

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Bz

FILE: EAC 03 149 52408 Office: VERMONT SERVICE CENTER Date: **SEP 16 2005**

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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* If those criteria do not readily apply to the alien's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility pursuant to 8 C.F.R. § 204.5(h)(4).

In her discussion of four of the regulatory criteria relevant to this case, the director noted that the record did not reflect the requisite sustained acclaim. On appeal, counsel claims that the director's decision thus "betrays a lack of understanding of the regulations. . . . To require that the evidence demonstrate national or international acclaim in each category is tantamount to saying that the three of ten rule is irrelevant." We do not read the director's decision as misinterpreting the regulation. Although satisfaction of at least three of the regulatory criteria will establish the requisite sustained acclaim, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically in the field of component based software engineering for financial institutions. The record indicates that the petitioner is currently employed by Goldman, Sachs and Company (“Goldman”). The petitioner initially submitted supporting documents including his academic credentials, five letters of recommendation and four presentations written or co-authored by the petitioner. On appeal, the petitioner submits additional evidence including four new support letters, copies of nine scholarly articles co-authored by the petitioner, citations to two of the petitioner’s co-authored articles, and documentation of the petitioner’s income. Counsel’s claims and the additional evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed. We address the evidence submitted and counsel’s contentions in the following discussion of the regulatory criteria relevant to the petitioner’s case.

(ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Although the petitioner did not claim eligibility under this criterion, we note that the record contains evidence relevant to this category. Four of the five recommendation letters initially submitted with the petition discuss the petitioner’s membership in two “prestigious” organizations in his field, the Institute of Electrical and Electronics Engineers (IEEE) and the Association for Computing Machinery (ACM). Yet the record contains no documentation of the petitioner’s IEEE or ACM membership or evidence that outstanding achievements are prerequisite to IEEE or ACM membership. Accordingly, the petitioner does not meet this criterion.

(iii) 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.

In her decision, the director commented on the lack of published material about the alien in the record. However, the petitioner did not claim eligibility or submit evidence under this criterion.

(iv) 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.

The petitioner claims to meet this criterion by virtue of his evaluation and judgment of other individuals in his current position at Goldman and as a graduate student at Columbia University. The record does not support this claim. The director determined that the evidence did not establish that the petitioner had judged the work of others outside of the evaluation of other Goldman employees as required by his supervisory position. On appeal, counsel contends that “[t]here is no legal requirement that an EB11 candidate’s achievements must be done outside of his employment” and that “[t]he reason [the petitioner] was chosen to judge the work of others is precisely because of his extraordinary ability.” Although an alien may meet this criterion through work associated with his or her employment, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The petitioner submitted no evidence that he has judged of the work of other individuals in his field in a manner significantly outside the general duties of his positions and reflective of national or international acclaim.

As evidence of the petitioner's judgment of other individuals at Goldman, counsel cites the recommendation letters of Laurent Daynès, Staff Engineer at Sun Microsystems Laboratories; Steve Dossick, Systems Architect at the Frameworks Division of BEA Systems, Incorporated; and Yu Li, Director of the Credit Derivatives Department at an unidentified investment bank in New York City. Mr. Daynès explains that part of the petitioner's role at Goldman is being a "mentor to other professionals" and that he supervises ten engineers on a project entitled "JFree." [REDACTED] states that the petitioner is "known to be a qualified judge of others, as evidenced by his role as supervisor and leader of other engineers on the JFree project." Both Mr. Daynès and Mr. Dossick describe the petitioner's judgment of other individuals in his field as limited to his supervisory position on a specific project at Goldman. Similarly, Yu Li states that "in his supervisory role at Goldman Sachs, [the petitioner] is constantly sought out to review the designs and proposals of other proprietary software developers who are themselves experts." Yu Li also notes that "Goldman Sachs analysts, associates, and vice presidents routinely seek his expert advice." This statement indicates that the petitioner's expertise is valued by other Goldman employees, but Yu Li's letter does not demonstrate that the petitioner has judged the work of others in his field outside of Goldman and in a manner consistent with the requisite sustained acclaim.

