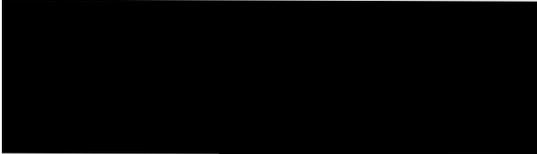




U.S. Citizenship
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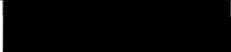
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FILE:



Office: TEXAS SERVICE CENTER

Date:

SEP 12 2007

SRC 05 264 53072

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.

Maura Deandick

Robert P. Wiemann, Chief

Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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. 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.

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.

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, 60898-9 (November 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 she has sustained national or international acclaim at the very top level.

This petition, filed on September 29, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an Application Engineer Adviser in the petroleum industry. At the time of filing, the petitioner was employed by ██████████ Incorporated's Centrlift Division managing technical support for the company's electrical submersible pump products for the deepwater petroleum industry.

On appeal, counsel states: "The self-petitioner respectfully submits that [CIS] should have applied the regulations at 8 C.F.R. § 204.5(h)(4) and that if that regulation is applied then the evidence presented does indeed show that she has reached the very top of her profession as contemplated for an extraordinary ability alien." The

regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence,” but only if the ten criteria at 8 C.F.R. § 204.5(h)(3) “do not readily apply to the beneficiary’s occupation.” Therefore, the petitioner must demonstrate that these criteria are not applicable to petroleum engineers. In this proceeding, counsel has previously argued that the petitioner meets at least four of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Further, the petitioner submitted evidence relating to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), (vi), and (ix). Where an alien is simply unable to meet three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

In this decision, we will first address the petitioner’s evidence as it relates to the regulatory criteria at 8 C.F.R. § 204.5(h)(3). We will then address counsel’s argument that the petitioner has submitted comparable evidence to establish eligibility for extraordinary ability classification pursuant to the regulation at 8 C.F.R. § 204.5(h)(4).

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. 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 at 8 C.F.R. § 204.5(h)(3).

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

The petitioner submitted an April 4, 2003 letter addressed to her from [REDACTED] Chairman, President and Chief Executive Officer, [REDACTED] Incorporated, stating:

The Chairman’s Award honors a select group of employees for their extraordinary contribution to [REDACTED] Employees receiving this award embody our Core Values and Keys to Success. We want to congratulate you on being selected as a recipient for recognition under this program.

This award symbolizes your dedication, personal sacrifice and commitment to the company.

We find that this award from the petitioner’s immediate employer reflects institutional recognition rather than national or international recognition.

The petitioner also submitted material printed from the January 18, 2002 issue *This Week @ Baker Hughes*, an online weekly newsletter “distributed electronically for employees throughout the company.” This material states:

Welcome to *This Week @ Baker Hughes*, presenting key developments and news about BHI [Baker Hughes Incorporated] divisions to help keep you informed about our progress, strengths and successes throughout the enterprise.

Success Stories from Baker Hughes Companies

Centrilift Brazil recently signed a two-year contract with Petrobras to perform well testing deep water using ESP's. The testing is to commence in Q1 and will be performed throughout the Campos Basin near Macae, Brazil. This is an aggressive testing program to produce wells in water depths from 2,000 to 9,500 ft. (610 to 2900 m). The objectives are to identify reservoir and fluid properties and develop the technology and operational expertise that will be need for long-term production. The Project Leader is [the petitioner] and Project Support provided by Floyd Ireland.

Eight additional “Success Stories” about Baker Hughes Incorporated’s various divisions were included in the January 18, 2002 issue. The plain language of this criterion requires documentation of petitioner’s receipt of “prizes or awards.” We do not find that a brief mention of the petitioner’s name appearing in a weekly internal company newsletter constitutes her receipt of a lesser nationally or internationally recognized prize or award for excellence in her field of endeavor. The preceding material is far more relevant to the “published material about the alien” criterion at 8 C.F.R. § 204.5(h)(3)(iii) and it will be further addressed there.

