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U.S. Citizenship and Immigration Services

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APR 1 3 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The petitioner's motion to reopen and reconsider, or in the alternative, an appeal to the AAO, was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a developer of digital video products. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

The petitioner indicates on his Form 1-140, Immigrant Petition for Alien Worker, that his occupation is that of president and chief technical officer,[1] and his job responsibilities would include managing the business, developing technology and marketing efforts, and defining company strategy. Through counsel, the petitioner has submitted evidence that he claims meets the following criteria.

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

The petitioner claims to meet this criterion based upon his receipt of the 1999 Young Investigator Award from the Society for Optical Engineers (SPIE). According to SPIE's website, the award is given to the young researcher who has graduated within five years of the annual conference who presents the best paper at the conference. Dr. Andrew G. Tescher, the 1981 president of SPIE, states that the competition for the 1999 award included "distinguished Researchers, PhDs and scientists from the most prestigious universities and research institutes world wide." While the evidence establishes that the award is presented by an international organization, the record lacks the extensive documentation required by the statute to establish that the award is nationally or internationally recognized as an award for excellence. The record contains no evidence to show the prestige of the award from among those in the field. Further, this award is limited by its terms to competitors in the early stages of their career. The award thus cannot be indicative of national or international acclaim for excellence in the field. The award does not measure the alien's standing or selection from among those who are well established and does not, by itself, show the petitioner's extraordinary ability under this criterion.

The petitioner also submits a copy of a "Certificate of Appreciation" from the International Organization for Standardization (ISO), which counsel asserts is also evidence that the petitioner meets this criterion. According to Leonardo Chiariglione, the Chairman of the Moving Pictures Expert Group (MPEG), the ISO group that developed the MPEG-1 and MPEG-2 standards, this certificate is awarded to individuals who have made outstanding contributions to international standardization. Robert H. Koenen, Chairman, MPEG Requirements Group and President, MPEG-4 Industry Forum, corroborates the petitioner's receipt of the ISO award. The record contains no further evidence, and independent research does not confirm, that this certificate is a nationally or internationally recognized award for excellence.

In response to the director's request for evidence (RFE) dated February 28, 2003, the petitioner submitted evidence that he had been nominated for the TR 100 Award, an annual award presented by the Massachusetts Institute of Technology's (MIT) *Technology Review* magazine. The information submitted regarding the award appears to establish it as a nationally or internationally recognized award. However, mere nomination for the award does not satisfy the requirements of this criterion. Further, the nomination and thus any subsequent conferring of the award postdates the petitioner's application for visa preference classification. Eligibility for visa preference must be established at the time of filing the petition; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). As evidence to support another criterion, the petitioner also submitted evidence that his company won a 2003 Readers Choice Award for the "Most Innovative MPEG-4 Solution." This award is more appropriately considered under this criterion. However, since the award was to

[1] This is an apparent error. The evidence suggests the petitioner means Chief Technology Officer.

the petitioner's company rather than to the petitioner and occurred after the filing date of his petition, it also cannot be considered to establish the petitioner's visa preference eligibility.

The petitioner has not submitted sufficient evidence to establish that he meets this criterion.

> *Published materials 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.*

In general, in order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

Counsel asserts that an Internet search of the petitioner's name results in a significant number of "hits" that provide some critical reviews of the petitioner's achievements. Counsel also asserts that as the Internet constitutes "major media," the petitioner's name recognition satisfies this criterion. Counsel's argument fails on two main points. First, the Internet is a compilation or distillation of publications and other resources rather than a publication itself. Thus it is more a distribution source or supplier of existing information. Second, "hits" on the Internet are often duplicative or not about the particular object of the search. The number of "hits" resulting from an Internet search can thereby often be very misleading. A print source distilled from the Internet may constitute major media based on its Internet distribution (in other words, the number of times that source's web page has been "hit"). If the petitioner relies on the Internet to establish that he meets this criterion, then he must show that the sites that are listed in the search receive a significant number of visitors. The petitioner does not provide information regarding the websites in which his name is mentioned.

