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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: **JUL 17 2015**

[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:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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. The petitioner filed an appeal to the Administrative Appeals Office (AAO).<sup>1</sup> The appeal will be dismissed.

The petitioner seeks classification as an alien of extraordinary ability as a folk singer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to petitioners who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. Section 203(b)(1)(A)(i) of the Act limits this classification to petitioners with extraordinary ability in the sciences, arts, education, business, or athletics. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner asserts that she meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (v), (ix) and (x). For the reasons discussed below, we agree with the director that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who is at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

## 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,

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<sup>1</sup> In her initial filing and response to the director's request for evidence (RFE), the petitioner states that in addition to her legal name, [REDACTED] she is also known as [REDACTED]

- (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) sets forth a multi-part analysis. First, a petitioner can demonstrate her sustained acclaim and the recognition of her achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then she must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination); *see also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through her evidence that she is the recipient of a major,

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<sup>2</sup> We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the petitioner asserts that she meets this criterion. Specifically, the petitioner states her awards that the [redacted] of Nepal and the [redacted] of Nepal issued, and her nominations for the [redacted] demonstrate that she meets this criterion. The evidence in the record does not establish that the petitioner meets this criterion.

First, the petitioner has not shown that her [redacted] Award for Best Female Singer under the Folk Duet Category from the [redacted], also known as the [redacted] is a nationally or internationally recognized prize or award for excellence in the field. The petitioner has submitted a foreign language award certificate, which according to the accompanying English translation, states that the petitioner received the “best female singer award in folk duet category in the [redacted] organized by [the] [redacted].” The petitioner has not submitted a certified English translation that meets the regulatory requirements under the regulation at 8 C.F.R. 103.2(b)(3). The regulation provides: “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.” Instead, the translation bears a stamp that states: “English/Nepali Translation.” The record lacks a certification stating that the English translation is “full,” “complete and accurate,” or that the translator is competent to translate. As such, the English translation of the award certificate has limited evidentiary value.

Regardless, the petitioner has not submitted sufficient evidence showing that the [redacted] award is either nationally or internationally recognized. In response to the director’s request for evidence (RFE), the petitioner submitted a June 19, 2014 letter from [redacted] the General Secretary of the [redacted]. The letter states that the petitioner’s award was presented during [redacted] . . . a national level program held with [the] objective of recognizing different artists and talents of the television world in Nepal.” The letter further indicates that the petitioner received the award “on the basis of an independent assessment of the panel of jury as chaired by [redacted] assessing the nominees on the basis of continuous excellent contribution for protection and promotion of music in Nepal.” The letter provides information on the organizer, purpose, selection process and recipients of the award. The letter, however, does not provide information on the recognition of the award nationally or internationally. At issue is how others in the field and/or

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<sup>3</sup> The letter lists the author’s title as “General secretly.”

the public perceive the award and if they recognize the award on a national or international level. A letter from the award organizer is insufficient to show that others outside the organizing entity recognize the award.

The record also includes an English translation of a [REDACTED] article entitled [REDACTED] and an article about the awards posted on [REDACTED]. The articles, which lack information on the author of the articles, do not establish that the petitioner's award at this event is nationally or internationally recognized. The evidence shows that [REDACTED] offered the awards, and the petitioner has not established that the media coverage demonstrates recognition as opposed to novelty. Regardless, the article posted at [REDACTED] focuses on awards related to television and does not mention any awards for music. The article in [REDACTED] begins by reporting the television awards and states that the "program was held in the presence of the most popular artists [REDACTED] and [REDACTED] where the title of Most Popular [REDACTED] was awarded to [REDACTED] and [the petitioner]." This sentence does not establish that the petitioner received a music award at an event that issues nationally recognized music awards. In short, the petitioner has not shown that her [REDACTED] Award that the [REDACTED] issued meets this criterion.

