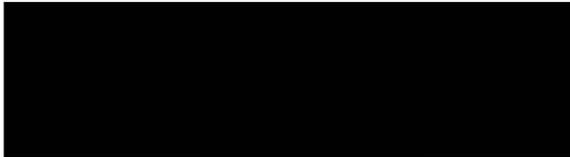


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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAY 09 2006**
WAC 03 222 50227

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.


Robert P. Wiemann, Chief
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.

On appeal, counsel asserts that the director incorrectly dismissed evidence as not relevant to the petitioner’s field. Specifically, the proposed employment listed on Part 6 of the petition is “venture capitalist.” The director relied on this information. On appeal, however, counsel asserts that the director erred by not narrowing the petitioner’s field to “Venture Capital (University Technology Commercialization).” In so narrowing the petitioner’s field, counsel asserts that the petitioner’s engineering accomplishments are relevant to his acclaim in his current field. For the reasons discussed below, we concur with the director that the petitioner’s engineering accomplishments are not indicative of acclaim in his current field. Moreover, much of the evidence does not carry the weight ascribed by counsel even in the field of engineering. While the director identified specific pieces of evidence absent from the record, such as the petitioner’s tax returns, the petitioner failed to submit such evidence on appeal. For the reasons discussed below, we find that the petitioner has submitted sufficient evidence to meet only one of the ten regulatory criteria, of which an alien must meet at least three. Thus, we uphold the director’s ultimate finding that the petitioner has not established his eligibility for the classification sought. While the petitioner has growing recognition in California, the record does not establish his sustained acclaim at the national or international level.

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.

As stated above, according to the petition, it seeks to classify the petitioner as an alien with extraordinary ability as a venture capitalist. As quoted above, section 203(b)(1)(A)(ii) of the act requires that the petitioner seek to continue work in his area of expertise. Accomplishments in a related field, while relevant, cannot serve to establish eligibility in the absence of evidence that the alien has sustained any acclaim he might have had in the related field in the field in which he seeks to continue working. For example, while an athlete and a coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). While not binding on us, it is instructive that the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field.

Id. In this matter, counsel would have us not only consider accomplishments from a different profession in the same field, but in a wholly separate field, science. On appeal, [REDACTED], a Partner of [REDACTED], asserts that a successful venture capitalist in a technology related field “must understand what it is that a company does so that he or she can leverage his or her business talent in order to maximize the company’s potential.” In a previously submitted letter, however, [REDACTED] President and Chief Executive Officer of [REDACTED], asserts that the petitioner was able to provide venture capital assistance to Nanosys despite his lack of “any formal training in nanotechnology or biotechnology.” [REDACTED] a Ph.D. candidate at Stanford and Vice President of Stanford’s Entrepreneur’s Challenge, asserts that even though the petitioner “has no formal training in medical devices[,] he saw the potential for Inventra, a participant in this year’s business plan competition.” Even if we accept that engineering knowledge is important for the petitioner’s subspecialty of venture capital, we are not persuaded that acclaim as an engineer predicts ability as a venture capitalist any more than acclaim as an athlete predicts ability as a coach.

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.¹

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

Initially, counsel references a letter from [REDACTED], Founder and Managing Director of Draper [REDACTED] the petitioner's employer. The letter is not on company letterhead. Mr. [REDACTED] asserts that the petitioner garnered national awards and recognition by distinguishing himself while studying for his undergraduate degrees and that the petitioner's inclusion in a biographic dictionary can serve to meet this criterion. The petitioner submitted evidence that he received a Bachelor of Engineering degree with honors from the University of Manchester, the [REDACTED] Prize from the same institution, the FC Williams Prize from the same institution and a 1996 Institution Prize from the British Institution of Electrical Engineers (IEE) "for distinction shown at the University of Manchester in a course leading to the award of a first degree in electronic and electrical engineering."

In response to the director's request for additional evidence of the significance of the petitioner's awards, counsel merely asserted that the petitioner's awards were nationally and internationally recognized. 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). The director concluded that these awards did not relate to the petitioner's ability in the field of venture capital. On appeal, counsel asserts that engineering is sufficiently related to the petitioner's subspecialty of venture capital.

