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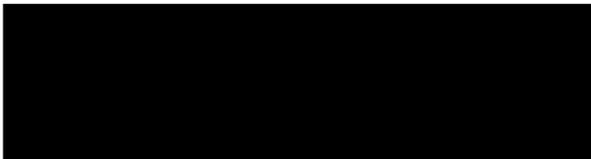


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 17 2007
SRC 06 032 52644

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

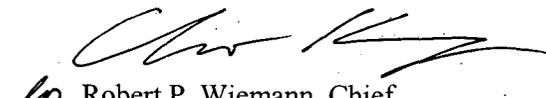
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability” in business, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the beneficiary’s sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. Specifically, the director concluded that the beneficiary meets only two of the regulatory criteria, of which an alien must meet at least three. Specifically, the director concluded that the beneficiary has performed a leading or critical role for an organization with a distinguished reputation and has made contributions of major significance pursuant to the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3)(v),(viii).

On appeal, counsel submits a brief and additional evidence. Counsel continues to discuss the “national interest” of the beneficiary’s work. The national interest of the beneficiary’s work in the United States, however, is not a consideration for the classification sought, alien of *extraordinary* ability pursuant to section 203(b)(1)(A) of the Act. Rather, aliens of *exceptional* ability or advanced degree professionals pursuant to section 203(b)(2) of the Act may seek a waiver of the alien employment certification process in the “national interest” if they establish their eligibility for the classification. See *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215 (Comm. 1998). This petition was not filed under that classification. Thus, we need not consider any of counsel’s assertions relating to this issue.

More relevant to the classification sought, counsel asserts that the director failed to consider evidence submitted, such as the testimonials from other members of the field. While the director did not specifically discuss that evidence, it is apparent that these testimonials, supported by other evidence, formed the basis of the director’s determination that the beneficiary has made contributions of major significance to the field and has served in a leading or critical role for a distinguished organization. While we will consider the letters in detail below, they are not persuasive. In fact, the letters are poorly supported by the remaining evidence and, in some cases, are expressly contradicted by other evidence.

Counsel’s specific assertions, some of which are raised for the first time on appeal, will be discussed below. Ultimately, however, we affirm the director’s ultimate decision, although we find that the beneficiary, in fact, meets only one of the regulatory criteria. Specifically, we find that while the beneficiary did play a leading or critical role for the Gallup Organization for just over one year, the petitioner has not demonstrated that the beneficiary has made any original contributions of major significance.

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 the beneficiary has sustained national or international acclaim at the very top level. We note that national or international acclaim both imply notoriety beyond the State of Florida, where the beneficiary resides and works.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as president of a real estate development company. We note that, according to her diploma, the beneficiary received her Master's Degree in Physical Education. While she claims on her curriculum vitae that the degree also included sports marketing and management, the petitioner did not submit the beneficiary's Master's degree transcript confirming this specialty. 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)). Thus, the petitioner has not established that the beneficiary has any business or marketing education. The beneficiary gained her initial experience in marketing through fundraising for various charity athletic events and subsequently found employment in the marketing and management field. The petition is primarily based on the beneficiary's proposed development of a "signature community" in Florida predicted to be influential nationally. Not only is the beneficiary not responsible for the design of this community, the community has yet to be built as of the date of filing and the articles submitted on appeal suggest that changes in eminent domain law may at least result in a reduced version of the original plan. In fact, the relevant authority has yet to even approve the project in its final form.

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.

On appeal, counsel asserts that the director failed to acknowledge and discuss the reference letters submitted. As noted above, while the director did not specifically quote from these letters, it would appear that the director did consider them in reaching her conclusion that the beneficiary has made contributions of major significance and has performed in a leading or critical role. Nevertheless, as the letters provide a good background for the remaining evidence, we will address them prior to discussing the evidence as it relates to the regulatory criteria.

