

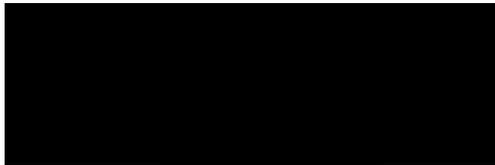
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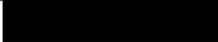
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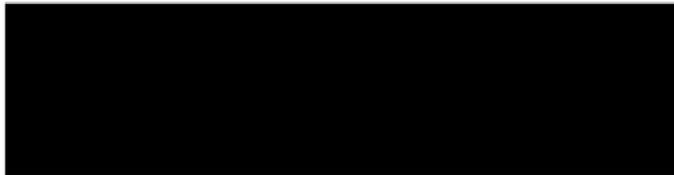
Petitioner:

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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 business. The director determined that 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 argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and thus qualifies for classification as an alien of extraordinary ability.

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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.

This petition, filed on April 5, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a Vice President of Strategy and Business Development for Vivre, Inc. The petitioner submitted a March 16, 2006 letter from [REDACTED] Chief Executive Officer and Founder, Vivre, Inc., stating:

In 1995, I established L'Art de Vivre LLC, a distinguished luxury catalog company. In January 2000, the company merged with indulge.com, an online-only high-end beauty and accessories marketer, and in September 2000, the name of the company changed to Vivre, Inc. The company has since been restructured, and in 2003, Vivre received \$2 million in equity investment from [REDACTED] and [REDACTED] which now own the company.

Since I am engaged in a never-ending search for unique, unusual products for our next season's collection, I travel around the world 6 months out of the year. I have been acclaimed for my impeccable taste and sense of style, and I use these attributes when I meet with designers and select new products for Vivre. However, because I am away from our company headquarters so often, I have always relied on [the petitioner's] extraordinary abilities, and I can categorically state that without him, Vivre would not be the success it is today. He has been indispensable to the company's growth, leading our progress into multiple distribution channels of our products, and expanding our business through new marketing initiatives and partnership ventures.

[The petitioner] has been employed by Vivre, Inc. and its predecessors since 1997, and has played a leading, critical role with the company. He has held several positions of critical importance at the company, including Vice President, Consumer Segmentation; Vice President, Catalog; Vice President of Client Services; and Vice President, Channel Development, responsible for developing all channels of distribution of our products. He also took on the additional responsibility of Acting Chief Operating Officer from January 2004 to March 2005. [The petitioner] currently serves as Vice President, Strategy & Business Development

The petitioner also submitted a March 20, 2006 letter from [REDACTED] President, Accessory Network Group, LLC, stating:

I am currently on the Board of Directors of Vivre, Inc., and I was Chairman of the Board from 2000 to 2004. Vivre, Inc. is a highly distinguished company which markets and sells leading luxury brand products through its proprietary catalog, and through the Internet. Participating brand partners have included [REDACTED] - and [REDACTED] I have interacted extensively with [the petitioner] over the last 5 years, and can attest to the fact that he has been employed in a critical role at Vivre, and has been indispensable to its success.

Specifically, [the petitioner] has been critical in coming up with highly innovative profiling and marketing techniques to reach Vivre's target customers, those with incomes of over \$150,000 per year. He developed a new system to find the best customers, by matching multiple lists, something that no other luxury goods company was doing. In this way, Vivre did not waste money or resources in sending its catalogs (which are expensive to produce) to people who were not likely to place an order. The result has been that for each catalog mailed, Vivre receives back about \$9-\$12 in orders, whereas \$1-\$2 is the industry benchmark. From 2001 to the present, [the petitioner] has overseen the growth in Vivre's catalog circulation, varying from 250,000 to 1½ million, and has increased the customer database from 50,000 to 160,000.

Furthermore, I witnessed [the petitioner's] restructuring of Vivre's business, which included creating, launching, and managing a highly profitable consulting business providing additional services to top luxury brands, such as [REDACTED]. In just two years, this venture generated over 4.5 million dollars for the company.

From my vantage point as a top executive in the field of luxury goods, I can unequivocally state that Vivre would not be the success it is today, without [the petitioner].

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria.

