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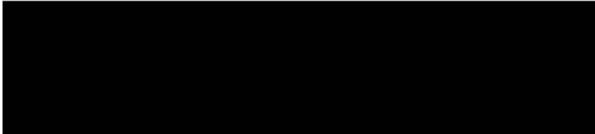
FILE: EAC 06 030 50758 Office: NEBRASKA SERVICE CENTER Date: MAY 20 2008

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability,” 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 that the beneficiary enjoys the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel has submitted two briefs and documentation, most of which was already part of the record of proceeding. For the reasons discussed below, we uphold the director’s decision as the petitioner has not submitted the necessary evidence to establish eligibility for the classification sought.

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

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a senior perfumer. 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. The petitioner has submitted evidence that, counsel claims, meets the following criteria.¹

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

Initially, counsel asserted that the beneficiary "is a recipient of the 2004 Perfumer's Choice Award." Counsel further asserted that the award is "the highest award in the industry." (Emphasis in original.) The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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).

The petitioner submitted a letter from ██████████, Secretary of the American Society of Perfumers, asserting that the society hands out yearly awards "to fragrance houses that create the best fragrances for certain media groups." Ms. ██████████ confirms that in 2004, the society awarded Fantastic Oxy-Power "Fresh Scent" from the petitioning company best fragrance in the Household Cleaners category, as voted by "all of the perfumers in our industry." The petitioner also submitted a letter from ██████████, the petitioner's Human Resource Representative, confirming that the beneficiary created Fantastic Oxy-Power "Fresh Scent." In addition, the petitioner submitted a copy of a photograph of the beneficiary holding an award, purported to be him accepting the award on behalf of the petitioner.

In response to the director's request for additional evidence, including a copy of the award itself "which clearly identifies the recipient," the petitioner resubmitted previously submitted evidence and a new letter from ██████████, the petitioner's President of Fragrance, who confirms that the beneficiary's contributions include Fantastic Oxy-Power "Fresh Scent." The petitioner did not submit a copy of the award as requested.

The director concluded that the beneficiary "was not personally awarded this prize for his own unique efforts." On appeal, counsel notes that ██████████ asserted that the award "is an extraordinary achieve [sic] for the fragrance company, manufacturer as well as the perfumer who developed it." Counsel further asserts that the director's logic would result in the conclusion that the chef who created the menu for an award-winning restaurant, the developer of Coca-Cola's recipe, the developer of Hershey's milk chocolate and the creator of Kevlar do not demonstrate extraordinary ability.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The examples provided by counsel are not before us. Regardless, at issue under this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(i), is not whether an employee who develops a remarkable recipe or formula can demonstrate extraordinary ability overall, but whether an award that is not issued to the alien beneficiary can be considered under this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) clearly requires evidence of “the alien’s receipt” of a prize or award. If the beneficiary did not personally receive the award, it simply cannot be considered under this criterion.

expressly asserts that the society issues awards to companies, not individuals. Thus, we must concur with the director that the 2004 award cannot serve to meet 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, counsel asserted that the beneficiary is a member of the American Society of Perfumers. As stated above, 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. The petitioner did not initially submit any evidence of the beneficiary’s membership in the society or the society’s membership requirements. Rather, the petitioner submitted Internet materials about the society indicating that the society has 300 “qualified” members. The petitioner also submitted a news articles on unusual high paying jobs that indicates there are “likely no more than 1,000 official perfumers worldwide.”

The director did not question the beneficiary’s membership in the society. Rather, the director requested evidence of the society’s membership requirements. In response, the petitioner submitted the society’s bylaws, which provide:

Any perfumer currently following his profession within the United States of America, having served five (5) years either as an Apprentice Member or Guest Member may be elected to active membership in the Society upon the recommendation of the Membership Committee.

The bylaws then define the qualifications for being considered a perfumer, which appear to simply be the requirements for employment in the field, and finally indicate that an invitee must be sponsored by two members, one of whom has been a full member of the society for a minimum of five years.

The director concluded that the petitioner had not demonstrated that society membership is limited to those with outstanding achievements. On appeal, counsel asserts that the society has only 300

members while there are estimated to be 1,000 perfumers worldwide. Counsel concludes: “This small group of Perfumers alone signifies its Perfumers are required to have outstanding achievement.” Counsel finally refers to other evidence indicating that the beneficiary’s field is small.

