his original artwork by fusing origami and painting. He also describes the petitioner's artistic qualities, lists the petitioner's awards, and points out that the petitioner's artwork has been displayed in both the petitioner's home country as well as the United States. Yet, he does not provide specific examples of how the petitioner's work has substantially impacted the visual arts field, has influenced the work of other artists, or otherwise equates to an original contribution of major significance in the field. It is not enough to be a talented artist with original works, and to have others attest to that unique talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion.

The record does not support the petitioner's assertion that the director essentially substituted his judgment of what constitutes a contribution of major significance in the petitioner's field. As noted above, the expert letters do not provide detail of how the petitioner's work has significantly impacted his field. Neither the petitioner's originality, nor his accomplishments are in question under this criterion. The ultimate question is, how his contributions in his field have been of major significance. Here he has not submitted evidence to satisfy this regulatory requirement. Further, the final determination of whether the petitioner's evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988)

The Board of Immigration Appeals (BIA) has stated 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 *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. 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. at 1136.

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated the conclusion that "letters from physics professors attesting to [the alien's]

contributions in the field” was insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner’s skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. 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 evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Additionally, each letter submitted in support of the petitioner’s eligibility claim is from a local colleague in New York and appears to have been drafted in response to the petitioner’s efforts in attaining permanent resident status in the United States. *See Visinscaia*, 2013 WL 6571822, at *6 (concluding that USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence, to include solo and group exhibitions at art galleries, to establish that he meets this criterion.

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

A leading role should be apparent by its position in the overall organizational hierarchy and by the role’s matching duties. The petitioner also has the responsibility to demonstrate that he actually performed the duties listed relating to the leading role. A critical role should be apparent from the petitioner’s impact on the organization or the establishment’s activities. The petitioner’s performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster’s online dictionary defines distinguished as, “marked by

eminence, distinction, or excellence.”⁵ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner’s burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner claims that his solo and group exhibitions at art galleries demonstrate his qualifying roles. The director determined that the petitioner did not meet the requirements of this criterion. On appeal the petitioner states:

The evidence submitted showed that not only did I have solo exhibitions but also group exhibitions. These exhibitions were in numerous galleries in [REDACTED] and [REDACTED] Galleries with distinguished reputation [sic] and it would be obvious that my role in providing art for these galleries, although benefiting the exhibition of my work, certainly benefited the galleries as well, and without artists providing the work for such exhibits, there would be no galleries, and no locations for the young and the old to be inspired by art.

First, the exhibition of the petitioner’s work falls under the display at artistic exhibitions or showcases criterion at 8 C.F.R. § 204.5(h)(3)(vii). As discussed above, the petitioner meets that criterion. Consistent with the statutory requirement for extensive evidence, the regulation at 8 C.F.R. § 204.5(h)(3) requires evidence to meet three separate criteria. While evidence may be relevant to more than one criterion, there is no presumption that evidence directly relevant to one criterion necessarily meets a separate criterion. Considering the petitioner’s exhibitions under this criterion collapses this criterion into the display criterion. *Cf. Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (finding the reverse, that considering performances as displays under 8 C.F.R. § 204.5(h)(3)(vii) would collapse the display criterion into the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii)).

To demonstrate how his exhibitions also meet this criterion, the petitioner provided two expert letters from individuals who are associated with art galleries that exhibited his work. The letters are from Dr. [REDACTED] who served as the curator for the petitioner’s solo exhibition at [REDACTED] in December 2012, and [REDACTED] Founding Director of [REDACTED] and [REDACTED] where the petitioner exhibited his work in October 2012. Notably, neither Dr. [REDACTED] nor Mr. [REDACTED] asserts that the petitioner performed in a leading or critical role for either institution. The petitioner’s assertion that without artists such as him, these art galleries would not be able to exist is not persuasive. 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

⁵ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on September 2, 2014, a copy of which is incorporated into the record of proceeding.

Dec. at 165. Moreover, while art galleries depend on the work of the artists whose work they display, it does not follow that every artist plays a leading or critical role for every gallery that displays his work.

Consequently, the petitioner has not demonstrated that he performed in a leading or a critical role for any of the claimed organizations.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a “high salary or other significantly high remuneration for services, in relation to others in the field.” Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.⁶

The petitioner claims the evidence he has provided relating to this criterion includes contracts and check payments showing that his works have sold between \$1,000 and \$15,000. The director determined that the petitioner did not satisfy the requirements of this criterion. Specifically, the director put the petitioner on notice that the record did not contain any primary evidence of the sales of his works. The director also notified the petitioner that he did not provide evidence that allowed a comparison of the sales of his works with other fine artists in the petitioner’s field. The regulation requires that the petitioner has “commanded a high salary or other significantly high remuneration for services, in relation to others in the field.”

The record contains a contract agreement between the petitioner and the [REDACTED] that the petitioner signed on September 20, 2011. This contract reflects that [REDACTED] will serve as the petitioner’s agent. The petitioner also provides tax related documents from [REDACTED] reflecting that the he earned the following amounts of employee, nonemployee and other income for each corresponding year:

- \$35,652 in 2010;
- \$16,211 in 2011; and
- \$13,502 in 2012.

⁶ While we acknowledges that a district court’s decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, “[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.”

Even though the director notified the petitioner that the record did not contain primary evidence of his remuneration for the sale of his work, he did not provide such evidence on appeal, nor did he provide the salaries or remuneration of others in his field performing similar work. The plain language of this regulatory criterion requires evidence of “a high salary or other significantly high remuneration for services, in relation to others in the field.” The petitioner offers no basis for comparison showing that he has earned a “high salary” or “significantly high remuneration” in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

In the present case, the evidence submitted by the petitioner does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

D. Summary

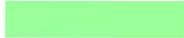
The petitioner has not satisfied the antecedent regulatory requirement of three types of evidence.

III. 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 have risen to the very top of the field of endeavor.

Had the petitioner 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 we conclude 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, we need not explain that conclusion in a final merits determination.⁷ Rather, the proper conclusion is that the petitioner has not satisfied the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

⁷ 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).



The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed 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, that burden has not been met.

ORDER: The appeal is dismissed.