The petitioner also submitted documents entitled “BHI CHAIRMAN’S HS&E [Health, Safety and Environment] EXCELLENCE AWARD 2003 CRITERIA” and “FY [Fiscal Year] 2003 BHI CHAIRMAN’S HS&E EXCELLENCE AWARD NOMINATION FORM.” Neither document specifically identifies the petitioner as a 2003 Chairman’s HS&E Excellence Award recipient. Even if the petitioner had provided first-hand evidence establishing her receipt of this award from her employer, we find that it reflects institutional recognition rather than national or international recognition.

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

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In 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 the aforementioned material printed from the January 18, 2002 issue *This Week @ Baker Hughes*, an online internal company newsletter, which mentions her name once. We do not find that this internal publication qualifies as “professional or major trade publications or other major media.” Further, the author of the material was not identified as required by this criterion.

The petitioner also submitted a copy of Baker Hughes Incorporated’s “2003 Annual Report and Proxy Statement” which includes a photograph of the petitioner and a two-sentence quote from her on page 7. The 2003 Annual Report is primarily about the company’s financial status rather than the petitioner or her engineering achievements. This material, which is not the result of independent journalistic reportage, cannot serve to meet this criterion. The author of the material was not identified as required by this criterion and there is no evidence that the report qualifies as a professional or major trade publication or other major media.

In response to the director’s request for evidence, the petitioner submitted a January 18, 2006 letter from counsel listing six papers authored by the petitioner as evidence for this criterion. The papers authored by the petitioner, however, relate to the “authorship of scholarly articles” criterion at 8 C.F.R. § 204.5(h)(3)(vi) and will be addressed there.

In light of the above, the petitioner has not established that she 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 four letters of support from her professional contacts.

[REDACTED], Petroleum Engineer, Petrobras, Brazil, states:

I met [the petitioner] in 2002, through professional contacts I have within Baker/Hughes – Centrilift of Brazil, seeking the implementation of new technologies to aid in the production of offshore oil fields.

She was the primary resource from [REDACTED], Centrilift Division for engineering and application of Electric Submersible Pumps (ESP’s) in our offshore oil fields and also with regard to Subsea Technology. The impact of her technical work in the Deep Water, Subsea markets has been fundamental in providing Petrobras applications support for ESPs in deepwater completions.

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.

Due to her outstanding job as the main Electric Submersible Pump resource to Petrobras she was transferred to the United States to accept an engineering position in Oklahoma where she is working on complex ESP applications including highly technical Deep Water, Subsea applications.

Her academic credentials are excellent, with a master's degree in civil engineering (emphasis on reservoir mechanics) and she also holds an MBA in Petroleum Industry Economics. In the past several years she has filed for two patents in the United States and written a number of papers for presentation to organizations such as the Society of Petroleum Engineers and VI International Conference on Application of Stress Wave Theory to Piles. Her education and experience easily place her in the top 5% of her profession world wide.

Considering her intelligence and work ethic I have recommended her for a Ph.D. program at the Tulsa University Artificial Lift Program, which is recognized as a global leader in advanced Petroleum studies. To confidently explore and produce deepwater fields the industry will need more skilled people like [the petitioner].

* * *

Therefore, I would highly recommend her acceptance as a permanent resident in the United States so that she can better pursue her engineering studies.