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 general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted a March 2005 article in *Catalog Age* entitled "Joie de Vivre" and an October 27, 2004 article posted on *Multichannel Merchant's* internet site entitled "Few Pre-Election Jitters for Catalogers," but these articles only mention the petitioner's name in passing. The petitioner also submitted a July 19, 2005 *Multichannel Merchant* "E-Special Report" (electronic newsletter) article entitled "A Fine Day for Multichannel Marketing." This article discusses "the first-ever Multichannel Marketing Day event" sponsored by *Multichannel Merchant*. The article identifies seven panelists from the session, one of which was the petitioner, and summarizes their comments. None of the preceding articles were primarily about the petitioner. The plain language of this regulatory criterion, however, requires that the published material be

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

“about the alien.” Further, there is no evidence (such as circulation statistics) showing that the preceding publications qualify as major trade publications or some other form of major media.

In response to the director’s request for evidence, the petitioner submitted an article in the Fall (November) 2006 issue of *eTailer* entitled “Viva Vivre” and a November 29, 2006 article posted on MarketingSherpa’s internet site entitled “How a Luxury Retailer Mines Customer Base to Improve ROI With Limited Analytics.” This material was published or posted subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this material in this proceeding.

In addressing the preceding evidence, the director’s decision stated:

The evidence submitted consists of a number of articles about the alien petitioner’s employer, Vivre. The alien petitioner was interviewed for some of the articles and the articles identify and quote him but the articles are about his employer and not about him. Mere reference to the alien petitioner . . . is insufficient to meet this criterion.

We concur with the director’s observations. The petitioner has not established that he meets this criterion.

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

The petitioner submitted several letters of support from his professional contacts. We cite representative examples here.

██████████ Vice-President of Retail and Director of Stores for Yves Saint Laurent, states:

Beginning in 2002, Yves Saint Laurent advertised with Vivre, Inc. in order to gain further exposure in the luxury goods market. In addition, in 2003, we had [the petitioner] and Vivre work on a consulting project for us. We wanted to increase our sales and the number of our customers in California, and [the petitioner] played a critical role at Vivre in developing innovative techniques to achieve this. As a result of his keen sense of the market and his utilization of a four-stage project plan, this resulted in a very successful venture. Most impressive was [the petitioner’s] strategic ideas and implementation expertise. For instance, he profiled potential Yves Saint Laurent customers using zip codes, and developed a special mailing for them. The successful results of [the petitioner’s] abilities speak for themselves: out of a mailing that just cost \$15,000, our company’s sales increased by \$200,000 in just three weeks.

██████████ Senior Vice President, Mokrynski*direct*, a full-service direct marketing company, states:

Founded in 1978, Mokrynski*direct* is the nation’s leading provider of customer acquisition programs and marketing services. Our clients include publishers, internet sellers, retailers, and cataloguers

I worked with [the petitioner] at Vivre for many years, since he was responsible for customer acquisition strategies. Vivre holds a prominent place in the direct marketing industry as a unique benchmark. It is a distinguished multichannel marketer of luxury products, serving affluent customers through its website and its catalogs. Vivre's customer acquisition strategy revolves around prospecting for new customers via rentals of lists of names and addresses, and Mokrynski*direct* is one of the top list "brokers" (middlemen) in the business.

[The petitioner] has been responsible for defining Vivre's circulation strategy for its catalogs, and determining the number of catalogs to mail out to repeat customers and new prospects. He oversaw the catalog's circulation growth of more than 400%, and developed innovative modeling and profiling strategies to target those affluent buyers who were most likely to purchase Vivre's luxury products. We at Mokrynski*direct* then provided [the petitioner] with lists of names to match his customers' unique demographic and purchasing profiles. He has streamlined the company's customer acquisition process, and his key strategies have resulted in one of the industry's most profitable databases.

Furthermore, [the petitioner] set up elaborate systems to make sure that a catalog was not sent to the same customer twice, even though that customer's name might appear on 2 or 3 different lists. This saved the company money, since the Vivre catalog is very expensive to produce. He also set up databases to check whether any of the customers had moved, and to check the national "Do Not Mail" list of people who do not wish to receive any catalogs in the mail. [The petitioner] also set up a system of special codes on the catalogs, which enabled Vivre to keep track of which lists of customers resulted in the highest number of purchases. This enabled him to create the optimal marketing strategies for the next season.

* * *

Specifically pinpointing these targeted customers has resulted in a productivity increase of 35% for each catalog mailed, and an increase in the average size of catalog and Internet orders.

