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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 1 1 2015 Office: TEXAS SERVICE CENTER FILE:

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:

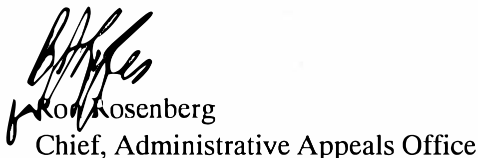
SELF-REPRESENTED

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,



Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner, a soprano saxophonist, seeks classification as an "alien of extraordinary ability" in the arts, 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 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.

On appeal, the petitioner submits a statement contesting the director's decision. The petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii), (v), (vi), (vii), and (viii).

For the reasons discussed below, we agree that the petitioner has not established his 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 he is one of the small percentage who is at the very top in the field of endeavor, and that he 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,
> > >
> > > (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 the alien's sustained acclaim and the recognition of the alien's 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 a petitioner 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[1]

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

The director determined that the petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion, and the director's determination on this issue will be withdrawn. 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).

The petitioner submitted a November [redacted] article in [redacted] entitled "[redacted]." The petitioner also submitted a January 21, 2014, letter from [redacted], a saxophonist and composer, asserting that [redacted] newspaper "is a major publication in Mexico," and that it has a distribution of "more than 100,000 copies a day." There is no evidence in the record, however, to support Mr. [redacted]

[1] We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner asserts that he meets or for which the petitioner has submitted relevant and probative evidence.

assertions. USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications); *see also Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field). In addition, while the petitioner submitted information about from *Wikipedia*, he did not submit any information about .[2] Accordingly, there is no evidence demonstrating that is a form of professional or major media. Furthermore, the English language translation of the article was not certified by the translator as required by the regulation at 8 C.F.R. §103.2(b)(3), which provides in pertinent part:

> *Translations.* 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.

Regarding the foreign language translations submitted by the petitioner in this proceeding, although not addressed by the director, the petitioner initially provided three "Certificate[s] of Translation" for documents in Japanese, Italian, and Spanish which state that "the attached translations are a true and accurate translation of the original." In response to the director's request for evidence, the petitioner submitted two "Certificate[s] of Translation" for documents in Spanish and Japanese which state that "the attached translations are a true and accurate translation of the original." It is unclear to which of the submitted documents, if any, the five certifications pertain. The submission of a translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). In addition, none of the five certifications state that the submitted translations were "complete." Because the petitioner did not submit a properly certified English language translation for each foreign language document, we cannot determine whether the evidence supports the petitioner's claims. Accordingly, the English language translations of the documents in Japanese, Italian, and Spanish are not probative and will not be accorded any weight in this proceeding.

The petitioner submitted a January 1998 music review of his compact disc ' ' that appeared in . The English language translation of the article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). In addition, the petitioner submitted a January 28, 2014, letter from , a guitarist and writer, stating: "I hereby affirm that the that [the petitioner] has filed as his evidence is a professional and major trade publication. I have been a writer to this nationally distributed magazine since . . . ." Again, USCIS need not rely on unsubstantiated claims. The petitioner also submitted information from a Japanese publishing company website, stating that its magazine has a circulation of 100,000, but the English language translation of the online material was only a partial translation and was not certified by the translator as required by the regulation at 8 C.F.R. §103.2(b)(3). Furthermore, with regard to the information from the magazine's writer and publisher, USCIS need not rely on self-promotional material. *See Braga v. Poulos,* No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on

[2] is a state in west-central Mexico.

the cover of a magazine as to the magazine's status as major media). The submitted information does not establish that is a professional or major trade publication or form of major media.

The petitioner submitted a description of his " " compact disc in the " " section of the April The English language translation of the material was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). The submitted material includes item numbers, descriptions, and prices for 29 different compact discs, including the petitioner's release. The submitted catalogue of new compact disc releases in is more of an advertisement for the petitioner's music than independent journalistic coverage about the petitioner. The petitioner also submitted a January 31, 2014, letter from , a contributor to , stating: "I hereby affirm that the that [the petitioner] has filed as his evidence is a professional and major trade publication in Japan. I have contributed my articles to this nationally distributed magazine...." Again, USCIS need not rely on unsubstantiated claims. In addition, the petitioner submitted information from stating that "was founded in and its circulation was approximately 300,000 in the 70's and 80's," but the English language translation of the online material was incomplete and was not certified by the translator as required by the regulation at 8 C.F.R. §103.2(b)(3). Moreover, circulation information from the 1970s and 1980s does not demonstrate that was a major trade publication or form of major media in 1998 when it advertised the petitioner's compact disc.