The beneficiary received her Master's degree in 1992. The following employment information is taken from the beneficiary's curriculum vitae. After 1992, she worked as a public relations consultant for Pearson Associates through 1995. From 1995-1996, she worked as a consultant on the Deering Bay Yacht & Country Club development. In 1996, she promoted the South Florida Inner City Games as a marketing consultant. From 1996 through 1997, the beneficiary worked as a sales and marketing consultant for American Invsco on development projects and for telecommunications clients. From 1997 through 1998, the beneficiary worked as a Senior Sales & Marketing Consultant for Brookman Fels/Avatar Holdings. From 1998 through 1999, the beneficiary worked as a charity fundraiser for Aventura Marketing Counsel. From December 1999 through January 2001, the beneficiary worked as Vice President of Sales and Marketing for The Gallup Organization in New York. Finally, the beneficiary was working as Director of Marketing for Tessi Garcia & Associates as of the date of filing. The last two positions are the only direct employment claimed on the beneficiary's curriculum vitae. Published articles in the record also suggest that the beneficiary is currently an officer of Intown Development Group, a development company with little development experience attempting to obtain permission to develop a portion of Boynton, Florida.

Before considering the letters, we note that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim, talent in the field or vague claims of contributions are less persuasive than letters that provide information relating to the regulatory criteria, such as by specifically identifying contributions *and providing specific examples of how those contributions have influenced the field*. In addition, letters from independent references who were previously aware of the beneficiary through her reputation and who have been influenced by her work are far more persuasive than letters from independent references who were not previously aware of the beneficiary and are merely responding to a solicitation to review the beneficiary's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The petitioner submitted letters regarding the beneficiary's work in the mid-1990's raising funds for the South Florida Inner City Games Foundation (ICGF). U.S. Senator Connie Mack, in a letter dated August 13, 1998, writes in support of the beneficiary's previous petition under a different classification. Senator Mack praises the beneficiary's charity fundraising abilities but does not imply that the beneficiary enjoys national acclaim in the marketing field. The letters from Brother Paul Johnson, Chief Executive Officer of Camillus House in Miami; [REDACTED] Vice President of Sales and marketing for [REDACTED] Company, South Florida Division; and [REDACTED] owner of an automotive consultancy company in Detroit, provide similar information. Mr. [REDACTED] explains that he met the beneficiary while residing in Florida part-time. Brother [REDACTED] affirms that ICGF was, at the time, offering the beneficiary the position of Director of Fundraising and Marketing. On her curriculum vitae, the beneficiary only indicates that she served as ICGF's marketing consultant in 1996. Regardless, while fundraising is perhaps related to sales and marketing, we are not persuaded that it demonstrates expertise in the beneficiary's current occupation, real estate marketing and development, which would appear to require knowledge of the real estate and development industry.

[REDACTED], Mayor of [REDACTED] Florida, attests to the beneficiary's work on Fisher Island, Deering Bay Yacht Club and Harbor Islands. He asserts that it is "a fact well-known in the field of marketing" that the beneficiary assisted in launching Topp Telecom, Inc. Mr. [REDACTED] provides other assertions regarding project in which he does not personally appear to have been involved. As Mr. [REDACTED] concludes that he has reviewed her "impressive work and credentials," he appears to base his letter on this self-serving documentation rather than any prior knowledge of her through her reputation in the field. Most significantly, Mr. [REDACTED] concludes only that the beneficiary is "renowned in Florida." Such local notoriety is well below the national acclaim statutory standard for the classification sought.

[REDACTED], President of [REDACTED] in Florida, explains that he has worked with the beneficiary on several projects over eight years. Specifically, Mr. [REDACTED] worked with the beneficiary on the Deering Bay Yacht Club, Harbor Islands and Ocean Palms. Mr. [REDACTED] praises the beneficiary's professionalism and creativity and predicts that her new project "can serve to

inspire entrepreneurial developers across the U.S.” He concludes that “if anyone has the exceptional talents to set national standards in the industry, [the beneficiary] does.” He does not assert, however, that the beneficiary’s past projects have changed the development industry nationwide or that she has already set industry standards. Moreover, he does not address the ten criteria or affirm that the beneficiary already enjoys a national reputation in the industry.