Counsel claims that "[m]any academic organizations, conferences and publishers asked [the petitioner] to evaluate the latest advances in the field" when he was a graduate student at Columbia University. Again, the record does not corroborate this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Gail E. Kaiser, Professor of Computer Science at Columbia University and the petitioner's doctoral advisor, states that the petitioner's "opinion is highly valued by other experts in the field, and he is frequently called upon to judge the work of others. Editors of the most influential academic journals and international conferences submit the works of other researchers, including the works of professors, researchers and Ph.D. students, to [the petitioner] to review, rate, and comment on, prior to approval for publication." The petitioner submitted no documentation of his review of manuscripts for scholarly journals in his field or any other evidence to corroborate Professor Kaiser's statement. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Although the record indicates that the petitioner evaluates other employees in his supervisory role and is consulted by other Goldman staff for his expertise, the petitioner submitted no evidence that he has judged the work of other individuals in his field in a manner significantly outside the duties of his employment and reflective of the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(v) 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 through his work on five projects. Counsel cites the testimonial letters submitted with the petition as evidence of the petitioner's eligibility under this criterion. Three of the authors of these letters have worked with the beneficiary and two authors do not state how they became acquainted with the petitioner's work. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters

solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

As a graduate student at Columbia University, the petitioner contributed to Project Oz, which Professor Kaiser describes as "the first distributed, process-centered software development environment." Mr. Dossick states that the petitioner's "work on Oz was notable and earned him recognition and admiration of other seasoned professionals in the field." Jinsong Wang, Chief Strategist of Proprietary Equity Trading at the Bank of Montreal in New York City, describes the petitioner as playing "a leading and critical role" in developing Oz. In his letter submitted on appeal, Kenneth M. Anderson, Assistant Professor of Computer Science at the University of Colorado at Boulder, explains that he attended the petitioner's presentation on Oz in 1996 at the University of California at Irvine, which he states "was very well received, and generated many questions and much stimulating discussion from the session attendees." Professor Anderson explains that the petitioner designed rule-based programming language for Oz and "was one of the very first to address some of the critical problems facing large scale software development, by advocating formal software process definition and automation, reusable component development and extensive coordination models among programmers." Although Professor Kaiser, Mr. Dossick, Jinsong Wang and Professor Anderson all attest to the importance of the petitioner's contribution to Oz, the record does not demonstrate that his individual work was widely recognized as a major contribution to his field. The record contains no documentation of the petitioner's 1996 presentation discussed by Professor Anderson and none of the submitted articles or presentations appear to relate to the petitioner's work on Oz.

Professor Kaiser explains that while a graduate student, the petitioner also "developed a groundbreaking architecture that integrated Object-Oriented Databases (OODB) into the World Wide Web. [His] work allows web sites to be customized to the different needs or requirements of different viewers." Professor Kaiser notes that the petitioner's work "has facilitated other innovations in technology; features such as security alert, web-page reformatting for Palm Pilots, content filtering and translation functions are all a result of [his] original, important work in this area." Professor Kaiser further notes that the petitioner's research was published in the proceedings of the "prestigious International World Wide Web Conference, and since then has been widely cited by top experts and applied successfully throughout the business community, worldwide." The record does not fully support Professor Kaiser's assessment of the impact of the petitioner's work in this area. The record contains a copy of an article entitled "An Architecture for Integrating OODBs with WWW" that was published in 1996 in *Computer Networks and ISDN Systems* and presented at the Fifth International World Wide Web Conference. The petitioner is the lead author of this article, of which Professor Kaiser is a co-author. On appeal, the petitioner submitted evidence that this article has been cited in three manuscripts written by other scholars in his field. One of these citing manuscripts has been published in an academic journal and another was presented at the Sixth International World Wide Web Conference. The petitioner also submitted printouts from unidentified sources, one of which includes the petitioner's article in a bibliography on OODBs and the other of which contains a purported link to his article in a "Bookmarks EDBT Tutorial." On appeal, the petitioner also submitted a copy of a syllabus for a course taught at the University of Illinois at Chicago in 2004 that includes his article. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Professor Kaiser further explains that the petitioner's dissertation was based on his research in "external, extensible transaction services (code-named JPern)" and that his "novel idea was to extract the core transaction management technology and put it into a standalone software component, called the external transaction server."