President and Chief Executive Officer of Louis Vuitton N.A., a leather goods company, states:

Having worked extensively with [the petitioner], and having held top positions at Cartier, Christofle and Ferragamo, each of which have been brand partners of Vivre, I am uniquely qualified to comment on his extraordinary abilities. Christofle . . . was one of the first brands to be featured by Vivre. Christofle had never sold its products by catalog before, but today is in its 10th year of this successful partnership with Vivre.

While I was Executive Vice President and President of Ferragamo USA, Inc., . . . I witnessed [the petitioner's] extraordinary abilities in initiating and implementing Vivre's consulting business. He instituted a brand new approach for Ferragamo, an exclusive catalog, which helped position and market Ferragamo's brand across the board, and resulted in an increase in the number of customers and revenues, to the sum of millions of dollars.

[The petitioner] is renowned in the field for his development of innovative concepts in the luxury environment and the application of his high-tech marketing skills to targeting wealthy luxury-product consumers. His contributions to the field have been of major significance, because they have been followed and emulated by other luxury product companies.

Since the onset of [the petitioner's] employment in a critical capacity at Vivre, he has been indispensable to the success of the company.

We acknowledge that the petitioner has contributed to the success of his employer, its business partnerships, and the handful companies for which he performed consulting services, but there is no evidence to demonstrate that his work constitutes original contributions of major significance in his field. [REDACTED] letter does not specify the innovative concepts developed by the petitioner and the extent to which luxury product companies throughout the industry emulate his original techniques.

[REDACTED] President of L'Artisan Parfumeur USA, states:

I came to know [the petitioner] when I was President of Christofle Silver Inc. Christofle was one of the first companies to showcase its luxury products in the Vivre catalog; in fact, it was featured in Vivre's very first catalog. Christofle's products had never before been sold through a catalog, but the company was attracted to the fact that Vivre had an elegant presentation, beautiful photographs, and extensive product descriptions, and that it was specifically targeted to affluent shoppers. The Vivre catalog gave Christofle's customers access to many of its product lines that they would not otherwise have been aware of, and it was a time-saving convenience to the shopper. Furthermore, Vivre actually created new products (silverware gifts) for Christofle to offer customers through the catalog.

I found [the petitioner] to be a visionary, and was extremely impressed by his extraordinary abilities in helping Christofle expand its market and develop awareness of its brand across the United States. As a French company that has a 175-year history and is very well known in Europe, nevertheless, it needed to become better known in this country. [The petitioner's] unique insight into the buying habits of affluent customers, and his expertise in distribution strategies and marketing programs made him critical to Christofle's and Vivre's success in the United States.

[REDACTED] Vice President for Sales and Marketing with NextAction Corporation, states:

I began in this capacity in 2002 and have worked directly with [the petitioner] in developing his customer base. NextAction is focused on delivering prospect names and activating non-buyer name sources through its cooperative database of consumers. Our world-class database, one of the top 2 or 3 in the United States, contains hundreds of catalog titles, which when combined, provide detailed insights into actual buying transactions across households. Prior to my meeting [the petitioner], our company had not used the database for clients with unique consumer demographics such as his, which averages purchases of \$500-600 per order. It is useful to note for comparison purposes that most direct mail orders average \$100 per order. [The petitioner's] innovative utilization of our system and his resulting success have greatly impacted the luxury goods market.

It is my opinion that [the petitioner] has clearly risen to the very forefront of his field through his distinctive accomplishments and has paved the way in this industry.

* * *

I am aware of [the petitioner's] groundbreaking techniques in marketing to high-end consumers as well as the impact he has had in this area. I have followed [the petitioner's] important contributions to his area of expertise with much admiration for his unmatched understanding of the various aspects of this specialized field, which clearly distinguishes him from his peers.

While the petitioner has successfully utilized NextAction Corporation's database for targeting high-end consumers to receive his company's catalog mailings, there is no evidence that this work is tantamount to original contributions of major significance in his field. [REDACTED] letter does not specify how the petitioner's work has "paved the way in this industry" or "greatly impacted the luxury goods market." For example, there is no independent corroborative evidence showing that the petitioner's work has had a significant impact beyond his employer, its business partnerships, and the handful companies for which he directly provided consulting services.

Director of Marketing at Devenlay, a licensee of Lacoste USA Inc., states:

From 2001 to 2003, I served as Director of Business Development for Salvatore Ferragamo USA Inc. in New York, where I managed a \$12 million marketing budget. I managed relationships with retail partners such as Neiman Marcus, and initiated strategic partnerships with Vivre, Inc., American Express Centurion Card, and Ritz Carlton Hotels.