The petitioner submitted a copy of article that appeared in a September 13, 2002 edition of *New Media Markets* that discusses the development by Canal Plus Technologies of a set-top box using the MPEG-4 technology; and a copy of a September 16, 2002 web page from *IBC Daily News* that contains a discussion in an "In Brief" section of the page describing a joint development of an MPEG-4 enabled set-top-box by the petitioner's company and Fujitsu Siemens Computers.[2] A copy of a September 13, 2002 edition of an Electronic *Engineering Times* article discusses the competition offered MPEG-4 by Microsoft and the competition by coding technologies that expand the use of the older MPEG-2 standard. These articles quote the petitioner as he discusses his company and the MPEG-4 technology, and are not about the petitioner or his work as required by this criterion.

A September 15, 2002 "In Brief" section of *IBC Daily News* states that the petitioner's company has introduced products and updates to its MPEG-4 software solutions, and a copy of a web page from

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[2] The petitioner also submits a copy of the same article that appears in another publication, identified by a hand written annotation as a September 16, 2002 edition of *IBC Daily News*. Uncorroborated evidence by the petitioner or counsel is not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

"europemedia.net" indicates that the petitioner's company and Kreatel Communications collaborated to provide broadcasters and "telcos" with MPEG-4 streaming solutions. The petitioner is not mentioned in these articles. The petitioner also submits a copy of a page from the *Director's Magazine* containing an article in Japanese without an accompanying translation.[3] The article includes a captioned photograph of the petitioner, and appears to be in a question and answer format about MPEG-4. It does not appear to be about the petitioner.

Further, no evidence establishes these media as professional or major trade media, or other major media. Similarly, the news releases by the petitioner's company in which he is quoted are not about the petitioner and his work and are not printed in media that meets the requirements of this criterion. A copy of a web page from *Digital Hollywood*, which is apparently part of a schedule for a conference in which the petitioner was a speaker, provides a brief biographical background of the petitioner. However, this brief biography in connection with his conference appearance is not an article about the petitioner that meets this criterion.

As further evidence in support of this criterion, counsel submits evidence that the petitioner's company won a 2003 Reader's Choice Award presented by *Streaming Magazine.* Awards are addressed in a separate criterion discussed above. Additionally, the information accompanying the award does not mention the petitioner or attribute the technology recognized by the award to him. Furthermore, as noted above, the award occurred subsequent to the filing date of the petition, and cannot be considered to determine eligibility for visa preference classification. *Matter of Katigbak, supra.*

Counsel also asserts that others in the field often cite the petitioner's publications. The AAO has consistently held that this criterion is not satisfied by citations to a petitioner's work by others in the field. The plain language of the regulation requires that the published material be about the alien, relating to his or her work. Citations of the petitioner's work are the subject of a separate criterion discussed below. The petitioner has not submitted evidence to satisfy this criterion.

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

First claiming to meet this criterion on appeal, the petitioner submits a letter from Fernando Pereia, Professor of Electrical and Computers Engineering at the Instituto Superior Técnico, Technical University of Lisbon. Professor Pereia states that, given the significance of the petitioner's work and his expertise in the field, he asked the petitioner to review scientific papers prior to publication in "the most prestigious journals of our field." The petitioner also submits a letter from Bruno Choquet, Innovation and Strategic Planning Manager at France Telecom R&D, who states that based on the petitioner's expertise and patented inventions, he asked the petitioner to review articles prior to publication at the 1996 and 1997 COSESA conferences. As the statute requires extensive documentation, the AAO will look at the frequency and the regularity of invitations to perform peer review. Occasional participation in the peer review process does not substantiate that the petitioner has earned such sustained national or international acclaim that his opinions and insight are regularly sought as a valued element of that process. Neither Professor Pereia nor Mr. Choquet state how

[3] The regulation at 8 C.F.R. § 103.2(b)(3) requires any document submitted in a foreign language to be submitted with a full English translation.

many papers or articles the petitioner had actually reviewed. Professor Pereia names only the Special Issue on MPEG-4 of the *Image Processing Journal* for which the petitioner reviewed work. The evidence does not substantiate that the petitioner has performed peer review work on more than an occasional basis and does not establish that he meets this criterion.

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

The petitioner claims to meet this criterion based on his receipt of nine international and U.S. patents, his leading role in the ISO MPEG committees, his publications, his "international awards," and his participation in major international conferences, as substantiated by testimonials from recognized experts in the field.

