



U.S. Citizenship  
and Immigration  
Services

B2

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



FILE:

WAC 03 245 54576

Office: CALIFORNIA SERVICE CENTER

Date MAR 31 2006

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 Director, California Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in business, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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. Specifically, the director appears to have concluded that the petitioner does not meet any of the ten regulatory criteria, of which an alien must meet three to be eligible for the classification sought.

On appeal, counsel asserts that the director failed to accord sufficient weight to the reference letters submitted. Counsel also briefly addresses eight of regulatory criteria. The petitioner submits additional evidence.

While some of the director’s analysis is confusing, he raised valid concerns. The petitioner has not overcome all of those concerns on appeal. Specifically, we find that while the petitioner has performed a leading or critical role for his distinguished employers pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), he has not established that he meets any of the other criteria.

Before we address the specific eligibility requirements and the evidence submitted, we note at the outset that the petitioner relies heavily on letters from colleagues who provide general assertions that the petitioner meets various criteria.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the petition must be filed with the initial evidence required by regulation. 8 C.F.R. § 103.2(b)(1). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). The regulation at 8 C.F.R. § 103.2(b)(2) provides:

*Submitting secondary evidence and affidavits. (i) General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as

church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

We find that where the regulations require specific, objective evidence of achievements, such as published material about the alien, the primary evidence includes copies of those published materials. Letters stating in general terms that the petitioner has received media attention, would need to “overcome the unavailability of both primary and secondary evidence.” Similarly, primary evidence that a publication is “major” would be circulation data from the publication itself. Letters from individuals with no association with the publication attesting to the publication being widely read are not primary evidence.

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 have 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.

On appeal, counsel asserts that the director “seems to imply that in order for an extraordinary ability beneficiary to properly satisfy a regulatory criterion, the beneficiary must do so in a way that is typical of extraordinary ability beneficiaries.” Counsel asserts that such reasoning was found to be “circular” by the federal district court in *Buletini v. U.S.*, F. Supp. 1222, 1231 (E.D. Mich. 1994). In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Regardless, the language quoted by counsel was rejecting a requirement that the alien’s participation as a judge “required or involved extraordinary ability.” The court did not explicitly reject any evaluation of the quality of the evidence submitted to meet a given criterion. Ultimately, the criteria are designed to set the alien apart from others in his field. Some of the criteria are inherent to certain occupations. For example, all coaches “judge” the work of their athletes, most competent researchers publish their results and all visual artists must “display” their work for sale in order to make a living in their field. Thus, the evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim given the alien’s occupation if the statutory standard of acclaim is to have any meaning.

On appeal, counsel asserts that the director erred in characterizing the petitioner as a “banker,” an “investment banker,” a “special advisor banker” and a “banker executive.” Counsel asserts that the petitioner “has only ever claimed extraordinary ability in the field of Corporate Financial Strategic Advisory Services.” According to Part 6 of the petition, the petitioner seeks to classify himself as an alien with extraordinary ability as an “investment banker.” Despite the obvious importance of the petitioner’s exact position title to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner’s employers never provide this information. The petitioner lists his job title as “Senior Associate, Investment Banking” on his curriculum vitae.

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 has submitted evidence that, he claims, meets the following criteria.<sup>1</sup>

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

---

<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Initially, counsel asserted that the petitioner met this criterion by his admission to the Indian Institutes of Technology (IIT) and the Columbia Business School. The director concluded that these admissions “are not awards for achievement in the professional world of endeavor.” On appeal, counsel asserts that the reference letters “verified the significance of the awards and demonstrated that the awards were indeed related to the [petitioner’s] field and were therefore recognizable.”

**Counsel mischaracterizes the evidence submitted.** While the petitioner’s references praise the reputation of the petitioner’s schools and his class standing, none of them assert that the petitioner has ever won a prize of any kind, let alone a lesser nationally or internationally recognized prize or award.