Second, the petitioner has not shown that her [REDACTED] Award in the Folk Duet Female Singer Category from the [REDACTED] is a nationally or internationally recognized prize or award for excellence in the field. The petitioner has submitted a foreign language award certificate, which according to the accompanying uncertified English translation, states that the petitioner received an award "in the category of 'Folk Duet Female Singer [REDACTED] in the [REDACTED]'. The petitioner has not submitted a translation certificate that meets the regulatory requirements under 8 C.F.R. 103.2(b)(3). The record lacks a certification stating that the submitted English translation is full, complete and accurate or that the translator is competent to translate. In addition, the submitted English translation appears to contain inconsistent information. Specifically, the award category is "Folk Duet Female Singer – [REDACTED] while the name of the award is '[REDACTED]'. Moreover, the year [REDACTED] appears in the heading of the certificate. The petitioner has not provided an explanation on why the heading, the award category and the award title have three different years. As such, the English translation for this award certificate has limited evidentiary weight.

Moreover, evidence in the record, including the June 19, 2014 letter from [REDACTED] President of [REDACTED] does not establish that the award is nationally recognized, as the petitioner asserts on appeal. [REDACTED] states that the petitioner won the "'Best Duet Female Vocalist – [REDACTED] the [REDACTED] organized as the [REDACTED]'. [REDACTED] states that the competition "is a national level competition where there was enthusiastic participation of a large number of folk and duet female singers from all over Nepal." [REDACTED] conclusory statements that the competition is "a national level competition" that had "a large number" of participants are insufficient to demonstrate that an award from the competition is nationally or internationally recognized. Neither [REDACTED] letter nor any other evidence in the record provides information on how many female

singers competed for the award, or if the competition was open to all singers, including accomplished, well-established and professional singers. Going on record without supporting documentary evidence is not sufficient for the 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)). A letter from [REDACTED] does not demonstrate any recognition beyond this entity.

The petitioner has submitted evidence about the [REDACTED] the organizer of the competition. According to [REDACTED] was "registered in District Administration Office, [REDACTED]". According to a May 15, 2014 letter from [REDACTED] who also identifies himself as the President of [REDACTED], the [REDACTED] was registered at the [REDACTED] District Administration Office in [REDACTED], not [REDACTED]. The petitioner has not explained this inconsistency. Letters from [REDACTED] and [REDACTED] and online printouts from [REDACTED] indicate that the [REDACTED] is "a national level organization," and its missions are "[REDACTED]". The petitioner has also submitted a photograph with the caption: [REDACTED] [REDACTED] posted on [REDACTED]. The submitted documents provide information relating to the [REDACTED] such as its missions, organizational structure, former presidents and its events; such information, however, does not establish that the petitioner's [REDACTED] award is nationally or internationally recognized. At issue is not the reputation of [REDACTED], at issue is the recognition and prestige of the [REDACTED] award that petitioner received.

Although the petitioner has submitted some evidence that the [REDACTED] competition received media coverage, this single article does not establish that her award from the competition is nationally or internationally recognized. The record includes a [REDACTED] article entitled "[REDACTED]". Although the article states that "[e]very year[,] [REDACTED] organizes this Awards program" and provides information on the award winners. The petitioner has not shown with this single article that her [REDACTED] award garners media attention consistent with a nationally recognized award such that it meets this criterion.

Third, the petitioner's nominations to the [REDACTED] do not meet the plain language of the criterion. The record includes a [REDACTED] article entitled [REDACTED] that discusses a rock band receiving [REDACTED] awards at the [REDACTED]. On appeal, the petitioner submits a [REDACTED] article stating that the [REDACTED] is "Nepal's [REDACTED]". The criterion, however, requires the petitioner to show her actual receipt of prizes or awards. The petitioner has not shown or provided any legal authority to support her assertion that nominations, without evidence of actual receipt of prizes or awards, meet the plain language of the criterion.

Finally, the record includes evidence of the petitioner's other accolades, including the petitioner's [REDACTED] Awards, [REDACTED] Award - [REDACTED] Award, and [REDACTED]. On appeal, the petitioner has not specifically asserted that these accolades meet the criterion. Accordingly, the petitioner has abandoned this issue, as she did

not timely raise it on appeal. *Sepulveda v. United States 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 United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal). Moreover, the petitioner has not pointed to any evidence in the record showing, and the evidence in the record does not show, that her other accolades meet this criterion.