The petitioner submitted a September radio program schedule in for in Japan listing his quartet in the " " broadcast slot. The submitted schedule from the newspaper similarly lists hundreds of other radio program slots. The English language translation of the material was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). In addition, the plain language of this regulatory criterion requires "published material about the alien . . . relating to the alien's work in the field" including "the title, date and author of the material." The schedule listing in and the radio program that featured the petitioner do not meet these requirements.

The petitioner submitted February and November music reviews of his compact discs " " and " " that appeared in The petitioner asserts that has a circulation of 8,000, but provided no documentary evidence to support the assertion. 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)). There is no evidence demonstrating that is a professional or major trade publication or form of major media.

The petitioner submitted an April article about him in (, but there is no evidence showing that the publication is a professional or major trade publication or form of major media.

The petitioner submitted a July , article about him in the " section of . In addition, the petitioner submitted a March online posting from stating that had a circulation of 15,000. The English language

translations of the article and online information were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, the petitioner has not established that the circulation figure for demonstrates that the newspaper is a major trade publication or form of major media.

The petitioner submitted multiple advertisements in announcing his upcoming music performances. The submitted advertisements were not articles about the petitioner and did not include the author of the material. The preceding advertising material, which is not the result of independent journalistic reportage, does not meet this regulatory criterion. In addition, the petitioner submitted circulation information for from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.[3] *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the source.

The petitioner submitted additional material, but none of the articles meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). For example, the remaining articles did not include a date or an author, were not about the petitioner, and the accompanying English language translations were not certified by the translator as required by the regulation at 8 C.F.R. §103.2(b)(3). Additionally, the petitioner did not submit documentary evidence demonstrating that the articles were published in professional or major trade publications or major media.

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

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

The director determined that the petitioner had not established eligibility for this criterion. The plain language of this criterion requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original artistic contributions "of major significance in the field." 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).

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[3] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . ***Wikipedia* cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on January 15, 2015, copy incorporated into the record of proceeding.

The petitioner submitted various letters of support discussing his talent as a soprano saxophonist and his music performances. The director found that the submitted evidence was not sufficient to demonstrate that the petitioner has made original contributions of major significance in the field. On appeal, the petitioner asserts that the letters of support from and demonstrate his eligibility for this regulatory criterion.

a freelance bassist in the area, states:

> I have had the privilege of working with [the petitioner] since 2012. Through our collaboration, I find him one of the most skilled and creative artists I have ever known. His ability to control the tone on his soprano sax is simply outstanding. Many experts consider the instrument one of the most challenging woodwind instruments. And, in my expert opinion, he is, without a doubt one of the few artists that is extremely successful at utilizing this advanced instrument as his own device to express himself. He is an excellent composer as well. The combination of his saxophone and his compositions is an absolute beauty. Besides being an amazing saxophonist/composer, [the petitioner] is a true artist in that not only he keeps improving his own artistry everyday, but he always works very hard to improve and inspire the lives of others that have come across.

Mr. comments on the petitioner's skills and talent as musician and composer, but does not identify specific examples of how the petitioner's work has influenced the field of jazz or otherwise constitutes original contributions of major significance in the field. Vague, solicited letters from colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d 1030, 1036 (9th Cir. 2009). In 2010, the *Kazarian* court reiterated that conclusion was "consistent with the relevant regulatory language." 596 F.3d at 1122. It is not enough to be a talented musician and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion. In addition, Mr. asserts that the petitioner "is an extraordinary talent in today's music world." Repeating the language of the statute or regulations, however, does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, 1997 WL 188942, *1, *5 (S.D.N.Y. Apr. 18, 1997).

, Artistic Director, , states:

> [The petitioner] has performed at the for countless occasions. His performances have received the most welcoming approval from our member audiences, who have highly experienced ears for the sophisticated nature of jazz music. The creativity and artistry in his work is [sic] simply extraordinary. The soprano saxophone music is something only the top expert saxophonists can make. And, [the petitioner's] soprano saxophone performances, especially the ones with the pianist, Ms. have been extremely unique, innovative and ground breaking. I have no doubt that [the petitioner] is one of the best soprano saxophonists in the world today.