It is instructive that Congress has expressed its view that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability, a lesser classification than the one sought. Section 203(b)(2)(C) of the Act. Further, in a case involving a lesser classification, this office concluded that academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. *Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. at 219, n.6. If a degree or academic achievements cannot satisfy lesser classifications, they certainly cannot rise to the level of lesser nationally or internationally recognized awards or prizes for excellence in the petitioner’s field of endeavor.

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

*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.*

Initially, the petitioner submitted evidence that the petitioner is a Chartered Certified Accountant. The certificate reveals that the certification is based on passage of an examination. The petitioner also submitted materials about the Association of Chartered Certified Accountants (ACCA) indicating that ACCA is “the largest and fastest-growing international accountancy body, with over 300,000 students and members in 160 countries.”

Counsel did not address this criterion in his response to the director’s request for additional evidence. The director concluded that the record contained no evidence “indicating that there are set rules for membership including rigid standards to join.” On appeal, counsel merely states that evidence to meet this criterion was submitted. Counsel further indicates that the petitioner has been invited to join the Indus Entrepreneurs (TiE). The petitioner submits an e-mail welcoming the petitioner to join as a TiE-Silicon Valley Charter Member. Membership is by invitation only and includes “successful individuals from the Indus region, those interested in Indus region and who have achieved success in their professions and are now ready to engage in helping others as mentors and advisors.” The materials reveal that TiE has 42 chapters in nine countries and that the chapters are “separate legal entities”

managed independently. The e-mail invitation is dated June 13, 2005, well after the filing date of the petition.

Passing a professional examination may suggest a degree of expertise above that ordinarily encountered, the standard for aliens of exceptional ability, but is not an outstanding achievement such that doing so is indicative of national or international acclaim. Thus, the petitioner's certification as a chartered certified accountant is insufficient to meet this criterion. The number of ACCA members suggests that it is not particularly exclusive.

The petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, we cannot consider his invitation to join TiE. Regardless, the petitioner was invited to join a local, independently managed chapter. Thus, membership in this chapter is not judged by national or international experts as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Finally on appeal, counsel asserts that the reference letters "verified that the [petitioner] has indeed been associated with qualifying associations for his entire professional life." The [director's] disregarding of this evidence was clearly inappropriate."

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires *membership* in, not association with, an organization that requires outstanding achievements of its members. Moreover, the regulation requires evidence of these memberships. Primary evidence of such membership would be the membership card itself or comparable official evidence from the association itself. *See* 8 C.F.R. § 103.2(b)(2) quoted above. As such, we need not rely on the assertions made in reference letters without evidence that both primary and secondary evidence are unavailable. The petitioner has provided no such evidence.

In light of the above, the petitioner has not established 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.*

Initially, counsel quoted the petitioner's references for the proposition that this criterion is not readily applicable to the petitioner's field. The references further assert that there has been published material about the petitioner's work in Tanzania. For the reasons discussed above, the primary evidence of those published materials includes copies of the articles themselves. The petitioner submitted a "media release" posted on Tanzania's National Bank of Commerce's website discussing its own takeover by the South African and African banking giant [REDACTED]. The petitioner also submitted articles posted at [REDACTED] about Celestica's purchase of an Avaya plant, a financial deal between Schroeder Ventures and Veba Electronics and Nortel's sale of a unit to Bookham. Finally, the petitioner submitted articles posted at DDi's own website about its offering of convertible subordinated notes. The petitioner is not mentioned by name in any of these materials.

In response to the director's request for additional evidence, which included a specific request for evidence that the materials appeared in major media, counsel responded only that additional evidence of media coverage is being submitted. The petitioner submits an article in *India West: Business Magazine* about a conference at the University of California, Berkeley. While the petitioner is identified in a photograph caption, he is not named in the article itself. The article is clearly "about" the conference, not the petitioner.