Accordingly, the petitioner has not submitted documentation of her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. See 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.* 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the petitioner asserts that she meets this criterion because she is a member of the [REDACTED] of Nepal. The petitioner asserts that a June 19, 2014 letter from [REDACTED] Secretary of the [REDACTED] of Nepal, establishes that the association requires outstanding achievements of its members, as judged by recognized national or international experts. The evidence in the record does not support the petitioner's assertion.

The petitioner has submitted two letters from the [REDACTED] of Nepal. The first letter is an April 5, 2009 letter from [REDACTED] Secretary of the [REDACTED] of Nepal, stating that the petitioner has been a member of the association since [REDACTED] letter does not provide information on membership requirements. The second letter is a June 19, 2014 letter from [REDACTED] which the petitioner submitted in response to the director's RFE. [REDACTED] letter states that the membership requirements for the association include "exceptional and extraordinary talent in [the] musical field" and "valuable contribution to the music industry through [the applicant's] talent in the musical field." [REDACTED] letter does not indicate the source of the membership requirements, i.e., if the requirements came from the association's bylaws or official membership policy that existed at the time the petitioner became a member. [REDACTED] general conclusory statements, without support from the association's bylaws, constitution or other official material providing the specific membership requirements, are insufficient. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In addition, neither [REDACTED] nor any other evidence in the record provides definitions for or details on what constitute "exceptional and extraordinary talent" or "valuable contribution." Without such information, the petitioner has not shown that the association requires "outstanding achievements" of its members, as required under the plain language of the criterion. Moreover, the plain language of the criterion states that the petitioner must show that the "recognized national or international experts in their disciplines or fields" judged the prospective members. Neither [REDACTED] letter nor any other evidence in the record demonstrates that national or international experts were involved in the

membership selection process at the time the petitioner became a member. In short, the petitioner has not shown that her membership in the [REDACTED] of Nepal meets this criterion.

Finally, the record includes evidence showing that the petitioner is a member of other associations, including the [REDACTED] and the [REDACTED] of Nepal. On appeal, the petitioner has not specifically asserted that her membership in these associations meet this criterion. Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9. Moreover, the evidence in the record, which includes reference letters and materials from the associations, does not show the petitioner's membership in the associations meets the criterion.

Accordingly, the petitioner has not submitted documentation of her 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 has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(ii).

*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. 8 C.F.R. § 204.5(h)(3)(iii).*

The director concluded that the petitioner met this criterion. The evidence in the record supports this conclusion. For example, the record includes an October 20, 2013 [REDACTED] article that discusses the petitioner's work as a folk singer and her taxes. The record also includes evidence, such as the U.S. State Department report on Nepal, indicating that the [REDACTED] is major media in Nepal. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

*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. 8 C.F.R. § 204.5(h)(3)(iv).*

The director concluded that the petitioner met this criterion. The evidence in the record supports this conclusion. Specifically, according to a July 31, 2013 letter from [REDACTED] Director of [REDACTED] in [REDACTED] the petitioner served as a guest judge on the television program [REDACTED] a reality show about dancing talents. The petitioner has submitted a July 7, 2014 letter from [REDACTED] Administration Chief, [REDACTED] stating that the petitioner served as a judge for [REDACTED]

[REDACTED] The record includes a June 27, 2014 letter from [REDACTED], President of [REDACTED] stating that in [REDACTED] the petitioner served as a jury member for the [REDACTED] award. Accordingly, the petitioner has submitted evidence of her 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 has met this criterion. See 8 C.F.R. § 204.5(h)(3)(iv).

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

On appeal, relying on reference letters from [REDACTED] Senior Music Director, Chief-Music Department, [REDACTED] of the [REDACTED] and [REDACTED] of the [REDACTED] of Nepal, the petitioner asserts that she meets this criterion. To meet this criterion, the petitioner must demonstrate that her contributions are both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term “original” and the phrase “major significance” are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)). The petitioner must show that her contributions are original, such that she is the first person or one of the first people to have done certain performances in the field; and that her contributions are of major significance in the field, such that her performances fundamentally changed or significantly advance the field as a whole. In addition, contributions of major significance connotes that her performance has already significantly impacted the field. See *Visinscaia*, 4 F. Supp. 3d at 134-36. The evidence in the record does not establish that the petitioner has met this criterion.

