

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

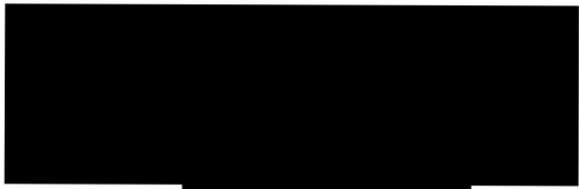
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B2

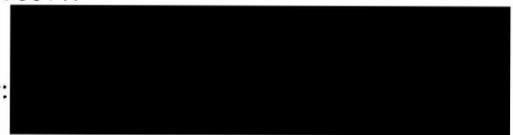


FILE: [Redacted]  
EAC 06 024 53779

Office: NEBRASKA SERVICE CENTER

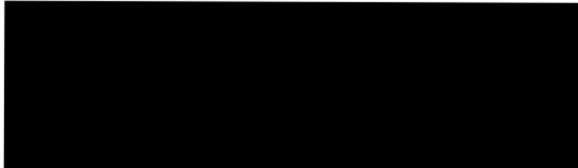
Date: **SEP 29 2008**

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 the arts. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and thus qualifies for classification as an alien of extraordinary ability.

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

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

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

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on October 25, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a Graphic Designer. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien

of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner submitted evidence showing that he received a Promax/Broadcast Designer's Association (BDA) Silver Award in 1998 and a Gold Award in 2000. In response to the director's request for evidence (RFE),<sup>1</sup> the petitioner submitted a letter from [REDACTED] Executive Vice President, Promax/BDA, stating:

Our annual awards competitions recognize superior creative work in North America, Latin America, the United Kingdom, Europe, Asia, Australia, New Zealand and Japan. The Promax/BDA award is the highest honor available for designers in this field. To win this highly coveted award entrants must compete against more than 4,000 entries from around the world and be judged by a panel of experienced design and marketing professionals.

The petitioner also submitted information posted on Promax/DBA's internet site encouraging registration for its 2007 conference in New York. The preceding documents do not establish that the petitioner's two awards from 1998 and 2000 were nationally or internationally recognized. Further, the petitioner's response did not address the selection criteria as requested by the director. The director concluded that the preceding awards were not indicative of sustained national or international acclaim in the field of endeavor.

On appeal, the petitioner submits a June 28, 2007 letter from [REDACTED]

The Promax/BDA Awards have become the most highly regarded and widely recognized symbol for design and marketing excellence in the electronic media industry worldwide.

The Conference and Awards Presentations attract thousands of industry professionals and have the participation of renowned individuals such as Former President [REDACTED] and many others who have served as speakers and presenters.

The Promax/BDA Awards honor the best work from companies and individuals around the world. As the methods of electronic media distribution evolve and as technology transforms the tools that promoters, marketers and designers have at their disposal, the Promax/BDA Awards strive to reflect the resulting changes.

---

<sup>1</sup> The director's RFE stated: "Please submit additional documentary evidence which establishes the significance of the award, the requirements necessary to compete for the award, and the criteria used to select the recipient."

With over 11,500 entries submitted in over 300 categories, the competition is fierce and, in fact, increases with every awards season. The recipients of Gold, Silver and Bronze honors are acknowledged as the top creatives in their field. BDA Silver Award winners include [REDACTED] Creative Director, NBC; [REDACTED] Executive Producer/Creative Director, ABC News; [REDACTED] Director of Design, CBS; Scot Safon, SVP Marketing, CNN; Ann Epstein, Executive Producer, E! Entertainment Networks to name a few.

The letter from [REDACTED] submitted in response to the director's RFE states that "entrants must compete against more than 4,000 entries from around the world." [Emphasis added.] Contrary to the information he initially provided, [REDACTED] June 28, 2007 letter states that the competition has "over 11,500 entries submitted in over 300 categories." [Emphasis added]. 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).

While it is unclear whether Gold, Silver, and Bronze awards are presented in each of the more than "300 categories" of Promax/DBA's annual competition, it is apparent that the number of awards annually conferred is substantial.<sup>2</sup> Further, individuals and companies participating in the Promax/DBA competition can self-nominate and must pay an entry fee to Promax/DBA.<sup>3</sup> The petitioner has not established that his two awards from Promax/DBA constitute nationally or internationally recognized prizes or awards for excellence in his field of endeavor. True awards for excellence in the field are generally not contingent upon payment of a fee. Further, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* and it is his burden to establish every element of this criterion. In this case, the petitioner has not shown that his two awards commanded a significant level of recognition beyond the presenting organization. As such, the petitioner has established that he meets this criterion.