The small number of perfumers in the United States and, indeed the world, does not suggest that everyone qualified to work in the occupation is necessarily one of the small percentage at the top of the field. Moreover, the fact that the society only has 300 members is not presumptive evidence that the society requires outstanding achievements of their members. We note that there are an estimated 1,000 perfumers in the world and that the society requires employment in the United States. Regardless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence that the society requires outstanding achievements of its members. Thus, the small size of an association, without evidence that membership is restricted to those who demonstrate outstanding achievements, is not presumptive evidence that the membership is qualifying.

It remains, five years of experience in the occupation, even an occupation with few practitioners, is not an outstanding achievement for those who work in that occupation, the group to which we must compare the beneficiary. Rather, five years of experience merely indicates an ability to sustain employment in the occupation, which does not set the member apart from any other individual in the same occupation.

In light of the above, we concur with the director that the beneficiary’s alleged membership does not meet the plain language requirement of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

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.

Initially, counsel asserted that the beneficiary had “appeared in major media regarding his expertise in the field and business of perfumery.” The petitioner submitted no evidence to support this assertion initially. We reiterate that 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.

The director requested evidence to support counsel’s assertions with respect to this criterion. The director further requested evidence regarding the distribution and circulation of any written source and the audience served for any broadcast. In response, the petitioner submitted a recording of the beneficiary’s appearance on German television, a 1998 article in *Savoir-Vivre* accompanied by an uncertified translation, a photograph of the beneficiary among several photographs of celebrants in a 1991 issue of *Cosmetic World*, an announcement of the beneficiary’s new position at Haarmann & Reimer in *Beauty Fashion* and a 2004 announcement in *Perfumer Flavorist Magazine* advising that

the beneficiary would appear on the Food Network's "What's Hot" as a commentator on the subject of luxury cleaning products and kitchen scents.

The director concluded that the brief mentions in *Cosmetic World* and *Beauty Fashion* could not serve to meet this criterion. The director then noted that the petitioner had not provided the required and expressly requested evidence of distribution or circulation regarding *Savoir-Vivre*. Moreover, the director noted that the article in this magazine was dated more than seven years before the petition was filed and, thus, not evidence of sustained national or international acclaim. Finally, the director concluded that the beneficiary's television appearances did not primarily "pertain to his accomplishments and achievements in the field."

On appeal, counsel asserts that the director did not consider all of the evidence and asserts that the director erred in dismissing the evidence considered. Counsel further asserts that Food Network is distributed to more than 85 million U.S. households and that it is the fastest in subscriber growth.

We concur with the director that the brief mentions of the beneficiary in *Cosmetic World* and *Beauty Fashion* are not published materials primarily about the beneficiary. Rather, the beneficiary is briefly named in materials that do not focus on him. Moreover, the position announcement by Haarmann & Reimer is tantamount to a press release. It is not the type of independent journalistic coverage of the alien that can serve to meet this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires media coverage in professional or major trade publications or other major media. Thus, a fundamental element of this criterion is the nature of the publication that featured the beneficiary. Despite the plain language of this criterion and the director's explicit request for evidence of the distribution or circulation of the publications covering the beneficiary, the petitioner has never submitted any evidence regarding the distribution or circulation of *Savoir-Vivre*. Even if the petitioner had submitted such evidence on appeal, and it did not, because the director expressly requested this evidence prior to the denial, we would not be able to consider such evidence on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. at 537. Moreover, the translation of this article does not comply with 8 C.F.R. § 103.2(b)(3), which requires that translations be certified by the translator. In light of the above, we cannot consider the article in *Savoir-Vivre*.

In addition, we acknowledge the submission of a compact disc purportedly of the beneficiary's appearance on the German television show "Taff." We were unable to play the disc. Regardless, as it purports to be German television appearance, it is presumably in German. The record contains no translation of the appearance. Moreover, despite the director's specific request that the petitioner submit evidence of the audience of any broadcast media, the record contains no such evidence. As the petitioner has not submitted evidence from German television officials confirming the broadcast and explaining the audience of the program, the petitioner has not established that the beneficiary appeared on a nationally televised program.