On appeal, the petitioner does not specify what she has done as a folk singer that is either original or explain how she has had an impact in the field consistent with a finding of “major significance.” The October 7, 2013 letter from [REDACTED] provides that the petitioner “is a versatile young artist (singer) of Nepal,” “has high professionalism and dynamic quality,” and that she has been involved in the “revitaliz[ation of] folk song in Nepalese music industry.” [REDACTED] states that the petitioner “has offered unique contributions to the Nepalese folk and duet songs. [The petitioner,] a legend in duet and folk song[,] played an important role for creating history in Nepalese duet and folk songs and dance as well . . . . Her creativity and hard work helped in many ways to introduce Nepal and Nepalese Culture in global arena through different ways which is always significant.” Both letters provide general statements about the petitioner’s talents and the importance of her work, but neither specifies what the petitioner has done that is original, such that she is the first person or one of the first people to have done the work, or establishes that the petitioner’s work has had an impact in the field consistent with a finding of “major significance.”

In addition, the petitioner has submitted a number of reference letters that contain virtually identical language. A June 26, 2014 letter from [REDACTED] Acting Director of [REDACTED] contains virtually identical language as a June 19, 2014 letter from [REDACTED] states in his letter:

[The petitioner] exemplifies the quality of an outstanding, dedicated singer who possesses a melodious voice. We along with large audience of Nepal are ardent admirer of her spirit, creative talents and outstanding talent of singing the contemporary and contextual songs which directly touches and attracts the majority

of people. She is one of the high demanding singers for international performance who have performed in many Countries.

states in his letter:

[The petitioner] exemplifies the quality of an outstanding, dedicated singer who possesses a melodious voice and thoughtful, meaningful and sentimental lyrics as well. We along with large audience of Nepal are ardent admirers of her spirit, creative talents and outstanding talent of singing the contemporary and contextual songs which directly touches and attracts the majority of people. She is one of the high demanding singers for international performance who have performed in many Countries.

Similarly, a June 27, 2014 letter from [redacted] General Secretary of [redacted] contains virtually identical language as a June 27, 2014 letter from [redacted] President of [redacted] states in his letter (grammar as it appears in original):

[The petitioner] is known in the folk and duet music industry as the best singer awarded with many outstanding title of Best Vocalist, Best Folk and Duet Singer. She is praised for her judging ability, awarded with prizes and titles in competition, and honored with title owner of different musical prestigious award ceremony. Her solo albums on folk and duet song were rated as A+ in the music market.

letter, which includes the same grammar that appears in [redacted] letter, states:

[The petitioner] is known in the folk and duet music industry as the best singer awarded with many outstanding title of Best Vocalist, Best Folk and Duet Singer. She is praised for her judging ability, awarded with prizes and titles in competition, and honored with title owner of different musical prestigious award ceremony. Her solo albums on folk and duet song were rated as A+ in the music market.

Moreover, [redacted] General Secretary of the [redacted] of Nepal states that the petitioner is “beautifully organized, attractive, efficient and extraordinary talented person.” [redacted] President of [redacted] states that the petitioner is “organized, efficient, extremely competent and extra ordinary talented person with active participant in many community endeavors.” [redacted] a folk song performer states that the petitioner “is beautifully organized, attractive, efficient, extremely competent and extra ordinary talented person with active participant in many community events.” [redacted] Managing Director, [redacted] states that the petitioner “is beautifully organized, attractive, efficient, extremely competent and extra ordinary talented person.”

The record includes a number of reference letters that contain virtually the same language when describing the petitioner's achievements and talents, suggesting the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. United States Dep't of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Finally, 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.<sup>4</sup> *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding the petitioner's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, 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 at 165; *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

Accordingly, the petitioner has not submitted evidence of her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*  
8 C.F.R. § 204.5(h)(3)(vii).