██████████, Chairman and Chief Executive Officer (CEO) of ██████████ and founder of ██████████ asserts that the beneficiary was Director of Marketing and Acquisition at Invsco in 1996 and increased sales at the Yacht Club 42 percent. While this increase demonstrates the beneficiary’s skill in her field, it is not clear how this accomplishment demonstrates any acclaim beyond her employer.

██████████, President of ██████████ and primary architect and planner for ██████████, the beneficiary’s current project, first discusses the beneficiary’s previous work. Specifically, Mr. ██████████ asserts that the beneficiary developed a “turnaround marketing plan” for Harbor Islands that increased revenues by 400 percent. ██████████, Associate Principal of ██████████ and Partners, indicates that her evaluation of the beneficiary’s abilities is based on a review of her credentials. Ms. ██████████ does not suggest that she previously knew of the beneficiary through the beneficiary’s national reputation in the field. Significantly, Ms. ██████████ discussion of the beneficiary’s work with ██████████ is nearly verbatim to the same discussion in Mr. ██████████ letter. Such common verbiage suggests that while the authors affirm the language, it is not their own. The record does not include confirmation of the increase in sales directly from the developer, Avatar Holdings

The petitioner did submit a letter from ██████████ President of the ██████████, and a co-developer with ██████████. Mr. ██████████ indicates that he selected the beneficiary to perform their marketing for Ocean Palms based on a recommendation from ██████████, President of Avatar. Mr. ██████████ asserts that sales of residences at Harbor Islands increased 250 percent due to the beneficiary’s marketing. ██████████, Executive Vice President of ██████████ in Florida, claims to have worked with the beneficiary on the Harbor Islands project and also attests to the 250 percent increase. While this still would be an impressive number, the record now provides two inconsistent numbers for the increase in revenues, 400 and 250 percent. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record lacks official sales data demonstrating a correlation between the beneficiary’s marketing and increased revenues.

The record contains an October 1999 article in the *South Florida Business Journal* asserting that ██████████ increased the sales of its Harbor Islands homes through a joint venture with ██████████ after which ██████████ President and Chief Operating Officer ██████████ “recognized the opportunity to reposition the community as a desirable purchase for local buyers.” The article does not mention the beneficiary and the record includes no letters from Mr. ██████████ or Mr. ██████████ confirming the beneficiary’s

role in the increase in sales of Harbor Islands homes. Rather, the petitioner submitted an advertising and public relations budget and an advertising campaign, both prepared by the beneficiary in January 1997 as "Director of Marketing" for Harbor Islands. The record contains no evidence that the beneficiary's January 1997 plans include the marketing plan referenced in the October 1999 article.

Regarding the beneficiary's current project, [REDACTED] Vice President of the petitioning company, asserts that she met the beneficiary in New York and in Florida before recruiting the beneficiary as the petitioner's president. Ms. [REDACTED] asserts that as Vice President of Sales and [REDACTED], the beneficiary repositioned "[REDACTED] City Center for [REDACTED]." As president of the petitioning company, the beneficiary has given presentations before government officials and is "working to make Seacrest Village into a 'signature community' which will be endorsed at both a local and national level." Finally, Ms. [REDACTED] asserts that the petitioner is offering the beneficiary \$125,000 annual remuneration and a 25 percent shareholder position. The development proposal submitted on appeal reveals that [REDACTED] is a joint venture between the petitioner, [REDACTED] and [REDACTED] and Partners. The local newspaper articles suggest that Ms. [REDACTED] and the beneficiary jointly represent Intown Development Group. It is not clear that the petitioner itself is a large development company with a prior history of successful development.