Finally, we acknowledge that the petitioner submitted a brief promotional notice in *Perfumer Flavorist Magazine* mentioning the beneficiary's upcoming appearance on a Food Network program. The beneficiary was to serve as a commentator. The promotional piece does not indicate that the beneficiary was the subject of a story or program. Thus, we concur with the director that the petitioner has not established that this appearance constitutes major media material "about" the beneficiary.

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.

██████████ quotes the beneficiary's own self-serving statements regarding the beneficiary's purported service on a committee that judges trainee and junior perfumers when they presented their work to the committee. ██████████ does not affirm any first-hand knowledge of the beneficiary's service on the committee. 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)).

The director requested clarification of the beneficiary's judging duties and evidence demonstrating acclaim as a result of these duties. In response, the petitioner submitted performance evaluations completed by the beneficiary and a letter from ██████████, a senior perfumer and Head of Global Fragrance Ingredient Management with the petitioning company, asserting that the beneficiary served on the petitioner's "master committee to judge Perfumer's talent and promotibility within" the petitioning company. ██████████ then lists three employees that the beneficiary trained in Japan, Australia and Argentina in addition to the "numerous" trainee perfumers he trained in Germany.

The director concluded that the training of trainees and junior perfumers does not fall within the type of judging contemplated by the regulation and that the petitioner had not demonstrated that the beneficiary's duties were consistent with national or international acclaim.

On appeal, counsel asserts that the petitioner prides itself on its apprenticeship program and that the beneficiary functioned as a judge on the petitioner's committee, judging many trainees and junior perfumers. In addition to the evidence discussed above, counsel references the petitioner's Fragrance Division Technical Organizational Chart from October 2002 listing six technicians and assistants and one laboratory manager under the beneficiary.

The membership materials for the American Society of Perfumers and the article by Jeanne Sahadi submitted by the petitioner reveal that perfumers must spend approximately five years as an apprentice to learn the position. Thus, apprentice programs would appear to be an inherent part of the field. The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. Participating in the training of new staff for one's own employer as part of the employee's job duties is not indicative

of any recognition beyond one's own employer. To hold otherwise would lead to the absurd result that every employee who oversees subordinates, students or trainees meets this criterion. Such a result would undermine congressional intent regarding the exclusive nature of this classification. Nor are we persuaded that such an absurd result would be avoided by the requirement that an alien meet three criteria. Meeting three criteria, each with evidence of duties and responsibilities inherent to the field, is no more indicative of national or international acclaim than meeting one criterion with such minimal evidence. Finally, while the beneficiary has trained staff in more than one country, simply working for an international company does not create a presumption of national or international acclaim.

The beneficiary's role with the petitioner is relevant, and will be considered in more detail below under the leading and critical role criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii). Supervisory and training responsibilities inherent to the employee's position, however, cannot serve as evidence to meet this criterion. Without evidence that sets the beneficiary apart from others in the field, such as but not limited to evidence that he judged scents for independent awards or served as a member of the committee of recognized experts that administer the perfumer examination referenced in the article in *Savoir Vivre*, we cannot conclude that the beneficiary meets this criterion.

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

Initially, counsel noted the submission of the article by ██████████ regarding the small and competitive nature of the field and asserts that the beneficiary's knowledge in the field, study on different antiperspirants and the 2004 award issued to the petitioner in recognition of a scent developed by the beneficiary all serve as evidence to meet this criterion.

The director requested objective evidence establishing the significance of the beneficiary's purported contributions. **In response, the petitioner submitted reference letters.** Counsel noted that the beneficiary had designed original products for major companies. The director concluded that while the petitioner had demonstrated that the beneficiary is highly knowledgeable and experienced, the petitioner had not provided objective evidence demonstrating the significance of the beneficiary's original work. On appeal, counsel asserts that the 2004 award issued to the petitioner is objective evidence ignored by the director and reviews the reference letters submitted. We will review the evidence.

The opinions of experts in the field, however, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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.

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive, although we acknowledge that the petitioner has adequately demonstrated that in this particular case, there is a limited number of individuals in the same occupation.

The petitioner's field is development oriented, and there would be little point in recreating scents that already exist. 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 beneficiary's field, it can be expected that the beneficiary's creations would have already influenced the field. Otherwise, it is difficult to gauge the impact of the petitioner's work.