Evidence submitted by the petitioner included copies of three patents in which he was listed as co-inventor issued by the World Intellectual Property Organization and two which were issued by the United States Patent and Trademark Office (USPTO). He also submitted copies of applications for three patents that he had made to the USPTO.[4] Counsel asserts that issuance of these patents is a "clear indication of an original contribution" to the field. This argument is meritless. Under U.S. patent laws, the applicant may acquire a patent for a "new and useful" invention or for any "new and useful improvement" to a known invention or discovery. The applicant must prove only that the invention is new as defined by patent law. This means that the invention was unknown or not used by others in the United States, or was not previously patented or described in print in the United States or another country. If either of the mentioned incidents has occurred, then the applicant must show that the incidents occurred within a one-year period prior to the patent application. Furthermore, the inventor must show that his or her invention involves one or more differences from the "prior art."[5] In no case does the USPTO require the work to be original or to have made a specific contribution to any particular field of endeavor. Thus the simple grant of a patent does not signify that the petitioner has made an original contribution to his field of endeavor, or that the invention is of major significance. It follows therefore that the petitioner's three pending applications do not, without more, establish that he has made an original contribution of major significance to his field of endeavor. To determine the significance of the patents, we must look at the use of the patents by those in the field.

In his letter of support for the petitioner's visa preference classification, Vincent Marcatté, Head of Department, France Telecom, Research and Development, stated, "We are the owners of multiple patents in the field of Multimedia and some of them are essential for the MPEG international standard." Despite counsel's contentions, Mr. Marcatté does not attribute any of these "MPEG essential" patents to the petitioner. Mr. Marcatté also states that the petitioner's patents were "recognized and accepted as the new standard for multimedia representation by ISO." No other evidence in the record corroborates this statement. For example, Mr. Chiariglione, head of television technologies at Centro Studi E Laboratori Telecomunicazioni (CSELT), Italy and the convenor of the ISO/IEC JTC1/SC29/WG11 (MPEG) writes that, since 1995, the petitioner has made "a number" of "key contributions" in various MPEG meetings. However, Mr. Chiariglione does not

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[4] A patent request completed on Form PCT/RO/101 under the Patent Cooperation Treaty does not indicate with whom the petitioner's application was filed. It is noted that this request is based on the same invention listed on another application filed with the USPTO.

[5] *See* "General Information Concerning Patents" at www.uspto.gov.

mention that the petitioner's patents were accepted as the new standard by the ISO. The evidence supports that the petitioner's patents have made contributions to multimedia technology but does not establish that these contributions have been of major significance to the field.

Counsel also asserts that the petitioner's record of publication, his "international awards," and his participation in major international conferences are evidence of this criterion. The petitioner submits copies of four papers that he co-authored, including the paper for which he won the Young Investigator Award, an abstract of a paper in the February 1996 "Proceedings of SPIE," and the first pages of a paper that is included as a chapter in a book entitled *Multimedia Systems, Standards, and Networks*. This book contains several chapters written by different authors. Counsel refers to the book as a textbook and one of the "leading resources in the field," used by students and professionals alike. Counsel submits no evidence that this is a textbook or professional reference. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although several of the individuals who wrote letters of support on behalf of the petitioner refer to his publications, none indicate how these publications constitute a contribution of major significance to the field. Mr. Chiariglione states that the petitioner's receipt of the Young Investigator's Award was evidence of his "accomplishments in the field of multimedia," but does not describe the petitioner's accomplishments or state they were of major significance to the field. Isabelle Corset, Product Manager of Philips Digital Networks MPEG-4 WebCine line of products, states that the petitioner's publications are "highly regarded" but does not state how they constitute major contributions to multimedia. Additionally, the petitioner provides no evidence that his appearances and presentations at various international conferences made a major contribution to multimedia.

Counsel asserts that the petitioner's leading role in the ISO MPEG committees is evidence of this criterion. The record reflects that the petitioner was actively involved in the ISO MPEG committees on which he sat and made several "important" contributions to the committee and the MPEG-4 standard. Membership on the committees, without more, does not establish that the petitioner has made a contribution of major significance to the field. The petitioner's role in the ISO MPEG committees is further discussed under a separate criterion below.