[REDACTED] Democratic Leader Pro Tempore in the Florida House of Representatives, asserts that she represents the district in which the beneficiary is proposing mixed development. Ms. [REDACTED] predicts that the development will revitalize a city struggling for an identity. Ms. [REDACTED] praises the beneficiary's commitment to community involvement and affordable housing. Ms. [REDACTED] fails, however, to discuss any past projects that demonstrate the beneficiary's notoriety in the field. Nor does she specifically address the ten regulatory criteria. Finally, Ms. [REDACTED] does not profess any expertise in the field of real estate investing or claim to have previously known the beneficiary through her national reputation.

[REDACTED], President of Criterium Inspection Engineers in Florida, asserts that he has worked in real estate development for 20 years and compares the beneficiary favorably with others in her profession. He affirms that her "work in leading Seacrest Village to be a 'signature community' in Palm Beach County and the City of Boynton Beach should stand as a role model to other developers in the profession both locally, regionally and across the United States." Once again, while Mr. [REDACTED] speculates as to the future reputation of developments on which the beneficiary is working, he does not identify past successful projects, specifically address the ten criteria, or claim to have learned of the beneficiary through her *national* reputation.

Mr. [REDACTED] in addition to his assertions regarding the beneficiary's previous work discussed above, also asserts that he personally designed the plan for Seacrest Village and that he met the beneficiary at a City Counsel meeting where she spearheaded a plan to implement Mr. [REDACTED] plan. While Mr. [REDACTED] discusses the significance of the plan for Seacrest Village, it remains that this plan has yet to be completed. Thus, it has yet to influence the development industry nationwide. Moreover, as stated by

Mr. [REDACTED] he is the architect of the plan itself. Thus, any credit for the significance of the plan itself would seem to accrue to him. Moreover, while the record contains some references to the beneficiary being "awarded" the Seacrest Village project, the plan itself indicates:

The City of Boynton Beach received an Urban Infill and Redevelopment Grant from the State of Florida to prepare a Neighborhood Master Plan for what is now referred to a "the Heart of Boynton." The Master Plan is the second of five redevelopment plans for the City's Community Redevelopment Agency (CRA) Redevelopment Area. The City retained the services of [REDACTED] and its sub consultants JEG Associates an RMPK Group to prepare the Neighborhood Master Plan.

"Heart of Boynton Community Redevelopment Plan," p. 1. The record contains no evidence that the beneficiary had any affiliation with [REDACTED] Associates or [REDACTED] prior to the award of this grant.

[REDACTED] founder and president of [REDACTED] Public Relations in Florida, asserts that the beneficiary has played a critical role in the growth and sustained recognition of her employers and that her accomplishments "have been chronicled in a wide range of publications that have positioned her as an expert and a trend-setter in marketing, management and development." Mr. [REDACTED] asserts that "through [the beneficiary's] efforts, [REDACTED] was recently named the 'master developer'" for Seacrest Village. The media coverage listed by Mr. [REDACTED], however, is all local to South Florida.

Moreover the articles themselves, while demonstrating some popular support for the beneficiary's project, do not suggest that the [REDACTED] has gained any official approval. The September 2005 article in the *South Florida Business Journal* indicates that the City of Boynton had yet to agree to sell the necessary property. The September 14, 2005 article in the *Sun-Sentinel* indicates that the Community Redevelopment Agency (CRA) had yet to choose a developer. In fact, the CRA was considering requesting proposals from several developers rather than let "Intown skirt the process." A September 16, 2005 article indicates that the CRA was in the process of using eminent domain to acquire 4.2 acres for a proposal it voted on in 2002 although "Intown has pending contracts on some of those same properties." An October 19, 2005 article in Boynton Beach's *Neighborhood Post* indicates that "Intown's vision, however, is not at all what the city and the Community Redevelopment Agency had in mind when the Heart of Boynton redevelopment plan was approved in 2001." The article continues:

[REDACTED], the city's development director, said the folks at Intown appear to be 'marching to their own drummer.