The director found that the petitioner did not meet this criterion. On appeal, the petitioner has not challenged the director's finding as relating to this criterion. As such, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9. In addition, the plain language of the criterion suggests that it is limited to evidence relating to the visual arts. This interpretation is longstanding and has been upheld by a

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<sup>4</sup> In 2010, the Kazarian court reiterated that our conclusion that "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

federal district court. *See Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at \*1, 4 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under the regulation at 8 C.F.R. § 204.5(h)(3)(vii)). In this case, the petitioner is not a visual artist and has not created tangible pieces of art that were on display at artistic exhibitions or showcases. Accordingly, the petitioner has not presented evidence of the display of her work in the field at artistic exhibitions or showcases. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The director found that the petitioner did not meet this criterion. On appeal, the petitioner has not challenged the director's finding as relating to this criterion. As such, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at \*9. In addition, the evidence in the record does not demonstrate that the petitioner's involvement with any organizations or establishments constitutes either a leading or critical role for the organizations or establishments. Moreover, the evidence in the record does not establish that these organizations or establishments have a distinguished reputation, as required by the plain language of the criterion. Accordingly, the petitioner has not presented evidence that she has performed in a leading or critical role for an organization or establishment that has a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the petitioner asserts that articles from the [REDACTED] and [REDACTED] show that she meets this criterion. The petitioner's assertion is not supported by the evidence in the record.

First, the [REDACTED] article [REDACTED] is insufficient to show that the petitioner meets this criterion. According to the article, the petitioner "has become a [REDACTED] is "the most demanded and expensive singer [and] has performed several stage shows in foreign countries too." The article lacks information on its author. The article also does not specifically state the amount of petitioner's earnings, or the amount of earnings of others in the field, to which we could compare the petitioner's earnings. The article does not explain what it means to be [REDACTED]

Moreover, the article does not indicate the geographic area, i.e. a town, a city or the entire country, in which the petitioner is "the most demanded and expensive singer." The article also does not specify evidence in support of its general and conclusory statement that the petitioner is "the most demanded and expensive singer."

Second, the article [REDACTED] that includes the handwritten notation: [REDACTED] Article” is insufficient to show that the petitioner meets this criterion. The handwritten notation is insufficient to establish that [REDACTED] published the article. In addition, although one copy of the article follows [REDACTED] cover, the page where the article appears does not include any printed marking establishing that [REDACTED] published the article. Moreover, the upper right hand corner of one copy of the article, submitted in response to the director’s RFE, has a printed “Promotion” notation, which is consistent with promotional material, rather than a newspaper article. Similar to the [REDACTED] article, this article does not indicate the geographic area in which the petitioner is “the heighest [sic] paid singer.” The article also does not provide specific evidence in support of its conclusory statement.

Third, other evidence in the record does not establish that the petitioner meets this criterion. The petitioner has submitted a letter from [REDACTED] from [REDACTED] Accountants, stating that her income for an unspecified period was \$82,313.35. The letter states that the petitioner’s income information “has been provided on the basis of supporting documents and the explanations provided . . . by [REDACTED] (Brother of [the Petitioner]).” The letter further states that “the figures and facts stated in this certificate are true and fair to the extent of information provided to us.” The record lacks evidence showing the petitioner’s actual receipt of any salary or remuneration for her work as a folk singer, or her actual payment of income taxes. As such, the figures provided in [REDACTED] letter constitute unsubstantiated facts and do not establish that the petitioner meets this criterion. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner has submitted some evidence of the compensations she received as a folk singer. The record contains: (1) a December 10, 2013 letter from [REDACTED] Proprietor of [REDACTED] stating that the petitioner received a royalty of Rs. 1207,580, or approximately \$12,221.50, for her music album [REDACTED] (2) a December 25, 2013 letter from [REDACTED], Managing Director, [REDACTED], stating that the petitioner has received a royalty of Rs. 13,38,327, or approximately \$13,355.40, for her music albums [REDACTED] and [REDACTED] (3) a November 19, 2013 letter from [REDACTED] Managing Director, [REDACTED], stating that the petitioner has received Rs. 25,93,823, or approximately \$25,738.50, for her album [REDACTED] and (4) a December 19, 2013 letter from [REDACTED] Managing Director, [REDACTED] stating that the petitioner has received Rs. 29,89,536, or approximately \$29,665.20, for her album [REDACTED].<sup>8</sup> In response to the director’s RFE, the petitioner submitted a number of Contract Agreements.