President and Chief Operating Officer, Red River Automation, Tulsa, Oklahoma, states:

In Dec. of 1999, I began my association with [the petitioner] in Brazil where I was the Country Manager for Baker Hughes and she was a recently hired applications engineer for our Electric Submersible Pump (ESP) Division. Her responsibilities at that time were to provide in-depth engineering assistance to our sales and service groups as well as interface with clients on matters of well bore application and reliability. She quickly distinguished herself within our organization and became our primary resource for complex engineering and application issues particularly with regard to Subsea Technology. The impact of her technical work in the Deep Water, Subsea markets was recognized by Baker Hughes Senior Management and in 2003 she was invited to accept an engineering position here in the United States. Currently she is one of only 3 people with in the Baker Hughes organization that is dedicated to highly technical Deep Water, Subsea applications due to the complexities involved. World wide there are probably only 20 within the ESP industry. In the past several years she has filed for two patents and written a number of papers for presentation to industry organizations such as the Society of Petroleum Engineers. The demand for her time and guidance by clients and other Baker Hughes Departments is a tremendous testament to her value and place her in the top few percent of her profession world wide.

Throughout the time I have known her she has always exhibited a high level of integrity, intelligence and a superior work ethic. In recent years she has been working on the development of deepwater applications which have never been designed any where else in the world. Due to the complexities involved, and the absence of any experience base to draw on with in the industry, she is applying for a Ph.D. program at the University of Tulsa. The United States Congress recently passed the Energy

Bill, which specifically targets Deep Water, Subsea technology development. It is my opinion that [the petitioner's] skill sets are exactly what are needed to develop Deep Water, Subsea technology within the United States.

Her acceptance as a permanent resident in the United States will allow her more flexibility to pursue her engineering studies

In their letters of support, [redacted] and [redacted] note that the petitioner "has filed for two patents and written a number of papers for presentation." Regarding the two patent disclosures coauthored by the petitioner, we find no evidence showing that either of these inventions represents a contribution of major significance in the petitioner's field. We note here that anyone may file a patent disclosure application, regardless of whether the invention constitutes a major contribution. The record includes no evidence showing that the United States Patent and Trademark Office (USPTO) has issued patents for her technological innovations. Given the amount of patent applications that the USPTO receives on an annual basis, we find it implausible that simply filing an application for a patent automatically qualifies as a contribution of major significance in one's field. In this case, there is no evidence showing substantial commercial interest in the petitioner's inventions or evidence of their widespread utilization. Without evidence of their substantial national or international impact, we cannot conclude that the petitioner's inventions meet this criterion.

Western Hemisphere General Manager for Electrical Submersible Pump (ESP) Systems, Weatherford, Midland, Texas, states:

My acquaintance with [the petitioner] has been on a professional basis through the Society of Petroleum Engineers where she has made several presentations on work she has done in Latin America relative to complex ESP completions. She is articulate and passionate about her work which is now in the Deepwater, Subsea application of ESPs, an area that has little or no other expertise. I therefore rate her in the top 3% of her profession and fully recommend her for permanent resident in the United States.

Regarding the papers presented by the petitioner, we note that any technical research, in order to be accepted for publication or presentation, must offer new and useful information to the pool of knowledge. It does not follow that every engineer who performs original research that adds to the general pool of knowledge or who incrementally improves an existing technology has inherently made a contribution of major significance to the field as a whole. In this instance, there is no evidence showing that the petitioner's work has attracted a significant level of attention beyond her employer or her professional acquaintances.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner'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. To be considered a contribution of major significance in the field of science or engineering, it can be expected that the petitioner's technical innovations would have already been widely utilized or confirmed by independent experts throughout her field. Otherwise, it is difficult to gauge the impact of the petitioner's work. Without evidence showing that the technical papers coauthored by the petitioner have significantly influenced her field (such as frequent citation of her work), we cannot conclude

that this work qualifies as an original contribution of major significance. The petitioner must demonstrate not only that she has presented original work, but also that it has impacted the field such that it can be considered indicative of sustained national or international acclaim.

Nevertheless, the papers coauthored by the petitioner relate to the “authorship of scholarly articles” criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the papers coauthored by the petitioner under the next criterion.