'I don't know where they got the idea that they were somehow going to be the exclusive entity in the Heart of Boynton,' he said. 'We know what we're doing, I just don't know what they are doing.'

Given the unambiguous language in these articles indicating that Intown had yet to gain official approval as of the date of Mr. [REDACTED] letter, all of the information in that letter lacks credibility. In fact, the articles submitted on appeal reveal that no deal was ever reached with Intown and that a recent law on eminent domain is requiring Intown to compete with other developers. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Mr. [REDACTED] also states that the beneficiary has "held senior-level positions with the [REDACTED] [sic], Blue Cross Blue Shield, and [sic] [REDACTED] [REDACTED]". While the record contains evidence directly from The [REDACTED] Organization confirming the beneficiary's role with that company, the record is absent evidence that the beneficiary has worked for any of the other organizations. Moreover, these organizations are not listed on the beneficiary's curriculum vitae. Rather, the CEO of [REDACTED] lists these organizations as among [REDACTED] own clients recruited by the beneficiary. Recruiting a business as a client for one's own employer is not the same thing as serving in an executive capacity for that client. Overall, the letter from Mr. [REDACTED] lacks credibility and has little evidentiary weight.

Given the above background, we will now discuss the regulatory criteria, set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x), as follows:

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 a 1993 award from the Florida International University College of Education in recognition of academic excellence issued to the beneficiary. The beneficiary received her Master's Degree in Physical Education from that institution in 1992. The beneficiary is also included in the 1989-1990 edition of "The National Dean's List." The director concluded that this evidence of academic achievement was not indicative of an award in the beneficiary's field of endeavor.

Counsel does not directly challenge this conclusion on appeal. Rather, counsel asserts, for the first time in these proceedings, that the "award" as master developer for Seacrest is an award of national significance. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

First, not only do we concur with the director that recognition for academic excellence at one's own school is not a lesser nationally or internationally recognized prize or award for excellence, the beneficiary's degree was in Physical Education, a completely different field. Thus, the recognition was clearly not in the beneficiary's current field of endeavor, real estate marketing and development.

Second, an "award" to develop property is not an award issued in recognition of past excellence. Obviously the past achievements of the developer are a factor in the evaluation of development proposals. The awarding entity has to be assured that the developer is capable of performing the proposed development. Nevertheless, a development grant is principally designed to fund future development, and not to honor or recognize past achievement. Moreover, it is presumed that a development award recognizes the quality of the proposed development, not the marketing or executive management for the project. While a proposal must be well presented, nothing in the record suggests that the development award was issued in recognition of the beneficiary's excellence in the fields of marketing and management. In fact, as discussed above, the only development award affirmatively granted that is documented in the record is the grant to Strategic Planning Group, Inc. The news articles continue to indicate that the necessary authority has not reached a final agreement with Intown.

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

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

Initially, the petitioner submitted the beneficiary's Real Estate Sales Associate License and Membership Card for the National Association of Realtors (NAR). The director requested evidence of the membership criteria for the NAR. In response, the petitioner submitted a May 11, 2006 letter from [REDACTED], CEO of the National Association of Sales Professionals ([REDACTED]) confirming the beneficiary's membership in NASP. Mr. [REDACTED] further asserts that [REDACTED] is comprised of "dynamic leaders" who rank in the top ten percent of their field. In a similar letter dated August 9, 2001, the former CEO of [REDACTED] [REDACTED], asserts that members of [REDACTED] "generally" rank in the top 10 percent of the field. The official materials also state that members "generally" rank in the upper 10 percent and suggest that [REDACTED] merely provides "premier sales certification" available to career-minded sales persons.

