



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
EAC 06 043 53578

Office: NEBRASKA SERVICE CENTER

Date: JUN 11 2008

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.

Laura Deadrick
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 (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.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). More specifically, counsel asserts that the evidence of record satisfies the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(iv), (v), and (vi). Counsel cites to an AAO decision and argues that the “preponderance of evidence standard is indisputably satisfied in this matter.”

For the reasons discussed below, we do not find that the petitioner has established eligibility by a preponderance of the evidence.

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

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

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

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

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

(iii) the alien’s entry 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 November 14, 2005, seeks to classify the petitioner as an alien with extraordinary ability in industrial engineering, operations research, and management science.¹ More specifically, the petitioner's work focuses on "research and development of new e-business [electronic-business] methodologies and supply chain management." At the time of filing, the petitioner was the Vice President for Research and Technology at ac² Solutions, Inc., an information technology company located in Hazlet, New Jersey. In a November 9, 2005 letter accompanying the petition, counsel states:

[The petitioner's] work involves the development of advanced analytical models and computer algorithms for optimizing supply chain parameters with respect to management issues. It also involves applying mathematical modeling and computer science techniques . . . to develop innovative decision support technologies in order to improve business operations.

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.

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

Counsel's November 9, 2005 letter addresses this regulatory criterion stating: "[The petitioner] was awarded two Invention Achievement awards for his patent applications (with one patent already issued) and was nominated for biographical reference in *Who's Who in Science and Engineering*."

The petitioner submitted a May 2002 certificate issued by IBM, his employer at that time, stating: "IBM presents to [the petitioner] a First Patent Application Invention Achievement Award for: Method and Structure for Bid Winning Probability Estimation and Pricing Model." A document accompanying this certificate, also dated May 2002, states: "An award payment of \$1500 will be added to the pay statement of 05/30/02."

The record includes no evidence of the petitioner's receipt of a second IBM Invention Achievement Award, although a second award is listed in the petitioner's resume. Nor is there evidence showing that the petitioner was nominated for biographical reference in *Who's Who in Science and Engineering* (also listed in his resume). 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)). Further, with regard to the

¹ The petitioner earned a Ph.D. in Industrial Engineering from the University of Wisconsin-Madison in 1996.

petitioner's "nomination" for biological reference in *Who's Who in Science and Engineering*, there is no evidence that a mere nomination for inclusion in this extensive directory of professionals constitutes a nationally or internationally recognized prize or award for excellence in the petitioner's field.

The petitioner also submitted a June 25, 2001 letter and an accompanying "Stock Option Award Agreement" reflecting that IBM granted the petitioner 1,000 Nonqualified Stock Options as a part of the company's "Long-Term Performance Plan."

With regard to the Invention Achievement awards and Stock Option Award presented to the petitioner by IBM, we find that these financial incentives reflect company recognition rather than national or international recognition. The petitioner has not established the awards he received from his immediate employer are nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

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

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

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence showing that he is a member of the Institute of Electrical and Electronics Engineers (IEEE) and the Institute for Operations Research and the Management Sciences (INFORMS). In response to the director's request for evidence, the petitioner submitted information from the IEEE's internet site stating:

Member grade is limited to those who have satisfied IEEE-specified educational requirements and/or who have demonstrated professional competence in IEEE-designated fields of interest. For admission or transfer to the grade of Member, a candidate shall be either:

- (a) An individual who shall have received a three-to-five year university-level or higher degree (i) from an accredited institution or program and (ii) in an IEEE-designated field
- (b) An individual who shall have received a three-to-five year university-level or higher degree from an accredited institution or program and who has at least three years of professional work experience engaged in teaching, creating, developing, practicing or managing in IEEE-designated fields; or

- (c) An individual who, through at least six years of professional work experience, has demonstrated competence in teaching, creating, developing, practicing or managing within IEEE-designated fields.

Meeting minimum “educational requirements” and demonstrating “professional competence” are not tantamount to “outstanding achievements.” The record includes no evidence showing that the IEEE or the INFORMS require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field or an allied one. Thus, the petitioner has not established that he meets this criterion.