The director noted that the initial evidence included articles that did not mention the petitioner. The director then appears to confuse articles by the petitioner with the evidence submitted to meet this criterion. Finally, in a confusing paragraph that does not relate well to the evidence submitted, the director implies that the petitioner has been cited and then discounts citations as evidence to meet this criterion. On appeal, counsel notes again that one of the petitioner's references asserted that this criterion is not applicable to the petitioner's field. Yet, in the introduction to the appellate brief, counsel continues to maintain that the petitioner meets this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) is unambiguous, the published materials must be "about the alien." It defies logic to suggest that articles that are about corporate mergers and buyouts with which the petitioner was involved but that fail to even mention the petitioner by name can be considered "about" the petitioner in any reasonable interpretation of the word. Our conclusion is consistent with the statutory standard of national or international acclaim. Published material that fails to mention the petitioner by name cannot garner him any recognition, let alone acclaim.

We acknowledge that the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of "comparable" evidence where a criterion is not readily applicable. [REDACTED] Co-Chairman and Co-CEO of [REDACTED], asserts that the confidential nature of the petitioner's business does not lend itself to public recognition in the media. As stated above, CIS may evaluate the content of expert letters and whether such letters are corroborated in the record.

The record does not support the implication that this criterion is not applicable to the field of finance. The issue of *Siliconindia* for which the petitioner authored an article includes articles interviewing or featuring prominent financial advisors. Given the common knowledge that major trade journals with national and international circulation exist in the finance field, Mr. [REDACTED] bare assertion that this criterion is inapplicable is insufficient. It is precisely because published material focusing on an individual is rare in any field that evidence of such material is listed as a criterion indicative of national or international acclaim.

Even if we were to accept that this criterion is not readily applicable to the field of finance, the regulation at 8 C.F.R. § 204.5(h)(4) requires the submission of "comparable" evidence. Evidence that is otherwise insufficient to meet the plain language of the criterion does not become "comparable" simply because the criterion is inapplicable. We find that published material that does not mention the

petitioner by name is not comparable to the type of published materials featuring the alien contemplated by this criterion.

In light of the above, the petitioner has not established that he meets this criterion. This conclusion does not mandate that the published material has no evidentiary value. Rather, the material about projects on which the petitioner has worked relates to the significance of the petitioner's projects and will be considered below.

*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.*

Initially, counsel quotes the petitioner's references recounting the petitioner's job duties that involve reviewing the work of others. Counsel further asserts that the petitioner was "regularly called upon to serve as a panelist in field-related events taking place in his native India." 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). Primary evidence to meet this evidence might include invitations to judge the work of others and official confirmation of the alien's performance of those duties such as credit as a judge or editor in a program, journal or book.

Mr. [REDACTED] asserts that the petitioner "is regularly called upon to judges [sic] and review the work of distinguished fellow professionals in his field. He is a key participant in our corporate recruiting efforts, and plays an indispensable role in both our efforts to acquire outside talent in the field and our internal performance review sessions." [REDACTED], Co-Head of the Technology Investment Banking Group at JP Morgan, uses almost identical language to describe the petitioner's duties at JP Morgan. Specifically, the petitioner "was regularly called upon to judge and review the work of distinguished fellow professionals in his field. He was a key participant in our corporate recruiting efforts and can take responsibility for attracting a number of the firm's finest hires." Finally, Mr. [REDACTED], Senior Partner at Pricewaterhouse Coopers (PwC), asserts that he developed an expertise in recognizing and helping to develop talent and that the petitioner has "this same expertise." Specifically, Mr. [REDACTED] asserts that the petitioner "exercised a facility for judging and reviewing the work of his peers during his tenure." Mr. [REDACTED] does not explain what work the petitioner actually judged or reviewed and how these duties compare with the typical duties in the petitioner's occupation.

The petitioner submitted a certificate recognizing his participation on a panel from the Sparks 1993 Computer Club and another certificate from Banaras Hindu University affirming the petitioner's participation on a Computer Club panel during 1992-1993.