The director concluded that the petitioner had not established that the beneficiary is a member of an association that requires outstanding achievements of its members. On appeal, counsel asserts that the letters from [REDACTED] set forth, "in detail, its requirements of extraordinary ability of its membership." Counsel also asserts, for the first time in these proceedings, that the petitioner submitted evidence of the beneficiary's "membership" in the [REDACTED]. Counsel specifically asserts that the director erred in failing to consider the beneficiary's [REDACTED] "membership" even though counsel has never advanced this claim previously.

Counsel seriously mischaracterizes the letters from [REDACTED]. The letters are not detailed, but brief. They provide no specific memberships requirements. The broad assertion that members are "generally" highly ranked in the field is insufficient. The association must "require" outstanding achievements of its members to qualify. 8 C.F.R. § 204.5(h)(3)(ii). The letters do not explain how members are elected

or otherwise chosen or provide the specific criteria under which they are evaluated for membership. Merely passing a certification examination is not an outstanding achievement.

It is noted that the petitioner has submitted voluminous documentation in this matter. At no point has counsel identified which exhibit documents the beneficiary's "membership" in ULI. We have been unable to locate any mention of ULI in the record.

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

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

The petitioner submitted articles in the *South Florida Business Journal* about the acquisition of land in Boynton Beach for the Seacrest Village development. The beneficiary is identified as a developer and official of Intown Development Group. Ms. [REDACTED] an officer of the petitioner, is listed as a co-developer. While counsel and several references tout the significance of this project as having altruistic values, the September 16-22, 2005 edition of the *South Florida Business Journal* reveals that the main landowners contributing to the development insisted on this issue. Moreover, as discussed above, the plan was actually designed by Mr. [REDACTED]. Finally, the completion of the project as planned remains uncertain even as of the date of appeal.

The director requested clarification as to how this evidence serves to meet the criterion. In response, the petitioner submitted articles in other local South Florida papers and the letter, discussed above, from Mr. [REDACTED]. As stated above, Mr. [REDACTED]'s makes assertions that are explicitly contradicted by the articles. Thus, his letter has little credibility.

The director concluded that the press coverage had no national circulation and, thus, could not serve to meet this criterion. On appeal, the petitioner submits new news articles, indicating that the CRA voted to negotiate with Intown rather than seek proposals from other developers because, without eminent domain, soon to be outlawed for private development, the city could not acquire the land to be developed. Without owning the land, the CRA could not open the process to outside proposals. The CRA, however, had yet to grant full development rights to Intown. A May 4, 2006 article in the *Palm Beach Post* indicates that city commissioners "asked staffers to review the Intown proposal but made no promises." A May 13, 2006 article in the same paper indicates that Governor Jeb Bush signed the eminent domain law sooner than expected and that the new law "foils last-minute negotiations with Intown Development Group for the second phase of the Heart of Boynton." A June 23, 2006 article in the *Sun-Sentinel* indicates that the City of Boynton agreed to look at proposals from multiple developers. Intown is named as a group planning to make a proposal. The latest article submitted, a July 11, 2006 article in the *Palm Beach Post*, still does not indicate that any final proposal has been accepted.

While the beneficiary is quoted in some of the articles, they are not primarily about her. Even if we were to conclude that the articles were sufficiently about the beneficiary, relating to her work, they did not appear in major media. The record lacks evidence that the papers that have covered Seacrest have a significant national distribution.

Also on appeal, counsel asserts that the beneficiary's television appearance was covered by a national affiliate. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no evidence that the beneficiary received nationally televised coverage.

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

Counsel does not challenge the director's assertion that the petitioner did not claim or submit evidence relating to this criterion and we concur with the director.

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

As discussed above, the petitioner submitted several reference letters that relate mostly to this criterion. As also explained above, mere attestations of extraordinary ability, skill and contributions are insufficient. The most persuasive letters will provide specific examples of contributions *and* explain how those contributions have influenced the field.

