U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 03 2009
SRC 08 177 53137

IN RE: Petitioner:
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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

M Oladrich
for Perry Rhew
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 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 sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate the receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

U.S. Citizenship and Immigration Services (USCIS) 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 sustained national or international acclaim at the very top level.

This petition, filed on May 12, 2008, seeks to classify the petitioner as an alien with extraordinary ability as an investment manager. However, on the petitioner's Form G-325A, Biographic Information, signed by the petitioner on May 7, 2008 and submitted concurrently with the instant petition, he indicated that he has not been employed since December 2006. Moreover, the petitioner was employed as a teacher at Newbury College from January 2006 to December 2006, as a teaching assistant at [redacted] from June 2006 to August 2006, and as a graduate assistant at the University of Denver from March 2005 to December 2005. At the time of the original filing of the petition, the petitioner had not been employed for almost one and a half years. When the petitioner was employed, the petitioner's occupations were in education. Even if we were to find that the petitioner met any of the regulatory criteria, which we do not, the evidence related to the petitioner in the claimed field of financial investment is from nearly a decade prior to filing. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

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 under 8 C.F.R. § 204.5(h)(3).

> *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.*

The petitioner claims eligibility for this criterion based on his [redacted] The petitioner submitted a [redacted] which indicates that the petitioner passed the insurance broker qualification exam organized by the China [redacted] on May 15, 1999. The petitioner also submitted a Certificate of [redacted] which indicates that the petitioner studied the sixth training session and passed the examination.

The petitioner also submitted two documents, which provide brief backgrounds for the examinations for insurance brokers and security analysts in China. The documents contain no author, title, or source for the information. Even if we were to accept the documents as credible and reliable evidence, which we do not, they provide very little, if any, evidentiary value.

Notwithstanding the above, in order to demonstrate that membership in an association meets this criterion, a 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, 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.

Based on the documentation submitted by the petitioner, in order to obtain a [redacted] an applicant must pass a qualifying examination in addition to passing some courses. As indicated above, we are not persuaded that passing qualifying exams or that successful completion of courses are outstanding achievements commensurate with the requirements necessary to establish eligibility for this highly restrictive classification. The petitioner failed to establish that membership requires outstanding achievement as judged by recognized national or international experts.
Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner is claiming eligibility for this criterion for the first time on appeal. Therefore, the director did not err in his decision since both at the time of original filing of the petition and in response to the director's request for evidence, the petitioner never claimed eligibility for this criterion.

The petitioner submitted a reference letter from [redacted] stating that the petitioner was instrumental in [redacted] business development and client-building. [redacted] further stated that "an investment company enlisted his cooperation to enter the insurance broker market to capitalize on his business acumen and expertise in risk management."

The petitioner also submitted a reference letter from [redacted] stating that the petitioner was "instrumental in landing contracts worth millions," and he has "exceptional ability in investment management."

On appeal, counsel claims:

> As a matter of fact, [the petitioner's] research report about the insurance broker market has been adopted by prestigious company as the groundwork for its investments in the insurance broker market. [The petitioner's] report of investment feasibility analysis was approved by the senior management of [redacted] – a leading investment management firm in China. At the time [the petitioner] conducted his research, China had no insurance broker. The first insurance broker

> qualification exam signified the beginning of the insurance broker market. Encouraged by [the petitioner's] report, [redacted] decided to invest initially around US $3 million and enlisted [the petitioner's] cooperation to execute its investment plan.

Counsel failed to submit any documentary evidence supporting his assertions. Without documentary evidence to support the claim, 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 this case, the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the above letters are all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner's role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts in not presumptive evidence of eligibility; USCIS 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 writers' 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 any immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field. 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 contribution of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner has not established 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.*

In response to the director's request for evidence, the petitioner claimed eligibility for this criterion based on his positions as:

1. [redacted]
2. Salesperson at [redacted]
3. [redacted]

The director concluded that the petitioner failed to establish that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. On appeal, counsel refers to the previously mentioned recommendation letter from [redacted] indicating that the petitioner "demonstrated great skills in market analysis by leading a team to fulfill an extensive market research for [redacted] company." In addition, the petitioner submitted a recommendation letter from [redacted] President of [redacted], indicating that the petitioner enlisted [redacted]'s company in a joint venture to bid for the [redacted]

While the documentation praises the petitioner for his expertise and business skills, the documentation, however, does not establish that his positions were leading or critical to these companies as a whole. For example, the record does not include detailed job responsibilities discussing the nature of the petitioner's duties and significant accomplishments and the importance of his role to the companies' operations. The petitioner failed to establish that his leadership or critical roles directly led to the success and accomplishments at any of the companies. Further, the petitioner has not submitted an organizational chart or other similar evidence showing his position in relation to that of the other employees in similar positions at any of these companies. There is no evidence demonstrating how the petitioner's roles differentiated him from the other managers or salespeople. In this case, the documentation submitted by the petitioner does not establish that he was responsible for the success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted a partial English translation of the [redacted] in October, 1998 (Unit: [redacted] However, the accompanied English translation fails to comply with 8 C.F.R. § 103.2(b)(3), which requires that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." As the petitioner failed to submit a full English language translation, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On appeal, counsel claims:

> We would like to point out that [the petitioner's] compensation was high not only compared to his peers, but also to the average salary in his position.
>
> [The petitioner's] monthly compensation at that time was RMB 8,000.00, which was 7 times of the average wage – a high salary in relation to others in the field.

Counsel failed to submit any documentary evidence supporting his claim that the petitioner's monthly compensation or evidence of how that salary compared to others in the petitioner's field. Without documentary evidence to support the claim, 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. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Notwithstanding, counsel's reference to the petitioner's salary in 1998, a period of ten years prior to the filing of the petition, fails to establish that the petitioner has sustained national or international acclaim.

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 investment managers.

Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that 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 national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). Moreover, the evidence submitted relates to the petitioner's work during the decade prior to filing.

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 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.