* * *

I was able to experience [the petitioner's] extraordinary skills and creative energies first hand when I worked with him in 2001 and 2002 on an innovative new Direct Marketing project for Ferragamo. As Vice President, Channel Development, he served in a critical capacity at Vivre, Inc., and established and managed a lucrative consulting business for his company. Because of Vivre's distinguished reputation, Ferragamo was already a "brand partner" of Vivre, and our luxury products were sold in the Vivre catalogue. It was thanks to [the petitioner's] expertise, that Ferragamo decided to have Vivre develop a special Ferragamo catalogue for new and established customers. [The petitioner] and Vivre offered Ferragamo a full-service solution for setting up and managing a cost-effective direct marketing infrastructure.

Specifically, [the petitioner] analyzed Ferragamo's direct market potential, set up and managed a "test" direct mail program targeted to Ferragamo's repeat customers, and positioned this new distribution channel as a customer loyalty program. He worked out an innovative strategy whereby Vivre recommended to Ferragamo circulation targets, outside customer target lists and profiting methods. He had Vivre provide merchandising and layout guidelines for the catalogues, a detailed circulation plan, and a post-mailing analysis on response rates, sales, cost per book, trends, etc. [the petitioner] had Vivre customize its own customer service procedures to Ferragamo's programs,

including a customized “1-800 number” and around-the-clock customer service. Vivre provided Ferragamo with warehouse space, packing, gift wrapping, shipping services, and processing of returns. The company also customized its own system to Ferragamo’s needs for inventory, credit card verification, and merchandising sales and source sales reporting.

[The petitioner’s] innovative and original strategy in partnering with Ferragamo was a milestone of major significance to the field, since it was the first time in its 75-year history that Ferragamo had tried a direct mail catalog, and other luxury-product companies took notice of its success and profitability. It not only led to an increase in Ferragamo’s customers, but it added millions of dollars to its revenues in just a few seasons.

We accept that the petitioner’s direct marketing project for Ferragamo was beneficial to that company, but there is no supporting evidence showing that his work was “a milestone of major significance to the field” as claimed in [REDACTED] letter. The evidence submitted by the petitioner does not establish that his work for this company has significantly influenced the field or attracted national or international attention such that it can be considered an original contribution of major significance in the field.

Vice President and Publisher of *SHOP Etc.*, a new fashion, home and beauty shopping magazine from Hearst Magazines, states:

When I was Publisher of *Harper’s Bazaar (HB)*, I worked extensively with [the petitioner] to produce an insert in one of our magazine’s issues, which was in fact a “mini-catalog” of Vivre, Inc. products. Together with the Chief Executive Officer of Vivre, Inc., I endorsed the products, and encouraged our readers to try them.

[The petitioner] project-managed the idea, and was the primary person at Vivre organizing this partnership venture with *HB*. I have to say I was very impressed by the presentation he prepared in January 2001 on partnership opportunities between *HB* and Vivre, which convinced me to enter into this new venture. It helped us both compete for an affluent consumer audience, as we leveraged each other’s resources (brands, names, advertisers, production, editorial) to better reach *HB*’s key readers, and it brought added value to our advertisers’ brands.

This was a highly innovative approach to marketing luxury goods, and a very creative and original way to build up business; it clearly represented a major contribution to the field of direct marketing of luxury goods. This new marketing media vehicle was a big success for Vivre, and resulted in their brands gaining access to *HB* readers, many of whom had not been familiar with their products. Likewise, *HB*’s readers benefited, since they turned to the magazine, as a world leader of style and fashion, to recommend the latest trends and the best quality in global luxury brands.

We accept that the partnership to produce a Vivre, Inc. product catalog insert for a *Harper’s Bazaar* magazine issue was beneficial to both entities, but there is no supporting evidence showing that this work “represented a major contribution to the field of direct marketing of luxury goods” as claimed in [REDACTED] letter. For example, there is no evidence demonstrating this work influenced others in the field or garnered significant national or international media attention.

Morten Gotterup, Senior Vice President and General Manager, Clearview Cinemas, states:

I formerly served in 2000 as Chief Operating Officer/Director/Co-Founder of Xpress Returns, Inc., which was created to assist Internet and catalog shoppers with the merchandise return process.