Mr. mentions the petitioner's performances at the and states that the petitioner's "creativity and artistry [are] simply extraordinary," but does not provide specific examples of how the petitioner's work has affected the jazz community at a level indicative of original artistic contributions of major significance in the field. The plain language of this regulatory criterion requires that the petitioner's contributions be "of major significance in the field" rather than limited to the places where he performs. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (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). In addition, Mr. asserts that the petitioner's performances with "Ms. have been extremely unique, innovative and ground breaking." The petitioner, however, did not submit evidence showing that their music collaborations have affected the field of jazz in a major way, have topped the jazz recording charts for a substantial period of time, or have otherwise risen to the level of original contributions of major significance in the field. Again, USCIS need not rely on unsubstantiated claims. *See 1756, Inc.*, 745 F. Supp. at 17; s*ee also Visinscaia*, 4 F.Supp.3d at 134-35.

a multi-woodwind performer, recording artist, and jazz educator, states:

> [The petitioner] is a fully committed soprano sax artist who executes with a personal voice. A musician's sound identity is primary and essential in being able to connect with an audience. It is obvious that [the petitioner's] primary instrument and passion is the soprano sax. He has a beautiful concept which translates his mastery and commitment to an instrument that is often whiny, nasal and out of tune. [The petitioner] also commands a strong repertoire on the alto and tenor saxes and loves to explore the tonal possibilities and extended range of the saxophone.
>
> [The petitioner] and I have collaborated through seminars dealing with the specialized needs of the soprano. Besides recognizing him as an extraordinary soprano saxophonist, I find his insights as a lecturer to be transformative in the unique ways the instrument can be approached.

Mr. comments that the petitioner is "a fully committed soprano sax artist who executes with a personal voice," that the petitioner has mastered the instrument despite its challenges, and that he also has experience with alto and tenor saxes, but there is no documentary evidence showing the extent of the petitioner's influence on other saxophonists in the field or indicating that the field has specifically changed as a result of his original work so as to demonstrate the major significance of his contributions. In addition, Mr. mentions that he and the petitioner "have collaborated through seminars dealing with the specialized needs of the soprano saxophone" and that the petitioner's insights as a lecturer are "transformative in the unique ways the instrument can be approached." Mr. however, does not provide specific examples of how the petitioner's seminars, lectures, or playing techniques have affected education programs at various music schools, have influenced the work of other musicians, or otherwise equate to original contributions of major significance in the field.

a "talent buyer" who books musicians to perform at the states: "With his recent CD ' recorded with , [the petitioner] successfully demonstrated to us how unique

and revolutionary his compositions and performances are." While the petitioner's release of his " " compact disc demonstrates the originality and uniqueness of his work, Ms. does not provide specific examples (such as jazz album charts) to support her assertion that the petitioner's recordings on the compact disc were "revolutionary" in the jazz industry or have otherwise risen to the level of artistic contributions of major significance in the field. Again, USCIS need not rely on unsubstantiated claims.

In his statement contesting the director's decision, the petitioner does not point to any other reference letters that demonstrate his eligibility for this regulatory criterion. The remaining letters submitted in support of the petition, written by those who have collaborated with the petitioner on various musical projects, include statements and assertions similar to those previously discussed. Accordingly, they will not be specifically and individually discussed in this decision.

The petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 17. In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. 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"). Without additional, specific evidence showing that the petitioner's work has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that he meets this regulatory criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner did not claim eligibility for this regulatory criterion initially or in response to the director's request for evidence. Therefore, the director did not make a determination regarding the petitioner's eligibility for this criterion.

On appeal, the petitioner asserts that his compact disc sales demonstrate his eligibility for this regulatory criterion. The regulations, however, include a separate criterion for commercial successes in the performing arts at 8 C.F.R. § 204.5(h)(3)(x), and the petitioner's compact disc sales will be addressed there. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." In this case, there is no documentary evidence showing that the petitioner has authored scholarly articles in professional or major trade publications or other major media. Accordingly, the petitioner has not established that he meets this regulatory criterion.

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

The director determined that the petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion and the director's determination on this issue will be withdrawn. We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d at 145.

The petitioner submitted documentary evidence of his music recordings and performances at various concerts and festivals as evidence for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." The petitioner is a musician. When he records a song or performs in concert, he is not displaying his music in the same sense that a painter or sculptor displays his or her work in a gallery or museum. The petitioner is performing his music. In addition, to the extent that the petitioner is a musician, it is inherent to his occupation to perform and play music. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, he has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). The petitioner's music performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x), and they will be discussed separately within the context of that regulatory criterion.

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

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

The director determined that the petitioner had not established eligibility for this criterion.