The petitioner's supporters speak highly of his contributions to multimedia, particularly to the MPEG-4 standards. Ralph Biesemeyer, Manager, Media Sector Solutions Marketing, Intel Corp., states he advised Intel to invest in the petitioner's company based on the advanced technology developed under the petitioner's leadership. Mr. Biesemeyer also states that "Envivio's products are world leading due to [the petitioner's] contribution of significant and unique intellectual property to the MPEG-4 standards, in particular MPEG-4 Systems, which provides the interactive elements in the MPEG-4 architecture."

Dr. David Singer, of Apple Computer's QuickTime multimedia group states:

> Since 1996, [the petitioner] has made important contributions to the MPEG-4 standard, which have been instrumental in extending the 3D scene capabilities of the Virtual Reality Modeling Language (VRML) standard (developed by the Virtual Reality Modeling Language Consortium, now Web 3D, to support real time media). Furthermore, he has made important contributions to the editing of various sections of the standard specifications, and towards the development of MPEG-4 reference software.

Although Mr. Chiariglione and Ms. Corset repeat Dr. Singer's comments, none detail the contributions that the petitioner made or how those contributions contributed significantly multimedia technology. Two of the testimonials' authors are more specific as to the petitioner's contributions to the MPEG-4 standards. Mr. Koenen states:

> The leadership of [the petitioner] has been instrumental in the development of the MPEG-4 Standard, notably the "Systems part", which provides the essential architecture foundation upon which the more well-known MPEG-4 Audio and Video coding parts rely. Notably, his work has led the way for the design of MPEG-4's Binary Format for Sciences (BiFS), which very likely constitutes the most important innovation that MPEG-4 brings over previous multimedia standards and frameworks.

Professor Pereira writes that the petitioner "has been one of the main contributors to the ISO's development of the MPEG-4 technology standard. Specifically, he personally invented many new concepts related to the integration of Video and Multimedia that made the MPEG-4 standard a true Multimedia standard, and not only a video and audio standard like previous MPEG standards had been." Both Mr. Koenen and Professor Pereira attribute the major success of MPEG-4 to the petitioner.

The record reflects that MPEG-4, through the ISO, has become an industry standard. As noted in the publications discussed above, several companies have used the MPEG-4 format in the development of their own products. Thinh Tran, Chairman and CEO of Sigma Designs, states that "MPEG-4 is the new generation standard for delivering Digital TV, next generation DVDs and other video applications," and his company invested a million dollars in the petitioner's company. Ralph Biesemeyer, Manager, Media Sector Solutions Marketing, Intel Corp, states, "Due to the advance status of the technology developed under [the petitioner's] leadership at Envivio, I advised the Intel Corporation's Capital group to invest in Envivio. After careful review of the technology . . . Intel invested $1.5M." The evidence establishes that through his development of the MPEG-4 technology, the petitioner has made an original contribution of major significance to the field.

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

Counsel often refers to the petitioner's curriculum vitae as evidence of this criterion. Simply going on record, however, without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Neither the unsupported statements of the petitioner nor the unsupported assertions of counsel constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. As discussed above, the petitioner submitted evidence that he had authored or co-authored five papers, one of which won him the Young Investigator's Award at SPIE's 1999 conference on Visual Communication and Image Processing. Two of the petitioner's papers were published in *Signal Processing: Image Communication.* Although counsel submits evidence of the journal's editorial policy, its publication schedule and the reputation of the publisher and honorary editor, he submits no evidence regarding the impact of the journal itself. However, the evidence provided does establish that the journal enjoys international circulation. Counsel also submits an abstract of one of the petitioner's articles that was printed in the February 1996

"Proceedings of SPIE." The final evidence submitted by counsel in support of this criterion is a copy of a few pages of a chapter co-authored by the petitioner and appearing in a book published by Marcel Dekker, Inc. As noted above, counsel asserts this is a reference and textbook used by both students and professionals, but submits no corroborative evidence of this statement.

Contrary to counsel's assertion, however, publication alone is insufficient to establish that the petitioner meets the eligibility requirements under this criterion. It is the nature of scholarly research to be vetted and published in scholarly journals, trade publications or other major media. It does not follow that every scientist who publishes possesses extraordinary ability. We must look at the industry's reaction to the publications to determine whether the work is indicative of national or international acclaim. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that others in the field have relied upon the petitioner's conclusions. It is noteworthy that one of the papers presented by the petitioner at SPIE's 1999 conference on Visual Communication and Image Processing was officially recognized with the Young Investigator's Award.