* * *

Because of my expertise in Internet and catalog sales from working for Xpress Returns and CD Now, I served as a Consultant to Vivre, Inc. on Business Development strategies in 2001. As such, I worked with [the petitioner] on a partnership venture he led with American Express, which was very successful for both companies. Specifically, Vivre customized co-branded luxury Vivre catalogs for American Express members with Platinum or Centurion cards, which included exclusive offers and special benefits for those purchasing from the catalogs. Since both companies targeted the same affluent customer base, this alliance between the two companies enabled them to increase their competitive advantages in marketing services and products.

* * *

[The petitioner] led this corporate partnership with American Express, as well as other corporate ventures, and these creative new marketing initiatives in the high-end world of luxury consumer products were significant and unprecedented innovations in the field.

The preceding letters of recommendation demonstrate that the petitioner's work has earned the respect and admiration of those with whom he has collaborated and consulted, but these letters do not establish that he has made original contributions of major significance in his field.

In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED] R.C. Kopf Professor of International Marketing, Graduate School of Business, Columbia University, stating:

[The petitioner's] specific contributions to Vivre and the field of marketing of luxury goods are many. Below, I highlight only a few that, in my mind, are most significant. First, early in his career, [the petitioner] played a significant role in identifying and capitalizing on a potentially successful niche within the luxury market. Vivre began as a mere distributor of luxury goods, offering customers access to luxury goods via catalog that had previously been unavailable, largely due to geographic constraints. Identifying an opportunity, [the petitioner] led Vivre to become a brand itself, becoming itself a curator of the best of the best. Rather than sell entire product lines of designers or other purveyors of luxury goods, Vivre carefully selected the "best of the best" for inclusion, heightening the catalog's prestige and defining itself as a necessary destination for discriminating buyers. This move was key to the company's success and redefined the market. The degree of [the petitioner's] success in this area – [the petitioner] more than doubled Vivre's customer base -- is striking and evinces the exceptional experiences and perspectives [the petitioner] brings to his current duties.

Moreover, demonstrating extraordinary insight and true business savvy, [the petitioner] championed and led Vivre's entrance into the on-line market. At this time (2001), many marketers were skeptical of the value of the Internet for sale of exclusive goods. Affluent buyers, industry wisdom said, did not use the Internet and would not buy expensive items from only a picture and description. [The petitioner] foresaw the direction of the market and cross-channeled with Vivre's existing successful catalog business to target the online market. This move demonstrated extraordinary creativity, initiative, foresight and professional courage. [The petitioner's] results in this area were remarkable, boasting an average of a 90% increase in revenue growth year over year during the first 5 years.

Another valuable contribution has been [the petitioner's] creation and utilization of Vivre's valuable proprietary database of over 140,000 customers. This database, containing the identities and purchasing habits of affluent (over half of these customers have an income over \$150,000) customers, is critical to Vivre's extraordinary success. Moreover, using sophisticated modeling and profiling techniques, [the petitioner] has been able to use this database to target likely buyers for positive business use, increasing, for example repeat buyers to a remarkable 30% of total customers.

Within this database, [the petitioner] has identified and isolated a core constituency of high-volume and high-income Vivre customers ("VIP customers"). At Vivre, VIP customers are specifically targeted and courted with special offers and e-mail notifications. [The petitioner] also tests marketing strategies on these VIP customers, comparing the effect of special offers and sales, for example, versus specific designers or themes in attracting the attention and business of these most valued customers. That [the petitioner] continues to refine and maximize his marketing strategies underscores his extraordinary business and marketing abilities and the critical nature of his responsibilities at Vivre.

We agree with [redacted] that the petitioner has performed in a leading or critical role for Vivre, Inc., but it has not been established that his work for the company constitutes original business-related contributions of major significance in the 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. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner is admired for his marketing skills and has worked on projects that benefited Vivre, Inc., its business partnerships, and the companies for which he provided consulting services, there is no evidence demonstrating that he has made original contributions of major significance in his field. For example, the record does not indicate the extent of the petitioner's influence on others in his field nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 (Commr. 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. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation

are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a business executive who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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 record includes ample published material indicating that Vivre, Inc. has a distinguished reputation. Further, the aforementioned recommendation letters, including those from [REDACTED], are sufficient to demonstrate that the petitioner performed in a leading role or critical role for Vivre, Inc.