On appeal, the petitioner asserts that his performance at the [redacted] meets this regulatory criterion. The director's discussion of the petitioner's evidence contains a typographical error with regard to the January 28, 2014, letter from [redacted] a "talent buyer" for the [redacted]. Specifically, the director's decision quotes a paragraph from Ms. [redacted] letter, but mistakenly attributes the quoted paragraph to "[redacted] the Assistant City Manager, [redacted]." The record, however, does not include a letter from [redacted]. The petitioner repeats the director's error on appeal by referring to "the comments from [redacted]" in his argument challenging the director's findings for this criterion. The statements attributed to [redacted] however, are actually those of Ms. [redacted]

In her January 28, 2014, letter, Ms. states:

> I book jazz artists to perform at the and the in Massachusetts. Both venues have long histories and have been recognized as two of the world's most renowned jazz clubs, and it is my duty to select the very best talents in the world to maintain our leading status.
>
> I have had the honor of working with [the petitioner], an extraordinary saxophonist, flutist and composer. . . . Considering his sensational talent, we decided it is suitable for [the petitioner] to perform at the On October 27, 2013, [the petitioner] performed six of his original compositions with his soprano sax, tenor sax and flute. His virtuosic performances were enthusiastically applauded by a full house, and the event recorded remarkable CD sales as well.

The petitioner has not established that his role as part of a "Sunday Brunch Series" temporarily performing at the was leading or critical for the establishment. Ms. asserts that the petitioner's October 27, 2013, performance was "applauded by a full house" and "recorded remarkable CD sales," but she does not indicate number of tickets or compact discs sold, or the amount of sales revenue that the petitioner's performance generated. There is no documentary evidence differentiating the petitioner's role as a musician from that of the numerous other jazz acts who have also performed at the club, let alone from that of the management and staff at the club, so as to demonstrate his leading role. In addition, the submitted evidence fails to establish that the petitioner contributed to the in a way that was significant to its success or standing and consistent with the meaning of "critical role." The petitioner did not submit, for instance, evidence from the club's management discussing the significance of his specific contribution to the beyond its need to book musicians to entertain its patrons and audiences. The petitioner's music performance at the is more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x), and we will discuss it further within the context of that regulatory criterion.

With regard to the reputation of the , Ms. asserts that it has a long history and has been recognized as one of "the world's most renowned jazz clubs." USCIS, however, need not rely on unsubstantiated claims. *See 1756, Inc.*, 745 F. Supp. at 17; *see also Visinscaia*, 4 F.Supp.3d at 134-35. In addition, the petitioner submitted an October 2013 event program and music calendar for the and promotional material about the printed from its website, but USCIS need not rely on self-promotional material. *Cf. Braga v. Poulos,* No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The petitioner also submitted information about the " " from *Wikipedia*, but again, there are no assurances about the reliability of the content from this open, user-edited internet site. *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d at 909. The assertions of Ms. the self-promotional material from the and the lack of reliability of the *Wikipedia* information are not sufficient to demonstrate that the jazz club has a distinguished reputation.

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

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Although the petitioner does not specifically claim eligibility for this criterion, he asserts in the appellate submission that he has sold compact discs and performed for various audiences. For example, the petitioner performed as part of the "Sunday Brunch Series" on October As previously discussed, however, the petitioner did not submit any specific sales figures for the event. This regulatory criterion focuses on volume of sales and receipts as a measure of the petitioner's commercial success in the performing arts. Therefore, the fact that a petitioner has recorded and released music or performed before an audience is insufficient, in and of itself, to meet this criterion. The evidence must show that the volume of sales or receipts reflect the petitioner's commercial success relative to others involved in similar pursuits in the performing arts. The petitioner, however, did not submit documentary evidence of "sales" or "receipts" demonstrating that his music recordings and performances were indicative of commercial successes in the performing arts. Again, 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. at 165. Accordingly, the petitioner has not established that he meets this regulatory criterion.

B. Summary

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.

C. Prior O-1 Nonimmigrant Visa Status

The record reflects that the petitioner is the beneficiary of an approved O-1 nonimmigrant visa petition for an alien of extraordinary ability in the arts. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, "The term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a different standard than that required for the immigrant classification, which defines extraordinary ability as "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." 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner's receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability. Further, approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

Many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103. *See also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

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). USCIS is not required to treat acknowledged errors as binding precedent. *See Sussex Eng'g 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 has approved a nonimmigrant petition on behalf of the petitioner, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La. Mar. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the individual has achieved sustained national or international acclaim and is one of the small percentage who has 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 in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.[4]

[4] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d at 145. 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).

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.