Mr. Daynès explains that "[t]ransaction management is considered one of the most difficult areas of software development" and that the petitioner's work "opened the door to reusable transaction technologies." Mr. Daynès states that "[h]is work on JPern has frequently been cited by other experts in the field and [his] presentations on the topic have benefited numerous researchers and developers." Mr. Dossick, Jinsong Wang, Professor Anderson and Leon Osterweil, Dean of the College of Natural Sciences and Mathematics at the University of Massachusetts Amherst, also attest to the importance of the petitioner's work on JPern. On appeal, the petitioner submitted copies of two manuscripts concerning JPern. The first is an article entitled "JPernLite: Extensible Transaction Services for the WWW" that was published in 1999 in *IEEE Transactions on Knowledge and Data Engineering*. The second article is similarly titled and was presented at "Hypertext 98: The Ninth ACM Conference on Hypertext and Hypermedia." The petitioner is the lead author of both of these articles, which are co-authored by Professor Kaiser. Apart from Mr. Daynès undocumented assertion, the record contains no evidence that the petitioner's JPern work has been cited by other researchers in his field.

The petitioner also claims to meet this criterion through his work at Sun Microsystems Laboratories ("Sun") where he created an application called PJama which was incorporated into Sun's Java programming language. Mr. Daynès, of Sun, describes the petitioner's work as "invaluable to the company." Mr. Dossick explains that PJama "enables programs to store their own state and restart from where they were last left off, which is a valuable time-saver for developers when writing lengthy programs, and critically important in the event of a power surge or loss. Because Java is so widely used, literally millions of developers have benefited from [the petitioner's] work." Professor Kaiser adds that the petitioner's "original, important contributions for Sun have gained him widespread recognition as one of the key leaders in his field." Yet the record contains no evidence that the petitioner's work on PJama has been recognized by any experts in his field besides Mr. Daynès, Mr. Dossick and Professor Kaiser.

The record also fails to document the allegedly major significance of the petitioner's work at Goldman. Mr. Dossick explains that the petitioner is the "supervisor and leader of 10 engineers now developing a state-of-the-art trading system infrastructure called JFree." Mr. Daynès states that JFree is "a groundbreaking creation; there is simply no comparable product like it in the marketplace. JFree has become a core component of several business units at Goldman Sachs and it is relied upon every day in the company's New York, London, and Tokyo offices. [The petitioner's] development of JFree is of far ranging importance." Jinsong Wang affirms that the petitioner's work "is revolutionary in the banking industry and truly gives Goldman Sachs a competitive advantage. Without [the petitioner's] expertise, JFree could not have been the success it is." Yu Li, Professor Kaiser, Dean Osterweil, and Charles McClintock, Dean of the School of Human and Organizational Development at the Fielding Graduate Institute in Santa Barbara, California, similarly attest to the importance and value of the petitioner's work at Goldman. Professor Anderson also explains that the petitioner's current work is "proprietary, inasmuch as it is used to create advances in the fixed income securities trading systems used by Goldman Sachs to gain a comparative advantage over competitors in the financial markets. Unfortunately for the field, this has meant that [the petitioner] is not free to share his more recent findings at conferences and in professional journals." Yet the confidentiality of the petitioner's work for Goldman should not prevent other types of documentation of the work's alleged significance. For example, the petitioner submitted no support letters from Goldman or other unclassified or redacted materials from Goldman or other financial firms to document the importance of his work on JFree to his field.

The record indicates that the petitioner has made valuable contributions to his field as discussed by seven experts in their testimonial letters. However, the petitioner submitted little evidence that his work has been recognized in his field beyond the authors of these letters. Of his alleged major contributions to his field, only one has been documented in a published manuscript and that article has been cited in only one other published article. Accordingly, the petitioner does not meet this criterion.

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

The petitioner initially claimed eligibility under this criterion, but submitted only a list of 11 manuscripts. On appeal, the petitioner submits copies or excerpts of nine manuscripts that he has co-authored. The record shows that five of these articles have been published in scientific journals or conference proceedings. The petitioner submitted no evidence that the remaining four manuscripts have been printed in professional, major trade publications or other major media. Counsel describes two of these manuscripts as "Columbia University Computer Science Department Technical Papers," but the record contains no evidence that the manuscripts were published in academic or trade journals or printed in major media. Counsel lists a third article as having been published in 1998 in the *World Wide Web Journal*, but submits only a copy of the paper purportedly accepted by the journal and no evidence of its publication. Counsel similarly lists a fourth article as having been printed in the *Proceedings of the Seventh Workshop of Information Technology and Systems* in 1997. The record documents the petitioner's presentation of the paper at this conference, but the petitioner submitted no evidence that the paper was actually printed in the conference proceedings.