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.²

Counsel’s November 9, 2006 letter addresses this regulatory criterion stating: “[The petitioner] is a widely cited author. His supporter’s [sic] letters refer to this” Contrary to counsel’s assertion, none of the initial letters of support accompanying the petition state that the petitioner “is a widely cited author.” Without documentary evidence to support the claim that the petitioner’s work is widely cited, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In response to the director’s request for evidence, the petitioner submitted a February 5, 2007 letter from Dr. Markus Ettl, Research Staff Member, IBM Thomas J. Watson Research Center, stating that the petitioner’s “paper ‘Demand Forecasting Today’ . . . has been frequently cited in others’ articles.” The petitioner’s response, however, includes a “Citation List” documenting only two publications citing to this paper that existed as of the petition’s filing date, November 14, 2005.³ 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 articles citing the petitioner’s work that were published subsequent to November 2005 in this proceeding.

Nevertheless, regarding the publications listed by the petitioner that merely reference his work, we note that the plain language of this regulatory criterion requires that the published material be “about the alien.” In this case, the journal articles citing the petitioner’s work are primarily about the authors’ work, not the footnoted material identifying the petitioner. With regard to this regulatory criterion, a footnoted reference to the alien’s

² 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.

³ The “Citation List” submitted in response to the director’s request for evidence was prepared by the petitioner and was unaccompanied by copies of the actual publications citing his work.

work without evaluation is of minimal probative value. There is no evidence showing that the citations listed by the petitioner discuss the merits of his work, his standing in the field, any significant impact that his work has had on the field, or any other aspects of his work consistent with his sustained national or international acclaim. The citation list submitted by the petitioner is more relevant to the “authorship of scholarly articles” criterion at 8 C.F.R. § 204.5(h)(3)(vi) and will be further addressed later in this decision.

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.

The petitioner submitted evidence showing that he served as a session chair for the program on Supply Chain Modeling and Analysis at the INFORMS Annual International Conference in November 2002 and for the program on Data Envelopment Analysis Supply Chain Applications at the INFORMS Annual International Conference in October 2003. The petitioner also served as a panelist for a session at the Global Automotive Conference (GAC) in April 2002. A February 5, 2007 letter from [REDACTED] Global Advanced-Leadership Center, states that his organization hosts the GAC and that panelists “judge the quality of the submitted technical talks.” The petitioner also submitted a September 3, 2004 letter from [REDACTED] Professor of Industrial Engineering, Arizona State University (ASU), requesting that the petitioner review a candidate “for promotion to associate professor with tenure.” The letter from [REDACTED] states:

The university requires the evaluation by outside referees of the research and scholarly endeavors of candidates for promotion. In order to assist us with our deliberations, we are asking you to write a confidential letter, giving your personal assessment of the quality of [REDACTED]'s research, publications, productivity, and other contributions to the profession. . . . It would be most helpful to know if you feel that this individual would likely be granted tenure and promotion at your institution or other institutions comparable to ASU.

The petitioner’s evidence also included documentation that he provided peer review services for publications such as the *International Journal of Services Technology and Management*, *Journal of Operations Research*, and *IEEE Transactions on Semiconductor Manufacturing*.

In light of the above, the petitioner has 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.

As evidence that he meets this regulatory criterion, the petitioner submitted several letters of support. These letters discuss the petitioner’s qualifications, activities in the field, patents, publications, presentations, and results from various projects on which he worked, but they fail to establish that specific work attributable to petitioner constitutes scientific or business-related contributions of major significance in his field.