██████████, the petitioner's President of Fragrance, lists the products for which the beneficiary has developed fragrances, including products for major companies such as Proctor & Gamble, Colgate and Johnson & Johnson. The beneficiary's job is to develop scents. While these products demonstrate that the beneficiary is skilled and capable of performing in his occupation, they do not demonstrate a contribution of major significance to the field. ██████████ does not explain how any of these products have impacted the field overall.

██████████, the petitioner's Vice President of Evaluation for Consumer Products, asserts that she is responsible for choosing the submission to be presented to clients. ██████████ praises the beneficiary's work as imaginative, interesting and commercial. She further asserts that she chooses to work with him because she knows she will win her "briefs." While we do not question Ms. ██████████'s assessment of the beneficiary's skill, skill in one's occupation is not necessarily a contribution of major significance. Again, such a contribution must have had a demonstrable impact on the field.

██████████, Vice President of Product Development at Coty, asserts that he collaborated with the beneficiary on the development of a technical reformulation of Coty's best selling Stetson cologne to meet new fragrance regulations. ██████████ explains that the reformulation was technically challenging and that the beneficiary's formulation was chosen and is currently on the market. Once again, while this account demonstrates that the beneficiary is capable of successfully performing as a perfumer, it does not describe a contribution of major significance that has impacted the field overall.

██████████, Chief Flavorist for Colgate-Palmolive, asserts that the beneficiary produces commercially valuable products that also have value to consumers. While ██████████ asserts that the beneficiary is widely recognized, he does not explain how the beneficiary has impacted the field.

Frank Voelkl, a former colleague of the beneficiary's, and Loc Dong of International Flavor & Fragrances, Inc. assert that the beneficiary has rare technical and creative abilities but fail to explain how the beneficiary has impacted the field. The initial letters submitted also merely contain vague assertions of talent in the occupation.

Finally, we acknowledge the affirmations that the American Society of Perfumers issued an award to the petitioner in recognition of a product developed by the beneficiary. Prizes and awards fall under a separate criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), discussed above. For the reasons explained above, the beneficiary cannot meet the plain language of that criterion because he did not receive the award as required, the petitioner did. We merely note the existence of a separate awards criterion as support of our finding that not every nationally or internationally recognized award recognizes a contribution of major significance although clearly some may. In this matter, the society's award recognizes that Fantastic Oxy-Power "Fresh Scent" had the best fragrance among new household cleaners introduced in 2004. The award, however, does not recognize a new methodology or development process that had resulted in a demonstrable impact in the field.

In light of the above, the petitioner has not demonstrated 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.

The evidence regarding this criterion is not entirely consistent. The petitioner submitted an organizational chart for its Fragrance Division US Creative Development, which lists the beneficiary as a senior perfumer. While another senior perfumer on the chart, [REDACTED], is also identified as a vice president, the beneficiary is not. That said, the chart dates from July 15, 2003 even though the petition was filed on November 7, 2005. The petitioner provides no explanation for providing such an outdated chart.

[REDACTED] asserts that the beneficiary is a "Sr./VP Perfumer" with the petitioner. The director requested additional evidence of the beneficiary's role and evidence of the petitioner's national reputation. In response, [REDACTED] and [REDACTED], the petitioner's Vice President for the Creative Center Scent & Care Division, confirms that the beneficiary is a Vice President, Senior Perfumer with the petitioner. The petitioner also submits evidence that it is ranked fourth on a list of Flavor & Fragrance Industry Leaders.

The director acknowledged the petitioner's distinguished reputation. The director then noted that the organizational chart listed the beneficiary as simply one of several senior perfumers and concluded that the title "Vice President" was not determinative.

On appeal, counsel asserts that the organizational chart places the beneficiary above the other senior perfumers and "directly below the Vice President/General Manager of Perfumery." Counsel further asserts that the "Vice President" title demonstrates that the beneficiary leads other perfumers.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. We concur with the director that the petitioner has adequately demonstrated its distinguished reputation. At issue is the beneficiary's role with the petitioner.