The petitioner is the lead author of three of his five published articles. As discussed above under the fifth criterion, one of these three articles has been minimally cited. This article, "An Architecture for Integrating OODBs with WWW," was published in 1996 in *Computer Networks and ISDN Systems* and presented at the Fifth International World Wide Web Conference. The article has been cited in three manuscripts written by other scholars in the petitioner's field. One of these citing manuscripts has been published in an academic journal and another was presented at the Sixth International World Wide Web Conference. The petitioner's article is also included in a bibliography on OODBs from an unidentified source.

The record indicates that only one other article co-authored by the petitioner has been cited in his field. The article is entitled "An Architecture for WWW-based Hypercode Environments" and was published in 1997 in the *Proceedings of Pulling Together – Nineteenth International Conference on Software Engineering*. The petitioner submitted excerpts from four papers published in scientific journals that cite his 1997 article. The article is also cited in manuscripts from three internal academic and company publications and is included in a bibliography on Hypertext Techniques from the website of a university in Finland. On appeal, counsel lists two other articles and one book chapter that cite the petitioner's 1997 article, but the submitted excerpts of these citing manuscripts do not include any evidence of their publication. In fact, one article ("Capturing Communication and Context in the Software Project Lifecycle") is captioned, "For submission to *Research in Engineering Design*."

The record shows that the petitioner has co-authored five articles that have been published in scientific journals or conference proceedings. Two of the petitioner's articles have been minimally cited and recognized by other researchers in his field. However, the petitioner's most recent article was published in 1999 and the most recent published citation to his work also occurred in 1999, four years before his petition was filed. The petitioner's

minimal publication and citation record does not reflect sustained national or international acclaim. Accordingly, he does not meet this criterion.

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

Documentation of an alien's presentations at scientific conferences may provide comparable evidence of his or her eligibility under this criterion pursuant to 8 C.F.R. § 204.5(h)(4). The petitioner initially submitted copies of the text of four talks written or co-authored by him, but no documentation of the actual presentation of the talks at conferences in his field. On appeal, the petitioner submitted copies of or excerpts from four of his co-authored manuscripts, which document the presentation of his work at the following conferences: Hypertext 98: The Ninth ACM Conference on Hypertext and Hypermedia; Pulling Together – the 19th International Conference on Software Engineering (1997); the Tenth International Software Process Workshop (1996); and the Fifth International World Wide Web Conference (1996). Steve Dossick and Yu Li also state that the petitioner presented his work at the first Asian Pacific web conference. The List of Exhibits submitted with the petition identify a manuscript entitled "Transaction Services for WWW-Based SDE" as "presented at APWEB98 (Asian Pacific Web Conference), September 28, 1998," but the record contains no corroborative evidence that the petitioner's work was actually presented at this meeting.

In particular, Dean Osterweil states that the petitioner's co-authored article, "An Architecture for WWW-Based Hypercode Environments," was "chosen from among approximately 300, for presentation at the 1997 ICSE [International Conference on Software Engineering]" and that the petitioner's presentation "generated great interest among conference participants." Professor Anderson also notes that the petitioner's presentation of his work on JPern at the 1998 ACM Conference on Hypertext and Hypermedia was "published in the proceedings of the conference and referred to and cited numerous times by myself and other researchers in the field." As discussed above under the sixth criterion, the petitioner's article was cited in four papers published in scientific journals, three internal publications, and is included in a bibliography on Hypertext Techniques from the website of a university in Finland.

Professor Anderson further explains that the petitioner discussed his work at three conferences with "very competitive" selection processes for presentations: the ACM Conference on Hypertext and Hypermedia, the International Conference on Software Engineering and the International World Wide Web Conference. For example, Professor Anderson states that the acceptance rate for the 2004 International World Wide Web Conference was 15 percent and explains that "[c]onsidering that the submitted papers are all from the top experts in this field, this is a very low percentage. . . . [O]nly the very best research work that is genuinely novel and has the greatest potential to make an impact on the field is accepted. By this measure alone, [the petitioner] is certainly among the top tier of the experts in the field." On appeal, the petitioner submitted the Call for Papers for the Fifth International World Wide Web Conference where he presented his article, "An Architecture for Integrating OODBs with WWW." The document explains that "[t]he primary focus of the conference is on new original research results and on innovative technology related to the World Wide Web" and states that "[a]ll submitted papers will be refered [sic] for relevance, originality, correctness and quality."