Counsel did not discuss this criterion in response to the director's request for additional evidence. The director concluded that the information was too vague and did not demonstrate that the judging responsibilities were "limited to executives of outstanding achievement or to renowned executives."

On appeal, counsel asserts that this conclusion is contradicts the holding in *Buletini*, 860 F. Supp at 1231.

As stated above, the district court decision in *Buletini* is not binding on us. Nevertheless, we are not holding that the petitioner must demonstrate that the judging responsibilities require or involve extraordinary ability, the standard rejected by the *Buletini* court. That said, the evidence submitted to meet a given criterion must still be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. We concur with the director that the reference letters are far too vague as to the petitioner's judging responsibilities and their significance. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Moreover, as stated above, duties that are inherent to an occupation cannot serve to meet a given criterion. Similarly, duties incidental to one's employment are not as persuasive as outside judging responsibilities. Although unclear, it appears that the petitioner served on a hiring panel for at least two of his employers. While being requested to serve on a hiring panel for one's employer is indicative of the *employer's* recognition, it is not indicative of national or international acclaim.

Finally, not every "panel" judges the work of others. For example, one can serve on a panel of speakers. The record lacks evidence of the petitioner's duties while on the computer club panels. Regardless, the nature of the club is not indicative of reviewing the work of others in his current field of claimed extraordinary ability, financial advising.

Without evidence that the petitioner has served on an editorial board of a trade journal in his field, as an external review panelist for an association with which he is not otherwise associated or in a comparable position, we cannot conclude 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.*

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

After graduating from the Indian Institutes of Technology, the petitioner worked for [REDACTED] (PW), PwC's legacy firm, in Tanzania for three years. While there, he advised the Tanzanian government on the privatization of state-owned companies. Mr. [REDACTED] does not provide the petitioner's job title, but asserts that the petitioner "was an exceptionally valued member of PW's East Africa practice during his time here as well as a recognized leader within both the firm and his area of expertise." Mr. [REDACTED] further attests to the petitioner's "pivotal role" in the success of the privatization effort and asserts that many of the state-owned companies would have otherwise gone bankrupt. According to Mr. [REDACTED] the petitioner "played a large role in drafting a number of the industry-specific investment and marketing pieces that were published by the United National Development Program (UNDP) for potential foreign investors in Tanzania." Primary evidence of these pieces would be copies of the pieces themselves, which the petitioner has not submitted. As such, we cannot determine whether the petitioner is a credited author or the number of credited authors.

[REDACTED] who collaborated with the petitioner at PW, asserts that the petitioner worked on the restructuring of Tanzania's National Bank of Commerce, which was insolvent by the 1990s. Mr. Allen does not provide the petitioner's job title, but asserts that the petitioner was "an important member of a large PW team drawn from our offices in the UK, Eastern Europe and Africa."

In addition [REDACTED] formerly the Chief Financial Officer of the National Bank of Tanzania, attests to the significance of the petitioner's work at PW. Mr. [REDACTED] asserts that he requested PW send the petitioner to the bank to "provide vital analytical assistance and oversight." The petitioner "became a major strategic advisor, directing the analytical work while I and the rest of the team set about the task of implanting PW's restructuring initiatives." Mr. [REDACTED] credits the petitioner with the success of the struggle to revive a key Tanzanian financial institution.

While Mr. [REDACTED]'s assertions must be given due consideration, the record does not corroborate his statements. The press release from the National Bank of Commerce discusses their takeover by a South African bank in August 1999, nearly two years after the petitioner must have left PW because he began studying for his MBA at Columbia University in the Fall of 1997. The press release not only fails to mention the petitioner, it fails to mention PW. Moreover, it indicates that a due diligence exercise "carried out at the end of 1998" reflected that the bank was "technically insolvent." Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] fail to explain the significance of the petitioner's work with this bank, which appears to have ended in mid 1997, given that the bank remained technically insolvent over a year later.