<sup>5</sup> According to [www.oanda.com/currency/converter/](http://www.oanda.com/currency/converter/), on December 10, 2013, Nepali Rupees (Rs.) 12,07,580 was approximately \$12,221.50.

<sup>6</sup> According to [www.oanda.com/currency/converter/](http://www.oanda.com/currency/converter/), on December 25, 2013, Rs. 13,38,327 was approximately \$13,355.40.

<sup>7</sup> According to [www.oanda.com/currency/converter/](http://www.oanda.com/currency/converter/), on December 19, 2013, Rs. 25,93,823 was approximately \$25,738.50.

<sup>8</sup> According to [www.oanda.com/currency/converter/](http://www.oanda.com/currency/converter/), on December 19, 2013, Rs. 29,89,536 was approximately \$29,665.20.

Although the Contract Agreements provide monetary figures for petitioner's compensation, the Contract Agreements do not specify the currency in which the petitioners would be paid. For example, according to an April 21, 2006 contract, the [REDACTED] "has to pay, [the petitioner], folk singer a total of six hundred thousand. This will be paid in two equal payments of three hundred thousand on advance before the program. Payment of the final three hundred thousand will be made after completion of programs."

Notwithstanding evidence relating to the petitioner's compensation, the petitioner has not submitted sufficient evidence relating to the salary or remuneration information of others in her field. Without such information, even if the petitioner has presented evidence relating to her own salary or remuneration, the petitioner has not shown that in relation to others in her field, her salary is high or that her remuneration is significantly high.

Accordingly, the petitioner has not submitted evidence that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix).

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

On appeal, the petitioner asserts that she meets this criterion because she "is hailed as [REDACTED] with chart topping hit songs," "has performed in various parts of the globe," and "is one of the most bankable folk singers in Nepal." The evidence in the record does not support this assertion.

At issue is whether the petitioner's work has enjoyed commercial successes. The record includes a November 23, 2013 document from [REDACTED] Nepal, stating that the petitioner's albums have sold between 54,285 to 139,446 copies and the petitioner has received an "A+" grade in "Box Office Sales Report" and an "A++" grade in "Stage Performance Level." The document states that the "rankings are purely best [sic] on the research number pertaining to the collection analysis interpretation or explanation and presentation of statistical data." The document does not provide any specific information on the source of the album sale data. Neither the letter nor other evidence in the record indicates that information provided by [REDACTED] Nepal, is accurate or reliable, or if its opinion or analysis is accepted and trusted in the music industry. The document acknowledges that "box office in Nepal . . . is not an open book as in the west." Furthermore, the record does not contain other evidence that corroborates the information provided in the document. Because the petitioner has not established the document's accuracy or reliability, the evidentiary value of this document is limited.

Although the record includes some newspaper articles and the accountant's letter relating to the petitioner's earnings, the petitioner has not shown what portion of her earnings derives from her album sales or ticket sales. In addition, although the petitioner has submitted letters indicating that she has received royalties for her albums, the petitioner has not shown that her level of royalties is

indicative of the albums' commercial success. The record lacks evidence from a reliable source showing the sales numbers that contributed to those royalties and comparable album sale numbers for other artists. As such, evidence relating to her income is not sufficient to show the petitioner meets this criterion.

The petitioner has submitted evidence showing that she has performed in domestic and international venues, but has not submitted evidence relating to "box office receipts" or ticket sales for her performances. The petitioner has also submitted evidence that [REDACTED] a radio station in Nepal, has played her music on air. This type of evidence, however, is not evidence of "box office receipts or record, cassette, compact disk, or video sales."

Accordingly, the petitioner has not submitted evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(x).

#### B. Summary

The evidence in the record demonstrates that the petitioner has been working as a folk singer for a number of years. Notwithstanding evidence showing that the petitioner has received some recognition and media attention for her work, for the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

### III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the petitioner has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of his or her 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 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. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence on which the petitioner relies, including the evidence he references on appeal in the aggregate supports a finding that the petitioner

has not demonstrated, through the submission of extensive evidence, the level of expertise required for the classification sought.<sup>9</sup>

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.

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<sup>9</sup> We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain 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 INA §§ 103(a)(1), 204(b); 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).