First, we concur with the director that the petitioner's awards in the 1990's from the University of Manchester relating to his undergraduate degree in engineering are not evidence of his sustained acclaim in the field of venture capital several years later.

Regardless, the "awards" themselves are not indicative of the petitioner's acclaim in any field. The awards from the University of Manchester are academic awards limited to students at that institution. The record contains no evidence as to the significance of the award from the IEE, although it appears to be in recognition of academic achievements as well. As experienced experts do not compete for student awards, they cannot establish that the petitioner is one of the very few at the top of his field. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm. 1998). Thus, awards based on academic performance are certainly not sufficient to meet the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification. Finally, inclusion in a volume of a frequently printed biographic dictionary

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

with hundreds or thousands of other members of the field is not a nationally or internationally recognized award or prize for excellence in the field.

For the reasons discussed 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, counsel asserted that the petitioner's membership in the IEE and inclusion in biographic dictionaries serve to meet this criterion. Counsel references the letter from Mr. [REDACTED] asserting that the petitioner became a member of IEE "based on his outstanding performance at the University of Manchester."

The director requested evidence of the membership criteria for the associations of which the petitioner is a member. The petitioner did not provide the membership criteria for IEE in response. Rather, counsel referenced a letter from [REDACTED] a member of the Venture Law Group of the law firm [REDACTED] and [REDACTED]. Mr. [REDACTED] explains that the petitioner's internet-based social networking company, [REDACTED] is a client of his firm. Mr. [REDACTED] continues that he was "so impressed with [REDACTED] that he "offered to introduce [the petitioner] and his partner to our Venture Capital Network, which includes perhaps the most prestigious venture capital firm in the world, [REDACTED]."

The director concluded that the petitioner had not established memberships in exclusive venture capital associations. On appeal, Mr. [REDACTED] asserts that there are no professional associations of venture capitalists but that certain firms have a "strong association" with top-tier venture capital, including Stanford University where the petitioner received his Masters degree in Science in Management Science and Engineering.

The petitioner's membership in IEE is not indicative of acclaim as a venture capitalist. Regardless, the petitioner has not submitted the official membership criteria for the IEE. Thus, the petitioner has not established that IEE membership could serve to meet this criterion in the field of engineering.

Inclusion in a volume of a frequently published biographic dictionary with hundreds or thousands of entries is not a membership in an association, let alone an exclusive association that requires outstanding achievements of its members as judged by recognized national or international experts in the field.

The fact that the law firm hired by the petitioner to represent [REDACTED] introduced the petitioner to the firm's own venture capital group as a potential investment opportunity for "members" of that group is not evidence of the petitioner's membership in an exclusive association.

Accepting Mr. [REDACTED] assertion that no exclusive associations exist in the petitioner's field, the lack of such associations is not presumptive evidence that the petitioner meets this criterion. Mere association with distinguished firms and schools is insufficient. First, a separate criterion set forth in the regulation at 8 C.F.R. 204.5(h)(3)(viii) provides that only evidence of a leading or critical role with a distinguished organization is indicative of sustained national or international acclaim. We will consider the petitioner's claim to meet this criterion below. Second, the supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

We find that this logic applies to the petitioner's field as well. Simply attending a top school and working for a top firm is not presumptive evidence of eligibility.

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.

The petitioner relies on press coverage of deals on which he has worked. He submitted reference letters attesting to his participation in deals, such as for Ember Corporation, End2End, Nanosys, Gen3 and Cambridge Software Partners. The petitioner also submitted media coverage of Ember's receipt of \$20 million in new capital in 2002 as well as its technical products. While CNBC Asia invited the petitioner for an interview as part of its coverage of Global Entrepreneurs Challenge (GEC) 2002, his firm insisted that he decline. In response to the director's request for additional evidence, the petitioner submitted reference letters attesting to his 2004 investment work for Groxis and published materials on that company. These materials relate to after the date of filing and cannot be considered evidence of the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The director concluded that the materials were not primarily about the petitioner. On appeal, the petitioner submits articles that postdate the date of filing and, as such, are not relevant to the petitioner's eligibility as of that date. *Id.* Regardless, these articles are similar to those already submitted as they do not mention the petitioner by name. Also on appeal, Mr. [REDACTED] asserts that for venture capitalists, press coverage is "properly understood" as the coverage of his portfolio. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published materials "about the alien." In support of a reference letter from [REDACTED] a professor at Stanford University, the petitioner submitted an article in *Forbes* that features her and her work as an "angel," someone who

finances upstart companies before venture capitalists, agents for investors, become involved. This article suggests that published materials featuring individuals exist in the petitioner's field.