The petitioner's publications are generally about MPEG-4 and its use and applications. The record reflects that several organizations have invested in not only product development based on MPEG-4 technology, but also in the technology itself. The record further contains independent corroborative evidence that the petitioner's published work on MPEG-4 is highly regarded in the multimedia field. Based on the evidence of record, we concur with the director's determination that the petitioner meets this criterion.

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

Counsel addresses this criterion in the letter accompanying the petition by stating that the petitioner has been invited to speak about his work at numerous professional conferences. The wording of this criterion strongly suggests it is for visual artists such as sculptors and painters. Counsel does not address this criterion on appeal, and the petitioner has not submitted any evidence indicating that he meets this criterion.

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

Counsel asserts that the petitioner meets this criterion based on his contributions to the ISO and participation on the MPEG-4 committee. The director determined that the petitioner had not established that the MPEG-4 committee had a distinguished reputation apart from the ISO, and that the petitioner had not established he played a leading or critical role in the organization or the committee.

The International Organization for Standardization is a renowned organization that plays a leading role in developing international standards to "facilitat[e] the international exchange of goods and services, and to develop[] cooperation in the spheres of intellectual, scientific, technological and economic activity." The record reflects that the MPEG Standard Group, whose chair is called the "father of MP3" and was named by Time Digital as one of the 50 most important persons in digital technology in 1999, has been responsible for the international advancement of multimedia technology in television and video. The group was also the

recipient of a 1996 Emmy award for its contribution to the progress of visual arts. The MPEG Standard Group has developed a significant international reputation, separate and distinct from the ISO. We find that the MPEG Standard Group is an organization or establishment with a distinguished reputation under this criterion.

Mr. Chiariglione states that the petitioner is one of the leaders in the MPEG-4 (ISO/IEC 14496) and not only made important contributions to the MPEG-4 standard, he also chaired the "MPEG-4 Ad Hoc group on Binary Format for Scene description (BIFS)." Mr. Koenen, Chairman of the MPEG Requirements Group, states that the petitioner's "leadership . . . has been instrumental in the development of the MPEG-4 Standard." Additionally, Professor Pereira states that he has personally "witnessed how the petitioner has been one of the main contributors to the ISO's development of the MPEG-4 technology standard." The evidence establishes that the petitioner has played a leading role in the MPEG Standard Group.

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

In the cover letter with the petition, counsel asserted that the petitioner's salary was $150,000 per year with an optional $30,000 bonus. This is supported by the letter from the CEO of the petitioner's company. Counsel submitted a copy of a web page from the U.S. Department of Labor's online wage library that showed the average salary of chief executive officers of the San Francisco area for 2002 was $142,418. Counsel should have submitted data showing the mean national wage for chief executive officers. In order to demonstrate eligibility under this criterion, the petitioner must show that his wage is high when compared with the high earners nationwide in the field. Counsel did not further address this criterion in response to the RFE or on appeal. The evidence does not establish that the petitioner meets this criterion.

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

Counsel's letter included with the petition states that the petitioner's company, under his leadership, positioned itself as a worldwide leader of MPEG-4 solutions. Nevertheless, the company's position in the technology industry does not provide evidence of this criterion, which is intended for those in the performing arts. Counsel does not address this criterion further and does not raise the issue on appeal.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*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." [emphasis added]. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the 10 criteria specified by the regulation. However, we will briefly address counsel's arguments and the evidence submitted in support under this provision.

In response to the RFE, counsel asserts that the petitioner's educational background should also be considered in determining if he is an alien of extraordinary ability. He argues that the petitioner's selection to attend the

prestigious Ecole Polytechnique and the Ecole Nationale Superieure des Telecommunications is "objective proof" of the petitioner's scientific abilities. The visa preference classification for extraordinary ability is limited to those who have reached the top of their professions, which is not proved by demonstrating the ability to be competitively selected to attend a prestigious school or the academic pursuit of a degree. Counsel does not address this issue further on appeal and no evidence submitted indicates that this provision is applicable to the petitioner.

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

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.