[REDACTED] Director, Tulsa University Artificial Lift Projects, and Associate Professor, Petroleum Engineering Department, The University of Tulsa, states:

My experience with [the petitioner] dates back to a couple of years ago when she contacted me asking for information on our Ph.D. program. At this time she was working for Baker Hughes in Brazil providing service to Petrobras. I contacted [REDACTED] a colleague of mine from Petrobras who was working directly with [the petitioner] at that time and he informed me how she was decided [sic] to pursue graduate studies. This was soon confirmed when [the petitioner] was transferred to Claremore in the United States. She visited me a couple of times and we discussed the possibility of her Ph.D. program. Pursuing a Ph.D. program part time while working is not an easy task and I must say that [the petitioner] impressed me by her firm decision on investing in her education and her willingness to overcome the difficulties.

I am aware that [the petitioner] was granted permission from Baker Hughes to pursue her graduate studies. I am also aware that Baker Hughes will be sponsoring [the petitioner’s] studies at [t]he University of Tulsa, which is a sign that the company values [the petitioner’s] technical qualities and is willing to invest the time and money required for her professional advance.

Throughout the time I have known her she has always exhibited a high level of integrity and intelligence. Her acceptance as a permanent resident in the United States will allow her more flexibility to pursue her engineering studies.

[REDACTED]’s letter indicates that the petitioner intends to pursue graduate studies at the University of Tulsa, but his letter does not state that the petitioner stands at the very top of her field, nor does it identify any original contributions of major significance directly attributable to the petitioner.

We note that the four letters of support submitted by the petitioner consist entirely of her professional contacts. With regard to the personal recommendation of the petitioner’s direct acquaintances, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim for her contributions outside of those with whom she has interacted. The statutory requirement that an alien have “sustained national or international acclaim,” however, necessitates evidence of recognition beyond those close to the petitioner. In this case, the record does not indicate the extent

of the petitioner's influence on others in the petroleum engineering field, nor does it show that this field has somehow changed as a result of her work. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that she 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.

The petitioner submitted evidence showing that she has coauthored papers for presentation to organizations such as the Society of Petroleum Engineers. In the fields of science and engineering, we find that acclaim is generally not established by the mere act of presenting one's work at a conference. The record includes no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top engineers. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in her field at the national or international level. The record includes no evidence distinguishing the petitioner from others in her field such as evidence showing that her presentations had significantly higher rates of attendance when compared to those of the other conference participants or that the petitioner has served as a keynote speaker at a national engineering conference.

The petitioner also submitted evidence of an article she coauthored appearing in the March 2004 issue of *Hart's E&P*. The record, however, includes no evidence (such as circulation statistics for *Hart's E&P*) showing that the preceding examples constitute authorship in "professional or major trade publications or other major media." Therefore, the petitioner has not established that she 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.

The petitioner submitted her Form W-2, Wage and Tax Statement, reflecting that she earned \$71,247.87 in 2004 and documentation reflecting her participation in Centrilift's Incentive Compensation Program. The petitioner also submitted a February 18, 2003 letter from [REDACTED] Manager of Research and Development Engineering, Centrilift Division, Baker Hughes Incorporated, stating: "Congratulations on the filing of the patent disclosure 60/405,272 titled "Well Pump Capsule," which lists you as an inventor/(co-inventor). In accordance with Centrilift policy P-A-22, "Patent and Technical Achievement Awards," the \$400 award sum will be included in your next payroll check"

The plain language of this criterion requires the petitioner to submit evidence of a "high salary . . . in relation to others in the field." The petitioner offers no national wage statistics as a basis for comparison showing that her compensation was significantly high in relation to others in her field. There is no evidence that the petitioner earns a level of compensation that places her among the highest paid petroleum engineers in the industry. Thus, the petitioner has not established that she meets this criterion.

In this case, we concur with the director's findings that the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the petitioner does not challenge these findings.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.*" [emphasis added]. As previously noted on page 3 of this decision, 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). However, we will address counsel's argument that reliance upon recommendation letters written by individuals in the petitioner's field is sufficient to demonstrate that she meets the requirements of section 203(b)(1)(A)(i) of the Act.