The record indicates that the petitioner presented his work at four scientific conferences in his field between 1996 and 1998. The evidence shows that the petitioner's presentations at three of these conferences arose from a highly competitive selection process, that the petitioner's presented articles were published in the proceedings of four conferences, and that his presented work received some recognition in his field. However, the petitioner's most recent conference presentation was made in 1998, five years before his petition was filed, and

the record does not establish that he continued to present his work at major conferences in his field in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

To meet this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. In this case, the petitioner claims to have performed a leading or critical role for Goldman and Sun, but the record does not demonstrate his eligibility under this criterion.

Laurent Daynès, Steve Dossick, Jinsong Wang, Yu Li, Professor Kaiser, Dean Osterweil, Professor Anderson, and Dean McClintock all discuss the importance and value of the petitioner's work for Goldman, but their letters do not provide a consistent description of his actual position and role at the company. Professor Kaiser states that the petitioner is a "Software Architect for the Fixed Income Currency & Commodity division of Goldman Sachs" and Laurent Daynès describes him as "a researcher and developer" for that division. Yet the letters submitted on appeal all state that the petitioner is a Vice President who directs strategic technology research at Goldman. The record contains no support letter or other primary evidence from Goldman to clarify this discrepancy and attest to the petitioner's allegedly leading or critical role for the company.

The record also fails to demonstrate that the petitioner played a leading or critical role at Sun. Laurent Daynès, Steve Dossick, and Professor Kaiser all discuss the value of the petitioner's PJama application and its incorporation into Sun's Java product. Yet the record does not document the petitioner's exact position at Sun or establish that he performed a leading or critical role for the company as a whole.

The record indicates that the petitioner's work on two projects is highly valued by those individuals familiar with his work at Sun and Goldman. Even if the petitioner supervised and made important contributions to specific projects at Sun and Goldman, the record does not establish that he performed a leading or critical role for these companies at large. Accordingly, the petitioner does not meet this criterion.

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

The petitioner did not initially claim eligibility under this category. On appeal, counsel claims the petitioner meets this criterion because his income from 2002 through 2004 was above the average total compensation for "Top Financial Systems Executives" in New York during this time period. Counsel states that the petitioner's total compensation was \$400,000 in 2003 and \$300,000 in 2002, but the submitted evidence does not support this claim. The documents submitted on appeal include a copy of the petitioner's 2003 W-2 form that states his wages as \$277,473 and an earnings summary listing his gross pay for 2003 as \$301,569. A handwritten note on the submitted copy of the 2003 W-2 form and earnings summary reads, "Base Comp. \$115,000[.] Other payments are bonuses attributed to 2002." Hence, we cannot determine the petitioner's income from January through April 15, 2003, the date he signed the Form I-140. The record also contains no documentation of the petitioner's income in 2002. Counsel submits a printout from the *Wall Street Journal* Executive Career Site, "CareerJournal.com," which states that the average salary of top financial systems executives in New York is \$200,218. Yet without documentation of the petitioner's income prior to filing, we cannot determine how his

compensation compares with this figure. Nonetheless, we note that the printout lists the income of these executives at the 67th percentile as \$407,264, an amount well above the petitioner's gross 2003 income of \$301,569.

Counsel further states that the petitioner's total compensation package for 2004 was \$600,000 and cites the submitted assessment of Charles M. Chinzi, President of Creative Career Solutions, who states that "[t]his level of compensation is very high, even for those at the highest levels of this field." We cannot consider evidence regarding the petitioner's 2004 income because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

The evidence submitted on appeal does not establish that the petitioner's income at the time of filing was significantly higher than other similarly employed individuals in his field or comparable to executives at the very top of his field. Accordingly, he does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner has made valuable contributions to his field, but the record does not establish that he had achieved sustained national or international acclaim at the time of filing. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.