First, counsel mischaracterizes the July 15, 2003 organizational chart. While the beneficiary is the first senior perfumer listed, he is not above them on the organizational chart. Rather, they all connect to the same line going up to the Vice President of Creative Development. We note that the Vice President of Marketing and the Vice President of Development of Consumer Products are also directly under the Vice President of Creative Development and, unlike the graph showing all the senior perfumers as equal, have lines descending from their title to the three and eight employees under them. Thus, there is no ambiguity to the chart, the beneficiary is one of 10 perfumers/senior perfumers, one of whom is designated as a Vice President and all of whom report directly to the Vice President of Creative Development, not the beneficiary. Moreover, the October 2002 organizational chart shows the employees reporting to the beneficiary, and their positions are listed as laboratory manager, laboratory technicians and perfumer's assistant. No perfumers are listed as reporting directly to the beneficiary.

While we acknowledge that the organizational charts are from 2002 and 2003, they are the only organizational charts submitted. Thus, the petitioner has not established that the addition of "Vice President" to the beneficiary's title altered his position in the petitioner's hierarchy. We note that the 2003 organizational chart lists another Vice President/Senior Perfumer who, like the beneficiary and all the other perfumers, reports directly to the Vice President of Creative Development. Thus, while the addition of "Vice President" to a senior perfumer's title may have consequences related to salary, it does not necessarily move the employee up the hierarchical ladder.

Obviously, the petitioner, a fragrance and flavor producer, requires the services of perfumers. Nevertheless, the petitioner has not demonstrated that the beneficiary is employed in an especially leading or critical role that sets him apart from other perfumers.

Finally, counsel has also asserted that the beneficiary's development of products for major companies is a leading or critical role for those companies. Counsel is not persuasive. We have already considered the beneficiary's development of specific products under the contributions criterion set forth at 8 C.F.R. § 204.5(h)(3)(v). As stated above, at issue for this criterion is the role the beneficiary was hired to fill. The beneficiary is a perfumer hired to develop fragrances for his employer's clients. That he successfully fulfilled his job duties is not evidence of playing a leading or critical role for his employer's clients.

While the evidence submitted to meet this criterion is noteworthy, without a more recent organizational chart that includes the beneficiary's position in the petitioner's hierarchy as a Vice President, we cannot conclude 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.

While counsel initially asserted that the beneficiary meets this criterion, the petitioner submitted no evidence regarding the beneficiary's actual remuneration. Rather, counsel asserted that the beneficiary earns more than \$200,000. As stated above, 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. The petitioner did submit the article by [REDACTED] on six-figure jobs noting that a junior perfumer starts out making \$60,000 but "perfumers who come up with formulas for hit fragrances can easily command six figures." The petitioner also submitted evidence that the prevailing wage for chemical technicians in New Jersey is \$22.13 an hour, or \$46,030.40.

The director acknowledged the above evidence and requested evidence "which corroborates the beneficiary's level of compensation in relation to others holding similar positions on a national level." In response, the petitioner submitted an attestation from Mr. [REDACTED] affirming that the beneficiary "is compensated at \$235,431 per year." Mr. [REDACTED] does not indicate that the beneficiary was earning this wage as of the date of filing, the date as of which the beneficiary must establish eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The petitioner did not submit the beneficiary's Forms W-2 Wage and Tax Statements or pay statements.

The petitioner did not submit additional evidence reflecting the high-end compensation for perfumers nationwide as requested by the director. Rather, counsel appears to rely on the fact that the beneficiary is earning more than the prevailing wage for chemical technicians. While perfumers may be classified as chemical technicians, it would appear that this classification is far broader than just perfumers. The petitioner has not established that the prevailing wage for chemical technicians is a realistic measure of the earnings for perfumers, an occupation that [REDACTED] indicates commands at least \$60,000 for junior members and six figures for more experienced members. Moreover, simply earning more than the prevailing wage is insufficient. The petitioner must demonstrate that the beneficiary's remuneration is comparable with the salaries of the most renowned and experienced members of his field, individuals who, according to [REDACTED], typically earn six figures.

While the evidence relating to this criterion is not insignificant, without evidence that the beneficiary was already earning \$235,431 as of the date of filing and that this was a significantly high remuneration for senior perfumers nationwide, we cannot conclude that the beneficiary meets this criterion.

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 himself as a senior perfumer 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 indicates that the beneficiary is an experienced and talented perfumer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.