In addressing the petitioner's evidence for this regulatory criterion, the director's decision stated:

The petitioner is currently employed as the Vice President, strategy and business development for Vivre, a company that specializes in marketing luxury goods. Letters from [REDACTED] Chief Executive Officer and Founder of Vivre[,] establish that the . . . petitioner has played a leading role in establishing and expanding the business.

We concur with the director's finding. As such, the petitioner has established that he meets this single criterion.

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

According to the U.S. income tax returns submitted by the petitioner, he earned \$92,875 in 2003 and \$110,387 in 2004. The petitioner also submitted his final pay statement for 2005 reflecting total year-to-date earnings of \$114,662.

The March 16, 2006 letter from [REDACTED] states: "[The petitioner] currently serves as Vice President, Strategy & Business Development, and receives an annual base salary of \$125,000, in addition to a bonus."

The petitioner also submitted a September 27, 2005 letter from [REDACTED] Co-Founder and General Partner of RRE Ventures, stating:

RRE now owns Vivre, Inc., together with [REDACTED] and I serve as Chairman of the Board of Vivre, Inc.

As a result of the indispensable role [the petitioner] plays at Vivre, his total compensation package is substantially higher than the norm in the market: he receives a base salary of \$125,000, plus valuable stock options. To date, he has been granted a total of 244,203 Incentive Stock Options, as part of Vivre's Equity Incentive Plan. The fair market value of these options is \$368,746, based on the latest evaluation of the company, and is expected to continue to rise.

[redacted] letter does not specify the amount of compensation that is "the norm in the market" or offer any salary data in support of his conclusion that the petitioner's compensation package is "substantially higher" than others in his field. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addressing the petitioner's evidence for this regulatory criterion, the director's decision stated that "no evidence was submitted to establish that the . . . petitioner's salary is high or significantly higher than that paid to other vice presidents of Vivre or executives of other similar businesses." We concur with the director's finding. The plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has commanded a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no evidence establishing that the petitioner has earned a level of compensation that places him among the highest paid business executives in his field.

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

In this case, the petitioner has established that he meets only one of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner's "speeches at industry-wide conferences" are comparable evidence of his extraordinary ability pursuant to C.F.R. § 204.5(h)(4). The petitioner initially submitted the following:

1. A June 2005 letter from [redacted] Certified Public Accountant, thanking the petitioner for his "participation as a panelist" at a marketing seminar for an estimated "200 Long Island business owners."
2. A July 19, 2005 *Multichannel Merchant* "E-Special Report" article discussing "the first-ever Multichannel Marketing Day event" sponsored by *Multichannel Merchant*. The article identifies seven panelists who participated in the session, one of which was the petitioner.
3. An electronic mail message inviting the petitioner to serve as a panelist for the "Training Your Organization for E-mail" session at the "6th Annual Panel of Peers Conference" in August 2005.
4. A letter from [redacted] of Lenser, a company that provides consulting, circulation management, data, listing, and e-Marketing services, inviting the petitioner to attend its Lenser Executive Roundtable Program on September 15, 2005. The letter states that the petitioner will

have “the opportunity to meet with eight to fourteen fellow CEOs” to discuss issues facing the catalog and e-commerce industry.

5. Copy of a speech entitled “Consumers Rule” that was written by the petitioner but given by [REDACTED] at the *International Herald Tribune’s* “Luxury Unlimited” fashion conference in 2002.
6. Copy of a speech entitled “Selecting the Right Channels: How to Reach Your Customers?” that was prepared by the petitioner but given by [REDACTED] at the “Leading Hotels of the World” sales and marketing conference in 2001.

Many industries and trade groups regularly hold meetings, conferences, and seminars to present topics of interest, educate participants, and foster networking among professionals. These events are promoted and sponsored by professional associations, businesses, educational institutions, and trade groups. There is no evidence showing that the petitioner’s participation or involvement in the preceding events was indicative of sustained national or international acclaim at the very top of his field.

In response to the director’s request for evidence, the petitioner submitted evidence showing that he spoke at sessions of the MidMarket eTail Conference in San Francisco on October 31, 2006, the Palm Springs eTail October 2007 conference, and the Luxury Interactive Branding Conference in New York in June 2007. The petitioner’s presentations at these events occurred subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding.

In this case, there is no evidence showing that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. Nevertheless, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, the petitioner has submitted evidence specifically addressing four of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

While CIS has approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat

acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.