We concur with the director that press coverage of projects on which the petitioner worked cannot serve to meet the clear and unambiguous requirement that the materials be about the petitioner. It is significant that materials that do not even mention the petitioner by name cannot possibly garner the petitioner any acclaim beyond those who already know him and the projects on which he works. The regulation at 8 C.F.R. § 204.5(h)(4) does allow for the consideration of "comparable" evidence where a criterion is not readily applicable to an alien's field. Assuming this criterion is not readily applicable to venture capitalists as claimed, and the article featuring Professor [REDACTED] suggests otherwise, we are not persuaded that published materials that do not mention the petitioner by name are comparable to published materials about him.

Finally, we acknowledge that the petitioner has been included in biographic dictionaries. Appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not indicative of or even consistent with national or international acclaim and cannot serve to meet this criterion.

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

Dr. [REDACTED] Senior Vice President of ORINCON, asserts that the petitioner "identified [Indecrypt as a revolutionary new company] as a judge at Stanford University's Business Plan Competition in 2002." In a March 4, 2003 letter, Professor [REDACTED] at Stanford asserted that the petitioner had "been invited to serve as a judge in the Stanford Entrepreneur's Challenge this year." The petitioner also submitted an e-mail invitation to judge Stanford's E-Challenge February 21, 2003. [REDACTED] a Ph.D. candidate at Stanford and Vice President of Stanford's Entrepreneur's Challenge, asserts that the petitioner "has been a judge/speaker on entrepreneurship at prestigious institutions such as the Massachusetts Institute of Technology, UCLA and Harvard." The petitioner is listed as a 2001 GEC judge. Subsequent materials reflect that the GEC was jointly organized by Stanford and the National University of Singapore (NUS) and held at NUS. The petitioner also submitted evidence of his participation on speaker panels.

In response to the director's request for additional evidence, [REDACTED] a Partner at Draper Fisher Jurtvetson ePlanet Ventures, asserts that the petitioner is "currently" running Stanford's Entrepreneur's Challenge, which in 2003 allowed in projects from the University of California, Berkeley and is now expanding to include projects from the California Institute of Technology.

The director concluded that the above duties were primarily speaking, not judging. On appeal, Mr. Hartenbaum discusses the type of judging inherent to the venture capitalist occupation. The petitioner

submits evidence that he was a moderator at a conference after the date of filing. Such evidence cannot be considered as relevant to the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, a moderator of a speaker's panel is not necessarily judging the work of anyone.

Judging responsibilities inherent to one's occupation are not persuasive evidence that sets an alien apart from others in the field. For example, all coaches evaluate their athletes and all teachers evaluate their students, but not all coaches and teachers enjoy national or international acclaim. Similarly, it is inherent in the field of venture capital to evaluate business plans. Thus, simply evaluating business plans for an employer as part of the petitioner's job is insufficient.

Nevertheless, the petitioner's judging responsibilities for entrepreneur challenges both at Stanford and at NUS, appear to go beyond his job duties. We note that the petitioner appears on the list of judges and the separate list of speakers for the GEC. Thus, the director's concern that the petitioner only spoke does not appear valid. The list of judges for the GEC includes international experts from around the world, not just Stanford and NUS. As such, we are persuaded that the petitioner meets this one criterion.

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

The director concluded that the petitioner's documented contributions did not appear to set him apart from others in the industry. On appeal, counsel asserts that the reference letters addressed the petitioner's contributions, his role in them and their significance.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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 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. 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.