Page 5 of counsel's appellate brief states:

The self-petitioner respectfully submits that she qualifies as an alien of extraordinary ability and is able to prove that by showing comparable evidence such as the letters submitted with the original petition written by people in the petitioner's field of endeavor which state that the petitioner is at the very top of her field of endeavors [sic]. In *Buletini v. I.N.S. (E.D. Mich. 1994)*, the legislative history indicates that "INS must consult with peer groups in the alien's field prior to determining eligibility."

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. Nevertheless, we find that the instant petition is easily distinguished from the facts in *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994). In the matter cited by counsel, the court found that the alien had established eligibility by submitting evidence showing that he met at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), whereas in the present case counsel asserts that the petitioner has established eligibility pursuant to the regulation at 8 C.F.R. § 204.5(h)(4) through the submission of letters of recommendation written by individuals in her field of endeavor.

Counsel's appellate brief further states: "The petitioner respectfully submits that she has submitted peer group letters stating that she is in the top 3% percent of her field of endeavor and the CIS [sic] seems to have ignored the letters presented. The CIS [sic] failure to consider such letters is clear evidence that it did not adequately evaluate the facts before it."

Of the four letters submitted by the petitioner, [REDACTED] is the only one that states that the petitioner is "in the top 3% or her profession." [REDACTED] letter asserts that the petitioner's "education and experience easily place her in the top 5% of her profession" while [REDACTED] letter states that the petitioner is in the "top few percent of her profession." None of the preceding individuals identify the source of the occupational data they utilized in reaching their conclusions about where the petitioner stands relative

to others in her profession. [REDACTED]'s letter, on the other hand, includes no statement indicating that the petitioner has reached the top of her profession. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is in accord with other information, not corroborated, or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). *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)).

While three of the four individuals offering recommendation letters assert that the petitioner has reached the top of her profession, additional statements included in the letters of support appear to contradict this conclusion. For example, the recommendation letters from [REDACTED] and [REDACTED] all state that the petitioner seeks to pursue graduate studies in engineering at the University of Tulsa. [REDACTED]'s letter specifically commends the petitioner for her willingness "to invest the time and money required for her professional advance." If the petitioner seeks to pursue graduate studies in her field, then the question necessarily arises as to whether she has indeed reached the top of her field. The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. *See* 8 C.F.R. § 204.5(h)(2).

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *See Matter of Caron International*, 19 I&N Dec. at 791, 795. 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. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. In this instance, we note that the four letters of support submitted by the petitioner originated from her professional acquaintances. 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 achievements and recognition that one would expect of an engineer who has sustained national or international acclaim.

While the regulation at 8 C.F.R. § 204.5(h)(4) permits "comparable evidence" where the ten criteria do not "readily apply" to the alien's occupation, the regulation at 8 C.F.R. § 204.5(h)(4) neither states nor implies that letters of support attesting to the petitioner's achievements and standing in the field are "comparable" to the strict documentation requirements in the regulations setting forth the ten criteria. We find that the petitioner's reliance on four recommendation letters prepared in support of the petition rather than contemporaneous evidence of her achievements and recognition is misplaced. Pursuant to section 203(b)(1)(A)(i) of the Act, the classification sought requires "extensive documentation" of sustained national or international acclaim, and the petitioner cannot arbitrarily replace such evidence with attestations from the petitioner's professional contacts who assert that she has reached the top of her field. The commentary for the proposed regulations implementing section 203(b)(1)(A) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The classification sought by the petitioner therefore requires specific documentation beyond mere testimony. An

individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. We find that evidence in existence prior to the preparation of the petition carries greater weight than letters of support prepared especially for submission with the petition. Further, the statutory requirement that an alien have “sustained national or international acclaim” necessitates evidence of recognition beyond those close to the petitioner. *See* section 203(b)(1)(A)(i) of the Act.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at a 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.