Subsequently, the petitioner obtained his MBA from Columbia University and went to work for JP Morgan. Mr. [REDACTED] asserts that the petitioner "was responsible for a number of highly significant original contributions to his field" during his three years at JP Morgan. Mr. [REDACTED] asserts that these contributions include the petitioner's advice to JP Morgan's clients and financial sponsors. Mr. [REDACTED] asserts that a deal on which the petitioner worked involving a Japanese client's purchase of a Canadian firm, was covered in the press. Mr. [REDACTED] does not explain, however, how the petitioner's successful performance of his job duties constitutes a contribution of major significance to the field. Mr. [REDACTED]

does not assert that the petitioner has influenced or otherwise impacted the field beyond the deals on which he has worked.

Mr. [REDACTED] also discusses the petitioner's successful work with clients of Wells Fargo Bank (WFB), a subsidiary of Wells Fargo, asserting that this work "considerably enhanced WFS' already sterling reputation within the corporate finance strategic advisory services community."

Finally, several clients attest to the value of the petitioner's advice. These letters verify the petitioner's competence and ability to perform his job duties successfully, but do not explain how the petitioner has impacted his field.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance in the field. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). It can be expected that a contribution of major significance will have an impact beyond the petitioner's clients and employers. The petitioner has not established that his valuable advice to his clients has impacted the field of corporate financial advice. Thus, the petitioner has not established that he meets this criterion.

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

Mr. [REDACTED] states:

As befits someone of his stature within the field, [the petitioner] is responsible for the authorship and dissemination of noteworthy field-related articles and presentations. I take pride in how these activities reflect well on WFS – through them we are able to realize the potential for continued excellence in our endeavors, not to mention commercial success. We expect [the petitioner's] work will soon appear in respected scholarly journals; I understand a selection of such materials will accompany this petition.

Although Mr. [REDACTED] states that examples will accompany the petition, he also implies that the petitioner's work had yet to appear in respected scholarly journals. The petitioner submitted an article on outsourcing manufacturing in *Siliconindia* and an unpublished article on leveraged buyouts. The petitioner also submitted e-mail messages regarding another as yet unpublished article. Finally, the petitioner submitted a certificate from the Institution of Engineers (India) confirming his presentation of a paper on environmentally friendly coal in 1992 and a certificate from the Society of Electronics and Computer Engineers confirming his presentation of a paper on computer science technology in 1991.

In response to the director's request for additional evidence, the petitioner submitted articles published in *Buyouts* and *ebn* after the date of filing. Also after the date of filing, the petitioner participated in a

conference sponsored by the American India Foundation at the University of California, Berkeley as one of the “Other Dignitaries and Table Leaders.” Despite the director’s specific request for evidence of the significance of the publications carrying the petitioner’s work such as their circulation, the petitioner failed to submit official circulation data for **the publications or attendance data for the conference**. Rather, the petitioner submitted a letter from ██████████, Managing Director and Group Head of the Private Capital Group at WFS, asserting that *Buyouts* is “an important Thomson Financial publication catering to the financial community,” that *ebn* is “an industry publication with a wide audience in the electronics industry and *Siliconindia* is “a well-read monthly targeted at technology companies in the Bay Area.”

The director acknowledged the petitioner’s authorship of the articles in *Siliconindia* and *ebn* but erroneously concluded that the author’s bio accompanying the article in *Buyouts* was submitted as published material about the petitioner. The director did not explicitly conclude whether the petitioner meets this criterion, but did note that the record lacks evidence of how often *Siliconindia* is published, what geographical area it covers and its circulation. On appeal, counsel asserts that the references “verified that the publications were significant and known throughout the industry.”

First, the petitioner’s presentations on coal and computer science technology do not appear to fall within his claimed area of expertise, finance. Second, the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of scholarly articles published in professional or major trade publications or other major media. Thus, establishing that the publications are professional or major trade publications or other major media is an essential element of the criterion. While we do not doubt the sincerity or credibility of Mr. ██████████ primary evidence to establish this criterion would be circulation data provided by the publication itself, which the petitioner has not submitted.