Mr. [REDACTED] asserts that the petitioner is responsible for some of the stronger deals in Draper Fisher Jurvetson ePlanet Ventures' portfolio and helped the firm "expand into new areas of investment," such as funding life sciences companies. [REDACTED], another partner at Draper Fisher Jurvetson ePlanet Ventures, makes a similar assertion. While the petitioner's insight was a contribution to his employer, it is not clear how it is an original contribution within the field. There is no suggestion that life science companies were unable to secure venture capital prior to the petitioner's work in this area and that he founded an entire new approach for these companies.

According to Mr. [REDACTED] the petitioner also "helped an internet-conferencing company gain market traction by giving them the brilliant idea of selling their technology to the United States Armed Forces." While Mr. Draper characterizes the latter advice as "groundbreaking," he does not explain how suggesting a potential large client to a company is a contribution of major significance to the field of venture capital funding.

Mr. [REDACTED] further discusses the petitioner's ability to negotiate the return of \$640,000 from a failed investment. While this deal was clearly beneficial to his employer, it is not clear how this deal influenced the field of venture capital funding as a whole. The deal does not appear to have garnered media coverage for its unique approach within the field.

[REDACTED] President and CEO of Ember Corporation, asserts that the petitioner "beat 19 other funds for the final \$3 million piece of the \$20 million round we raised in October 2002." Mr. [REDACTED] notes the press coverage the deal received because it was the largest amount raised by a non-Silicon Valley-based start-up in 2002. As the petitioner was only responsible for his firm investing the final small amount of the financing, it is not clear how this deal represents the petitioner's contribution of major significance to the field of venture capital funding. Clearly [REDACTED] was successfully seeking venture capital and 19 other companies would have provided the final \$3 million if the petitioner had failed to negotiate the investment, suggesting his work on this project was not original. Investing in start-up companies is what venture capitalists do, and the petitioner's success at his occupation in beating the competition is not necessarily a contribution to the entire field.

We acknowledge the submission of media coverage of the [REDACTED] venture capital deals. This coverage does not suggest any unique nature of the funding other than its size, for which the petitioner does not appear responsible. As stated above, [REDACTED] had already raised \$17 million of the total \$20 million prior to the petitioner's negotiated investment. The media coverage suggests that Ember's technical innovations were responsible for its ability to raise capital.

Mr. [REDACTED] praises the petitioner's work as a board observer for [REDACTED] advice with a deal with a Denmark company and introductions to top industrial leaders. Similarly, [REDACTED] President and CEO of Nanosys, asserts that the petitioner helped connect Nanosys with venture capital institutions.

While connections with top business leaders is clearly valuable in the business world, the record fails to explain how this is an original contribution of major significance to the field of venture capital funding.

Executive Chairman and co-Founder of Gen3, asserts that the petitioner assisted Gen3's purchase of PVI, a portfolio company of Draper Fisher Jurvetson ePlanet Ventures. Once again, it is the petitioner's job to encourage investment in his employer's portfolio companies. His competence and ability to perform his job successfully cannot serve to meet this criterion. Mr. [REDACTED] further asserts that he incorporated Cambridge Software Partners for the purpose of "rolling up" smaller software companies and that the petitioner assisted with identifying suitable smaller companies. Professor [REDACTED] of Stanford references the petitioner's assistance for a former student starting a company. While it is clear that the petitioner performed a useful service for Mr. [REDACTED] and the former student, the record does not establish that this service constitutes an original contribution of major significance to the field.

Professor [REDACTED] of Stanford asserts that the petitioner will be a regular contributor to her class at Stanford, which enjoys an international reputation. It is not clear that the petitioner was already such a contributor as of the date of filing. More persuasive evidence of his contributions to the field through influencing students would be evidence that he had authored textbooks or other written materials routinely assigned to management students nationwide. The record contains no such evidence.

Dr. [REDACTED] Director of the Center for Integrated Systems education and research centers at Stanford asserts that the petitioner assisted students with the preparation of presentations for Stanford's Asia Technology Initiative (ATI). The petitioner also helped expand the program into Singapore. While this volunteer work clearly helps the students at Stanford, it is not clear how it is original or how it has influenced the field of venture capital funding as whole.