The letters regarding the beneficiary's work on [REDACTED] are not persuasive. As discussed above, that project has yet to go forward and, as such, cannot be considered a contribution that has already influenced the field. Moreover, some of the most significant elements, such as the design, are not the beneficiary's own original contributions.

The record contains several presentations prepared by the beneficiary for [REDACTED]'s clients. These presentations include "[REDACTED]," a metric based economic model created by [REDACTED]'s current CEO according to his biography in the record. The record lacks letters from the clients who participated in these seminars as to the influential nature of the beneficiary's presentations. Mr. [REDACTED] asserts that the beneficiary recruited "invaluable" clients for the New York office and has received favorable acclaim in the field, but provides no examples of how the beneficiary has influenced the field of marketing and sales beyond demonstrating her competence at [REDACTED]. While counsel focuses on Mr. [REDACTED] discussion of the beneficiary's successful score at the time of hiring, the record lacks evidence as to how this score is indicative of her past contributions of major significance or

general acclaim in the field. Acclaim requires not merely talent, but notoriety in the field beyond one's own employers and clients.

The beneficiary's presentations of [REDACTED] management strategies, developed by the company's CEO, while possibly tailored to an individual client, do not appear to be *original* contributions. Regardless, the record lacks evidence of widespread adoption of these strategies.

The petitioner also submitted several marketing plans for various real estate properties and a cellular phone company. As discussed above, several references assert that these marketing plans were unusually successful. Most of these letters are not from the actual employer. Regardless, assuming that the beneficiary is responsible for successful marketing plans, not every successful marketing plan is a contribution of major significance to 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. To be considered a contribution of major significance in the field of marketing, it can be expected a marketing plan will not merely be successful, as they are designed to be, but influential on the field as a whole.

The record is absent evidence that the beneficiary's real estate marketing plans have proven influential in the field or have even been acknowledged outside of Florida. The record contains no evidence that the beneficiary is a frequent lecturer on marketing or has authored influential scholarly articles in major trade journals explaining her methods. The record lacks letters from members of the field outside of Florida who were previously aware of the beneficiary through her national reputation and who have been influenced by her marketing plans.

In light of the above, we withdraw the director's finding that the beneficiary 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 initially submitted a local news article in a community newspaper authored by the beneficiary. The director requested evidence that the beneficiary had authored an article in a scholarly journal or major trade publication. In response, the petitioner submitted several internal reports and presentations prepared by the beneficiary on behalf of [REDACTED] for its clients. The director concluded that these reports were not published in professional or major trade publications or other major media. Counsel does not specifically challenge this conclusion on appeal but does reiterate that these materials were submitted.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires that the articles be scholarly and that they appear in professional or major trade publications or other major media. The beneficiary's articles for local newspapers are not "scholarly" and do not appear in major media. The

beneficiary's reports and presentations prepared for her employer's clients are not published in professional or major trade publications or other major media.

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

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Initially, the petitioner submitted marketing materials for [REDACTED], an [REDACTED] community. The unofficial sample submitted lists the beneficiary as the designer of [REDACTED]'s logo and a Harbor Islands advertisement. The petitioner also submitted a proposal for marketing the Ocean Palms prepared by the beneficiary, credited as Director of Marketing for the architecture company ItecDesign. The petitioner also submitted Internet materials for [REDACTED]. [REDACTED] reports prepared for the [REDACTED] Organization's New Jersey World Headquarters and promotional materials for corporations sponsoring the Greater Miami Inner City Games. Nothing in these materials credits the beneficiary as the designer of these materials. Finally, the petitioner submitted the plans for a proposed Sears building. These plans are not credited to the beneficiary and the beneficiary is not an architect.