[REDACTED] President, ac² Solutions, states:

Since joining ac² Solutions in May, [the petitioner] has been engaged in cutting-edge research in the field of operations research and management science. He has taken a leadership role in several research and development projects including: developing a statistical outlier detecting and adjusting method (completed); quadruple exponential-smoothing forecasting model (completed); multi-server heterogeneous-skill-set queuing simulator (on-going) and its server-skill-requirement optimization model (on-going). He has applied his broad knowledge base and unique expertise in statistics, demand forecasting, simulation, stochastic modeling, queuing theory and optimization theory to develop statistical and optimization models addressing the most challenging problems in call center workforce management. His research work has been critical in our development of state of the art software solutions. I am confident that he will equally succeed in leading research and development work for our new supply chain management project: Production Scheduling for Aircraft Depot Maintenance, Repair and Overhaul. Our management decided to apply for a U.S. patent for the quadruple exponential smoothing model that [the petitioner] has worked on. [The petitioner] has exceptional analytical and communication abilities and extremely advanced modeling skills. His work is not only beneficial to our company but also to U.S. manufacturing and service industries as our software solutions have generated tremendous business success to our clients in U.S.

[redacted] s letter includes no specific examples of instances where the petitioner's work for ac² Solutions has provided significant benefits to "U.S. manufacturing and service industries." While the petitioner has clearly earned the admiration of his employer, there is no evidence showing that work attributable to him has had a substantial impact beyond his employer and its clients such that it can be considered a business-related contribution of major significance in the field.

[redacted], Emerson Electric Professor in Total Quality and Chair, Industrial Engineering Department, University of Wisconsin-Madison, states:

I have had the pleasure to be [the petitioner's] academic advisor for his M.S. and Ph.D. degrees in Industrial Engineering at the University of Wisconsin-Madison from 1988 to 1996.

* * *

[The petitioner's] thesis at UW-Madison focused on the development of analytical models for the design of setup time and batch size reduction in the group *technology-based flexible manufacturing* flow line work-cells. . . . In his research, he developed an analytical model that is used to determine the optimal reduction scheme for a work-cell with a given budgetary constraint. He also developed an analytical model based on queuing theory and stochastic differential equations to characterize and evaluate the work-cell's performance. By applying the calculated reduction scheme, the work-cell's throughput rate is maximized and the inventory level is minimized under the budgetary constraint. These models are pivotal for manufacturers to optimally allocate their budget for implementing setup time and batch size reductions in their manufacturing facilities. The impressive results of his research, particularly the derivation of stochastic differential equations, are clearly a measure of Roger's strong theoretical ability in system analysis and modeling and his research capability in deriving in-depth research results. Some of the petitioner's research results are published in the March 10, 1999 issue of the prestigious *International Journal of Production Research*.

Associate Professor, Industrial Engineering and Engineering Management Department, National Tsing Hua University, Taiwan, and Fulbright Visiting Professor, Industrial Engineering and Operations Research Department, University of California-Berkeley, states:

I have known [the petitioner] for the last 10 years, since we were graduate students in the Industrial Engineering Department at the University of Wisconsin-Madison. We both received our Ph.D. in the summer of 1996. . . . [The petitioner's] dissertation work and other research projects he conducted as part of his research assistantship with his academic advisor ([REDACTED]) were extremely outstanding.

With regard to the petitioner's research at the University of Wisconsin-Madison, [REDACTED]'s letter mostly repeats the information provided by [REDACTED]. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution 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's work has earned the admiration of his superiors and professional acquaintances, there is no evidence showing that it constitutes a contribution of major significance in his field consistent with sustained national or international acclaim. For example, there is no supporting evidence showing that the petitioner's published research was cited extensively by independent researchers or had a significant national impact throughout the manufacturing and service industries.

[REDACTED] of IBM states:

[The petitioner's] work on business analytics for technology components forecasting is extraordinarily outstanding. In contrast to traditional statistical forecasting techniques that rely purely on the trend and seasonality of demand history, [the petitioner] utilized mutual information indices to capture the demand correlations among technology components, and also exploited the Bayesian diffusion process to analyze technology life cycles. Utilizing demand correlations and product life cycles greatly improves the accuracy of demand forecasts when compared to traditional forecasting techniques. While the model is much more realistic, it is much more complex and challenging both analytically and computationally. To meet these challenges, [the petitioner] cleverly devised tractable and accurate approximations to develop intelligent forecasting algorithms. This groundbreaking methodology is of great importance to theory, but also led to successful implementations at IBM's Personal Computing Division and IBM Systems Group. The implementations showed that these new models outperformed the existing forecasting tools by 20% or more in forecasting accuracy.

