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

(b)(6)

DATE: JUN 1 8 2015

FILE #:
PETITION RECEIPT #:

IN RE: PETITIONER:
BENEFICIARY:

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:

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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO). We will dismiss the appeal as abandoned and, in the alternative, on the merits.

The petitioner seeks E-11 classification for himself as an alien of extraordinary ability in the arts, specifically, as a reed voicer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The E-11 classification makes visas available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. 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. The matter is now before us on appeal.

On appeal, the petitioner asserts, in part, that he has established his eligibility for the petition based on comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4). On November 25, 2014, we issued a request for evidence (RFE), in which we concluded that the evidence shows that the petitioner seeks to work in the field of pipe organ building and requested that he submit additional evidence that might further develop his reliance on comparable evidence. Specifically, we requested:

- Comparable evidence that is either equivalent to any one or more of the ten types of evidence listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), or that is of equivalent persuasive value, that establishes the petitioner meets the antecedent procedural requirements for the petition;
- Evidence relating to the work the petitioner performed during the installation of a organ housed at the South Korea; specifically, evidence relating to the work the petitioner performed to resolve the temperature fluctuation issue;
- Extensive[1] documentation that, when viewed in its totality, establishes the petitioner's "sustained national or international acclaim" and that his "achievements have been recognized in the field" of pipe organ building;
- Extensive documentation that, when viewed in its totality, establishes that the petitioner is "one of that small percentage who have risen to the very top of the field" of pipe organ building; and
- If the petitioner disagrees with our conclusion that his field is pipe organ building rather than the single occupation of reed voicer as he discussed, evidence demonstrating that he is in a different field of endeavor, provided he does not narrow the field such that it includes only a

[1] Section 203(b)(1)(A) of the Act explains that eligibility for the classification is established "through extensive documentation." Accordingly, whether a petitioner relies on meting three of the criteria at 8 C.F.R § 204.5(h)(3) or through comparable evidence, the statute requires "extensive" documentation.

single occupation. *See Buletini v. INS,* 860 F.Supp. 1222, 1230 (E.D. Mich. 1994) (holding that "field" is a broad term that encompasses more than a single area of medical specialty).

We noted in the RFE that the petitioner had 45 days to respond, and informed the petitioner that his failure to respond is a ground for dismissal of the appeal without further discussion.

We did not receive a response from either the petitioner or his counsel. Accordingly, we will dismiss the petitioner's appeal due to abandonment. *See* 8 C.F.R. § 103.2(b)(14), (15). In the alternative, we dismiss the appeal because, while the record confirms that the petitioner demonstrates a unique talent, the petitioner has not sufficiently established his eligibility for the exclusive classification sought.

A. Evidentiary Criteria[2]

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate his sustained acclaim and the recognition of his 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 he 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). Finally, where a petitioner demonstrates that the standards at 8 C.F.R. § 204.5(h)(3) do not readily apply to his occupation, he may submit comparable evidence.

On appeal, the petitioner asserts that he meets the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the leading and critical role criterion under the regulation at 8 C.F.R. 204.5(h)(3)(viii). In addition, the petitioner asserts that he has submitted comparable evidence to establish his eligibility, under the regulation at 8 C.F.R. § 204.5(h)(4). We determined that the petitioner successfully demonstrated that the eligibility standards under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation as a reed voicer.[3] Once the petitioner has demonstrated that the standards do not readily apply, however, the next question is whether the evidence on which he relies is comparable to the evidence otherwise required by the criteria at 8 C.F.R § 204.5(h)(3). Accordingly, we issued the RFE, requesting evidence (listed above) that might serve as comparable evidence or help demonstrate how

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[2] 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.

[3] According to a foreign correspondent for :

> [A reed voicer makes] the tonal quality of a given reed stop consistent throughout its range of however many octaves, and mak[es] it fit in with the ensemble of the hundreds or thousands of other pipes in the organ. He does that by adjusting the curve of the brass tongue, and making adjustments to the resonator. It is painstaking work requiring close listening, mechanical aptitude, and a sense of how to make a pike, a stop, and all the stops in the organ work together as a work of art.

evidence already in the record is comparable to the objective evidence required under 8 C.F.R. § 204.5(h)(3)(i)(-(x). The petitioner did not respond to the RFE.

While the existing record shows that the petitioner is a talented reed voicer who has some recognition in the field, the petitioner has not established that he has satisfied the antecedent regulatory requirement of presenting evidence of a one-time achievement that is a major, internationally recognized award as required under 8 C.F.R. § 204.5(h)(3), at least three of the ten types of evidence listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), or comparable evidence establishing his eligibility as required under 8 C.F.R. § 204.5(h)(4).

At the outset, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, 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 listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) or comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4) to satisfy the threshold evidentiary requirements.

Next, we examine the two threshold criteria that the petitioner asserts he satisfies.

> *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).

The petitioner has not demonstrated that he meets the criterion of original contributions of major significance. Relying on reference letters, the petitioner asserts that he meets this criterion based on the "excellent work [he has done at] ." The references confirm that the petitioner is talented and respected, having worked on major organ projects. Although the record includes a number of reference letters, all praising the petitioner's ability and experience as a reed voicer, these letters do not specifically identify what the petitioner has done that is original or that constitutes contributions of major significance in the field, as required by the plain language of the criterion. According to Senior Executive Producer, the petitioner's work at involves continuing the company's expertise in pipe organ building. Specifically, Mr. states that "[t]hough several different individuals (including himself) have been involved with reed pipes during [the last half a century], uniformly high standards have been reliably maintained, and [the petitioner]'s work fits right into the expected tradition of qualify and character." A continuation of a company's expertise in pipe organ building, while notable, is not indicative of the petitioner's original contribution of major significance in the field. Rather, this evidence contributes to our determination that the petitioner has performed in a leading or critical role for this company, discussed below.