The director's request for additional evidence emphasizes that this criterion requires display at artistic exhibitions or showcases and does not apply to the beneficiary's field. Counsel did not address this criterion in response. The director ultimately concluded that the displays of the beneficiary's work were not at artistic exhibition or showcases and that this criterion is not applicable to the beneficiary's field. Counsel does not challenge this conclusion on appeal and we concur with the director. Thus, the petitioner has not established that the beneficiary meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel initially claimed that the beneficiary played leading or critical roles for the [REDACTED] Organization in New York and for the following development projects: [REDACTED] and [REDACTED] all in Florida. The index to the initial submission suggests that the petitioner is also relying on the beneficiary's roles with the Don Shula Foundation, the Greater Miami Inner City Games and the Miami Project to Cure Paralysis.

In response to the director's request for additional evidence, the petitioner submitted a letter from the CEO of The [REDACTED] affirming that the beneficiary served as the Vice President of Sales and Marketing for the company's New York Office for 14 months. The director concluded that the beneficiary meets this criterion and we concur, although this 14-month position hardly seems indicative of the type of sustained acclaim contemplated by the statute.

The record lacks sufficient evidence that the beneficiary's remaining roles have been leading or critical as she merely served as a consultant. Specifically, the record lacks letters from the actual entities that

employed her, as opposed to those who appear to know of her work indirectly. The regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of employment should be in the form of letters from the employers themselves. The record also lacks Forms W-2 confirming actual employment with any company other than The [REDACTED]. The record also lacks evidence that the beneficiary's other alleged employers, as opposed to their clients, have distinguished reputations *nationally*.

In light of the above, while we will not withdraw the director's conclusion that the beneficiary meets this criterion, we find that the evidence, although minimally sufficient, carries far less weight than claimed by counsel.

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

Initially, counsel asserted that the beneficiary "has been, and will continue to be remunerated with a significant salary for her extraordinary work." The only evidence submitted initially relating to this criterion was the job offer from the petitioner. This letter does not demonstrate what the beneficiary had already earned as remuneration.

The director requested evidence of the beneficiary's remuneration in 2002, 2003 and 2004 and evidence of comparative salaries in the field. In response, the petitioner submitted the beneficiary's 2000 Wage and Tax Statement data showing wages of \$120,282. The petitioner also submitted a letter from [REDACTED] CEO of the [REDACTED] confirming that the beneficiary was employed as their Vice President of Sales and Marketing in New York office from December 1999 through February 2001. He further states that [REDACTED] paid the beneficiary "one of the highest *base* salaries for a Vice President in our company." (Emphasis added.)

The director concluded that the petitioner had not established the beneficiary's remuneration after 2000 and had not established that her remuneration was high "in relation to others in the field." On appeal, counsel asserts that the director did not give sufficient weight to Mr. [REDACTED]'s letter.

The petitioner must establish the beneficiary's eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, the petitioner's offer of employment to the beneficiary is insufficient. We note that the beneficiary already serves as an officer of Intown, a partner of the petitioner, yet the record does not establish that she is earning a significant salary in that position. Regarding the beneficiary's \$120,282 salary with [REDACTED] the record is not persuasive that this wage is significantly high in the field. While Mr. [REDACTED] asserts that the wage was one of the company's highest *base* salaries for that position, we will not narrow the beneficiary's field to those earning a base level wage in a similar position. The beneficiary must compare with the top earners in her occupation. The record does not establish that her salary at [REDACTED] compares with the top earning Vice Presidents of Sales and Marketing nationwide.

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

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel does not challenge the director's assertion that the petitioner did not claim or submit evidence relating to this criterion and we concur with the director.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the beneficiary has distinguished herself as a real estate development president 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 indicates that the beneficiary shows talent as a real estate development president, but is not persuasive that the beneficiary's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

While Citizenship and Immigration Services (CIS) approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, the prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of beneficiary's qualifications).

Moreover, if the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. Due to the lack of required initial evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant visa petition.

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 had approved the nonimmigrant petitions 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).

The director is instructed to review the previous nonimmigrant approval for possible revocation, pursuant to 8 C.F.R. § 214.2(o)(8).

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.