[REDACTED] a participant in the University of California, Los Angeles / California Institute of Technology joint M.D. / Ph.D. program, asserts that the petitioner has assisted as a mentor for his own biotechnology entrepreneurial concept. Mr. [REDACTED]'s predictions of how the petitioner will assist with this project are not persuasive of the petitioner's past contributions to the field.

discussion of the petitioner's efforts with Groxis appears to relate to work conducted after the date of filing. As such, it is not relevant to the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Similarly, the petitioner's work with Doostang, an Internet-based social networking system, obtained representation by Heller Ehrman in 2004, after the petition was filed.

The petitioner submitted a 2003 provisional patent application for Advertainment. This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). Rather, the significance of the innovation must be determined on a case-

by-case basis. *Id.* The record does not indicate that the petitioner has successfully marketed the patent-pending device. Thus, the impact of the device is not documented in the record.

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. 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). The above evidence establishes that the petitioner is a talented and successful venture capitalist, but does not explain how his work is original insofar as it represents a unique way of approaching investing in start-up technical companies or has changed the field of venture capital investing as a whole such that the petitioner's influence is apparent in the field at the national level. The record lacks evidence that the petitioner has authored influential student texts, presented his ideas at major conferences that have garnered media attention for the ideas presented by the petitioner or similar evidence of a national influence in the field.

In light of the above, 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.

As stated above, the petitioner has given presentations. The director concluded that these did not constitute scholarly articles in major trade publications. On appeal, counsel reiterates the claim that the petitioner meets this criterion but does not address the director's concerns.

The individual requesting that the petitioner speak at the ASES Summit has an e-mail address at Stanford and references student networking opportunities, suggesting that the summit is a university event. Stanford was a joint organizer for GEC where the petitioner also spoke. The petitioner also spoke at a conference at the Massachusetts Institute of Technology (MIT), but the record lacks evidence that this conference had a national audience or that the proceedings of the conference were published and distributed nationally.

While conference presentations can serve as comparable evidence to meet this criterion, the petitioner has not established that the conference where he spoke had a national or international audience or that the proceedings were published and distributed nationally. As such, he has not demonstrated that these conference presentations are comparable to scholarly articles published in major trade publications or other major media. Thus, the petitioner has not demonstrated 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.

The director did not address this criterion. We have already considered the petitioner's claimed contributions to his field above. At issue for this criterion is the role the petitioner was hired to fill and

the reputation of the entity that hired him. On his curriculum vitae, the petitioner lists his position with Draper Fisher Jurvetson ePlanet Ventures as “Vice President.” The petitioner’s biography on the list of judges for Stanford’s Entrepreneur’s Challenge also reflects this position. While this position is clearly a leading or critical role for that company, none of the petitioner’s references from that company confirm this title. Thus, the petitioner has not provided corroborating evidence sufficient to meet 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.

The director concluded that the petitioner had not submitted tax returns or evidence by which we could compare the petitioner’s remuneration with other remuneration in the field. On appeal, counsel reiterates the claim that the petitioner meets this criterion but does not address the director’s concern. We will examine the evidence submitted initially.

President of Dressler Associates, asserts that venture capitalists receive on “nominal” salaries and are further compensated upon a return on their investments. Ms. further asserts that venture capitalist funding has become a much riskier profession. She concludes:

In this context, it must be said that both [the petitioner’s] base compensation (\$120,000/year) and carried interest in Draper Fisher Jurvetson ePlanet Ventures (\$300,000) are excellent. In the current economic environment, many venture capital firms reduced their operations considerably and many newer funds have closed. Compared with others similarly situated, [the petitioner’s] overall remuneration would rank him among a small group at the top of his field.

As stated above, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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. at 795. However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought and may consider the content of the letters and whether they are corroborated in the record. *Id.*; *see also Matter of Soffici*, 22 I&N Dec. at 165(citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Ms. fails to assert how she has first hand knowledge of the petitioner’s remuneration. The record does not include the petitioner’s tax returns or Form W-2 wage and tax statements. None of the references from the petitioner’s employers attest to his remuneration. Finally, the record lacks data supporting Ms.’s opinion regarding the level of the petitioner’s remuneration, such as data from the Bureau of Labor Statistics regarding the 90th percentile remuneration for venture capitalists.

In light of the above, 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 a venture capitalist 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 a venture capitalist, 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.