I am also deeply impressed with [the petitioner's] research accomplishments in the area of dynamic pricing and profit optimization. In a project pertaining to electronic business-to-business (B2B) marketplaces, [the petitioner] served as principal investigator and led a small research team to

develop innovative models that attempt to dynamically devise product pricing policies, so as to maximize company profit. He first conducted a comprehensive study to analyze characteristics of historical sales transactions relative to current supply and market conditions, and subsequently directed the team to derive two multi-dimensional probability models that attempt to measure customers' buying behavior and competitors' selling behavior. Using the historical transaction data, it showed that setting the pricing policies based on the derived models will significantly increase total profit. This research work pioneered a revolutionary concept of using multi-dimensional probability models to interpret buyers' and sellers' behavior, and determine optimal prices from the mixture. Through several conference presentations and university seminars, [the petitioner] had brought this new idea to the field and led research to apply multi-dimensional probability models, such as Logit or Probit models, to pricing problems. There is no doubt that [the petitioner's] work represents a major accomplishment in the field of Operations Research, as well as the area of dynamic pricing and revenue management.

[redacted], Professor of Industrial Engineering and Operations Research, Columbia University, states:

I have known [the petitioner] for the last three years, since he was transferred . . . to IBM's Research Division at Thomas J. Watson Research Center. I have followed his work closely as I have a part-time visiting appointment at IBM Research. The main thrust of his research has been in the area of supply chain management. [The petitioner's] first project at IBM Research was to develop advanced forecasting methodologies to estimate customer demand for computer components. [The petitioner] developed two innovative models that are used to capture demand characteristics and estimate the future demand based on the captured characteristics. These include a statistical model that captures the demand correlation among components, and a Bayesian diffusion model that projects the demand life cycles of components.

* * *

[The petitioner's] second project at IBM Research was to develop advanced pricing and profit optimization methodologies to support IBM's businesstobusiness (B2B) sales and distribution group in determining the prices of computer products. [The petitioner] led the project and developed innovative analytical models to investigate the correlation between bids characteristics and winning probability, and to determine the optimal price to bid in response to a competitive request for quote (RFQ) for a specific computer configuration.

* * *

[The petitioner] has been involved in another high-visibility project at IBM Research, SenseandRespond (SaR) Blue Enterprise. The SaR system addresses the full spectrum of supply chain event management. It is an attempt to integrate event monitoring, simulation and optimization capabilities to improve the supply chain control and management. In this project, [the petitioner] has developed a demand driven production plan and inventory optimization model, which attempts to detect demand exceptions by monitoring daily order transactions and revising the original daily production plan and inventory plan to meet the exceptional demand requirements.

We acknowledge that the petitioner has made contributions to IBM's intellectual property, but there is no evidence establishing that this work was of major significance to the field. The record includes evidence showing that the petitioner coauthored a United States patent assigned to IBM for its "method for demand planning of products." The petitioner also submitted evidence showing that IBM filed a United States patent application for an invention coauthored by him entitled "Method and structure for bid winning probability estimation and pricing model." The grant of a U.S. patent demonstrates only that an invention is original. There is no evidence demonstrating that the preceding methodologies represent contributions of major significance in the petitioner's field. For example, there is no evidence showing that the petitioner's patented methodologies have attracted a substantial level of interest outside of IBM or his professional contacts. Without evidence showing substantial commercial interest in these methodologies, their widespread implementation, or that they have otherwise risen to the level of contributions of major significance in the field, we cannot conclude that the petitioner's methodologies meet this criterion.

[REDACTED], International Quality Coordinator, Philips Electronics North America Corporation, states:

During the period of 1995-1997, I . . . served as Program Manager of a 2.2M government project to improve aircraft readiness, a project in which [the petitioner] played a pivotal role.