Even if we accepted Mr. ██████████ assertions, the petitioner has not established that he met this criterion as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. As of that date, the only article the petitioner had authored or presented *in his field* is the article in *Siliconindia*. Mr. ██████████ indicates that *Siliconindia* is a local publication. Thus, the article in that publication cannot serve to meet this criterion.

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

Counsel quotes the references’ statements about the petitioner’s contributions as evidence to meet this criterion. The director also appears to confuse contributions to the field with this criterion. We have already considered the petitioner’s claimed contributions above. At issue for this criterion are the positions the petitioner was hired to fill and the reputation of the entities that hired him. We do not contest the nationally distinguished reputations of the entities that have hired the petitioner. Thus, it remains to evaluate the positions he was hired to fill.

Curiously, despite the obvious relevance of the petitioner's actual job title, none of his employers provide that information. Instead, their assertions are much more subjective and vague. As stated above, Mr. [REDACTED] asserts that the petitioner was an "important member" of a team at PW. Mr. [REDACTED] attests to the petitioner's "large" role on a particular project at PW and his "major role in establishing the office and its infrastructure, maintaining our best practices library and knowledge resources, and training other consultants."

Mr. [REDACTED] asserts that the petitioner was a "key member of JP Morgan's worldwide Systems & Semiconductors Practice group and played an anchor role in building the practice by providing advisory services of the highest quality to some of the most prestigious companies in the world." Mr. [REDACTED] also references the petitioner's "leadership abilities."

Mr. [REDACTED] asserts that the petitioner "has been leading our effort to target tier-one WFB corporate banking clients and offer innovative financial advisory services to them." Mr. [REDACTED] discusses the work of the petitioner and "his team" on accounts that represent WFB's "most prized corporate banking relationships." Mr. [REDACTED] concludes that the petitioner is a "leading performer" at WFB. In a subsequent letter, Mr. [REDACTED] asserts that the petitioner "spearheaded" WFB's effort to create a dedicated practice covering technology sectors. As a result, the petitioner is now WFB's "lead technology banker for technology hardware companies including semiconductor, electronics contract manufacturing, and electronics design automation companies."

While information regarding the petitioner's job titles and the organization of his employers would have considerably bolstered his claim to meet this criterion, we are satisfied that the petitioner has been given critical and leading responsibilities for his employers. As such, the petitioner has established that he meets this criterion.

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

Several of the petitioner's references assert generally that the petitioner's remuneration has been high. For the reasons discussed above, these letters are not primary evidence to meet this criterion. The petitioner also submitted evidence that the level two wage in the geographic area where the petitioner works is \$84,677 annually. The petitioner submitted his joint 2002 tax return reflecting wages of \$280,825. The total wages on a *joint* return, however, may not represent the petitioner's income only. The petitioner did not submit his Form W-2. Counsel did not address this criterion in his response to the director's request for additional evidence.

The director concluded that the petitioner had not submitted evidence that his "salary is the norm within the industry." On appeal, counsel asserts that the petitioner had submitted evidence that his "salary was well over 100% greater than the average salary for even the most experienced individuals in his field." Counsel asserts that the petitioner has received over \$400,000 over the past 18 months. The petitioner submits his 2004 joint tax returns reflecting total wages of \$220,552 and a pay stub reflecting an annual

bonus of \$222,500 in February 2005. Finally, the petitioner submitted evidence that the top 10 percent of financial analysts and personal financial advisors earned more than \$108,060 in 2002.

As discussed above, the petitioner must demonstrate his eligibility as of the date of filing, August 28, 2003. The only evidence of the petitioner's income prior to that date is the joint income tax return. As stated above, a joint tax return, without accompanying pay stubs or Forms W-2, cannot establish the income of one person. Thus, the petitioner has not established that he meets this criterion.

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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an investment banker to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as an investment banker, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the 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.