The record also includes several reference letters provided on the petitioner's behalf that contain similar language when describing the petitioner's training and accomplishments in the field of pipe organ building. For example, President of states:

> [The petitioner]'s outstanding training began with an exhaustive and comprehensive apprenticeship in his native with . This education has given him a unique insight into every aspect of the organbuilding trade: fine woodworking, pipemaking, and reed voicing. [The petitioner]'s skills represent a unique combination of disciplines found in one individual. His talent is what attracted him to attention, and with [] further training, [the petitioner] has proven himself to be an extremely valuable asset to "

Artistic Director Emeritus, Tennessee; Professor of Organ, Church Music Department, College of Music, in South Korea; and Associate Professor of Organ, all provide similar assertions.

These letters confirm the petitioner's unique training, talent, and value to his employer, which we do not question. At issue under this particular criterion, however, is whether the petitioner has made a contribution of major significance in the field. The letters from colleagues in the same or related fields do not specifically identify contributions or provide specific examples of how those contributions influenced the field. While probative of the petitioner's talents, the letters are ultimately insufficient to establish that the petitioner meets this criterion. *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. 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 a petitioner's eligibility for the benefit sought. *Id. See also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding the AAO's decision to give minimal weight to letters that do not provide details on contributions of major significance in the field).

The petitioner has submitted evidence showing that when voicing a organ in South Korea he faced a temperature fluctuation issue that other reed voicers might not have faced. Recognizing that this incident may possibly present evidence of an original contribution of major significance to the field, we issued an RFE seeking specific evidence relating to the work the petitioner performed during the installation of this organ and the work the petitioner performed to resolve the temperature fluctuation issue. As noted, however, the petitioner did not respond to our RFE.

Accordingly, while the evidence attests to the petitioner's talent, the petitioner has not presented evidence of his 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 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).

On appeal, the petitioner asserts that he meets this criterion. The record supports this assertion. For example, according to Mr. the petitioner is "a master at the art of reed voicing, and depend[s] on him and entrust[s] him to work his magic on almost every organ that [it has] produced in the past eight years." According to Chairman Emeritus of the Board, the "voicing of the organs has been crucial to success in achieving the special ' for which the company is recognized throughout the world. [The petitioner] has played a role in achieving this distinctive sound in the reed voicing he has done in the 12 years that he has been with the company." The petitioner has also submitted sufficient evidence showing that has a distinguished reputation. According to , Curator of the Lecturer in Music, is "one of America's most admired organ building companies." According to Mr. organs (and their reed stops) are universally admired, and the quality of workmanship and tonal character is held in the highest esteem." Accordingly, the petitioner has satisfied the requirements of this criterion.

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4).

The director concluded that the petitioner had not submitted evidence of the display of his work at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the petitioner asserts that the evidence he submitted in support of that criterion constitutes comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4). Given the unique nature of the petitioner's occupation, we accept that the petitioner may rely on evidence that is comparable to the standards set forth at 8 C.F.R § 204.5(h)(3). The next question, however, is whether the evidence on which the petitioner relies is, in fact, comparable. Accordingly, we issued an RFE in which we requested specific evidence and information that might develop the petitioner's reliance on comparable evidence. The petitioner did not respond.

The evidence in the record does not show that the petitioner has submitted evidence comparable to evidence that would demonstrate he meets the display at artistic exhibitions or showcases criterion under 8 C.F.R. § 204.5(h)(3)(vii). The record includes evidence showing that the petitioner performed his reed voicing services for a that is housed in The petitioner has submitted an online printout of events that the church hosted in 2012 for the inauguration of the organ; and a 2012 article entitled ' ' posted on classical-scene.com, discussing the organ dedication recitals. The petitioner has also submitted evidence showing that musicians have played organs for which the petitioner performed reed voicing services in musical performances. Some of these performances have been broadcast in , a pipe organ program, and recorded one performance. None of the evidence, however, mentions the petitioner by name or credits him for his work on the organs. Instead the evidence provides information on the musicians

who played the organs and , the company that made the organs and that employs the petitioner. Artistic exhibitions or showcases serve as a means by which named and credited artists display their work, typically for public viewing. In this case, however, the petitioner has not shown that the programs of the musical performances credit the petitioner for his work on the organs or that the audience is otherwise aware that the organ represents his work. While we afforded the petitioner an opportunity to develop his reliance on comparable evidence and explain how the evidence is comparable to artistic displays of an artist's work or is equivalent to the evidentiary criteria in general, the petitioner did not do so. As such, the evidence in the record as it stands does not sufficiently establish that the petitioner has submitted comparable evidence.

B. Summary

The petitioner has not satisfied the antecedent regulatory requirement of presenting evidence of a one-time achievement that is a major, internationally recognized award as required under 8 C.F.R. § 204.5(h)(3), or at least three of the ten types of evidence alternatively listed under that subsection, or, in the alternative, comparable evidence establishing his eligibility as permitted under 8 C.F.R. § 204.5(h)(4). As such, we do not proceed to a final 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 [he] is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that [he] has sustained national or international acclaim and that his . . . 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 (stating that only when the initial regulatory requirements are met does USCIS proceed to a "final merits determination"). The appeal must accordingly be dismissed.

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 as abandoned. In the alternative, the appeal is dismissed on the merits.