* * *

When [the petitioner] started his position in my group at Philips Research-USA, his primary assignment was to work on a government research project . . . entailing the development of a Decision Support System (DSS) that would manage an aircraft repair and overhaul supply chain. The objective was to provide the U.S. Air Force with a tool that would enable the different levels of management (Pentagon, Wings, Air Force Bases, and Depot Repair management) to assess the impact of different policies and tactical decisions on the availability of the E3A aircraft fleet.

[The petitioner] led several critical technical aspects of this project and demonstrated his strong theoretical ability in stochastic process and queuing theory, and his extraordinary skills in simulation modeling and information technology. He developed a discrete event simulation model with built-in stochastic modules to simulate the entire repair supply chain. It enabled evaluation of the impact of policy decisions on supply chain performance. He developed the client-server based database management system of the DSS. He also designed the architecture for a what-if analysis system, through which decision makers could set the policies and parameters of the supply chains, provide the input of the simulation, and assess the output of the simulation.

* * *

It received very good feedback from Air Force logistics officers and was recommended as a tool to be used by other parts of the Air Force.

█'s second project in my group was to identify the specific design scenario of the logistics and supply chain network for Philips Consumer Electronics North America that would provide the greatest reduction in total logistics cost while meeting the target order fill-rate. He applied a Linear Programming based tool kit to formulate a large-scale equation set that best described the objective function (minimizing total logistics cost) and constraints such as target service level, manufacturing capacities, and warehouse capacities. This was a very challenging task as the number of supply chain and logistics factors may exceed 100. The proposed design yielded a savings of \$4.5M per year in logistics cost and a reduction in order delivery lead-time of 30%. These promising results were well received by the logistics department at Philips Consumer Electronics.

█'s letter states that the petitioner's DSS simulation model "was recommended as a tool to be used by other parts of the Air Force." With regard to the second project, █'s letter indicated that the petitioner's "proposed design" scenario was "well received by the logistics department at Philips Consumer Electronics." The record, however, includes no evidence showing that the petitioner's DSS simulation model was utilized by other parts of the Air Force. Nor is there evidence showing that Philips Consumer Electronics North America actually implemented the design scenario proposed by the petitioner for its logistics and supply chain network. Nothing in the record establishes that the petitioner's work for the preceding projects constitutes contributions of major significance in his field.

Director, Transportation and Distribution Solutions, i2 Technologies, Inc., worked at Philips Electronics along with the petitioner during the 1990s. █ repeats the information discussed in the preceding letters and observes that the petitioner "actively publishes scholarly articles in professional journals and conference proceedings." With regard to the petitioner's published and presented work, such evidence is far more relevant 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 petitioner's published and presented work under the next criterion.

In this case, the letters of support submitted by the petitioner's professional contacts and their discussion of his work 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 795-796. 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 researcher who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has

otherwise risen to the level of contributions of major significance, we cannot conclude 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.

The petitioner submitted evidence of his authorship of papers for presentation at various conferences and publication in journals such as *International Journal of Project Management* and *International Journal of Production Research*. The petitioner's response to the director's request for evidence indicates that his body of work was cited in others' publications an aggregate of seven times. The petitioner also submitted a syllabus from a course offered by the Information Systems Department at the University of Wisconsin-La Crosse entitled "Business Decision-Making and Research Methodology." The petitioner's paper "Demand Forecasting Today" is listed in the syllabus as one of dozens of required readings. In addressing the evidence for this regulatory criterion, the director's decision stated: "The record does not establish that the petitioner's works have been relied upon or cited to the extent that the impact of the articles is commensurate with a finding that the petitioner has achieved sustained national or international acclaim." We concur with the director's findings for this criterion and note that authoring scholarly articles is inherent to the research field. For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. On the other hand, few or no citations of an alien's work may indicate that his work has gone largely unnoticed by his field. In this case, there is no evidence showing that the petitioner's articles were frequently cited, or that they appeared in major publications or other major media in a manner consistent with sustained national or international acclaim. As such, the petitioner has not established that he meets this criterion.

In this case, we find that the petitioner 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. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

While CIS has approved at least two O-1 nonimmigrant visa petitions filed on behalf of the petitioner, the prior approvals do 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)(i) 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.