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

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current

---

<sup>2</sup> For example, according to the "Promax/DBA Design Awards 2008" listing, there were more than 560 award recipients. See [http://www.promaxbda.org/media/site/pdf/BDA\\_Design\\_Awards\\_winners.pdf](http://www.promaxbda.org/media/site/pdf/BDA_Design_Awards_winners.pdf), accessed on August 29, 2008.

<sup>3</sup> Promax/DBA's competitive submission instructions include a section entitled "How To Pay For Your Entries." This section states: "All payments must be made in US Dollars. Please make all payments payable to Promax/DBA. All entries must be paid prior to the judging period in order to qualify for judging. . . . If you are sending multiple entries all entries must be paid with a single check, a single wire transfer, or a single credit card charge." See <http://www.promaxbda.org/awards.asp?n=instructions10>, accessed on August 29, 2008.

members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a May 19, 2005 letter from the Canadian Society of Cinematographers (CSC) stating that he has been a member since November 27, 1997. The letter does not specify whether the petitioner is a full member (the highest level of membership), associate member, or affiliate member. The petitioner also submitted information from CSC's internet site stating: "To become a full member of the CSC the applicant must be professionally employed as a cinematographer for a period of at least 5 years and must be fully qualified to assume the responsibilities as a Director of Photography or must have to his or her credit exceptional achievement as a cinematographer." The preceding information indicates that admission to full membership in the CSC is contingent upon years of employment and job qualifications or exceptional achievement. Even if the petitioner were to demonstrate that he is a full member, we cannot conclude that fulfillment of such standards constitutes "outstanding achievements" as required by the plain language of this regulatory criterion.

The petitioner submitted a May 9, 2005 letter from the British Academy of Film and Television Arts (BAFTA), East Coast stating that he has been a member since March 2005. The letter does not specify whether the petitioner is a full member (the highest level of membership), professional member, associate member, student member, or visitor member.<sup>4</sup> The petitioner also submitted information from BAFTA East Coast's internet site (printed on September 15, 2005) stating that its Full Membership (voting members) category "has been frozen." This information further states that Full Membership is for "[p]rofessionals with at least 3 years experience working in or with the British or Irish film, television or interactive industries. Selection criteria includes length of industry involvement, creative contribution to the industry and industry awards and affiliations." While the selection criteria include consideration of the preceding factors, the information submitted by the petitioner does not specify which of them must be satisfied for admission to membership. The documentation submitted by the petitioner also indicates that membership in BAFTA East Coast is contingent upon payment of annual dues. Even if the petitioner were to demonstrate that he is a full voting member, he has not established that that fulfillment of the preceding standards constitutes "outstanding achievements" as required by the plain language of this regulatory criterion.

In response to the director's RFE, the petitioner submitted his "Provisory Members Card" for the [REDACTED] Members Club (HBMC).<sup>5</sup> The petitioner also submitted a November 13, 2006 letter from [REDACTED] Membership Manager, HBMC, stating: "To become a member of [REDACTED], one has to be approved by our committee and needs to have sufficient criteria in order to become a member of the club. Members of [REDACTED] are the small percentage of creative's [sic] who have reached the very top of their profession in their respective field." [REDACTED] letter does not indicate the date when the petitioner became a provisory member. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Nor does [REDACTED] letter

<sup>4</sup> BAFTA East Coast has five categories of membership. See <http://www.baftaeastcoast.com/join/categories-and-dues>, accessed on August 29, 2008.

<sup>5</sup> The card states that the petitioner's provisory membership is "Valid until 10/07."

define “provisory” membership or specify the club’s criteria for admission to membership. The term “provisory” indicates that the petitioner’s membership was conditional.

The petitioner’s response to the director’s RFE also included an October 30, 2006 letter from [REDACTED] Founder and Creative Director of Stellar Network, stating that the petitioner is a member of the Stellar Network, a networking group whose “mission is to connect New York’s film, theatre and television professionals by offering members a unique program of social, developmental and interactive opportunities, workshop and education.” [REDACTED] letter does not specify her organization’s criteria for admission to membership.

In this case, there is no evidence (such as membership bylaws or official admission requirements) showing that the Stellar Network, the HBMC, BAFTA East Coast, and the CSC require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field or an allied one. As such, the petitioner has not established that he meets this criterion.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>6</sup>

The petitioner submitted a captioned photograph in the July 15 – 22, 2004 issue of *Time Out New York* promoting a T-shirt he designed. In response to the director’s RFE, the petitioner submitted information from *Time Out New York*’s internet site indicating that it has a total average paid circulation of 139,140 in the New York area. We cannot conclude that this local publication qualifies as major media. Further, it has not been established that a captioned photograph meets the plain language of this regulatory criterion.

The petitioner submitted a book review in the September 11, 1993 issue of *The Globe and Mail* discussing a book by [REDACTED] entitled *Away*. This review is about [REDACTED] book and only mentions the petitioner’s name in passing.<sup>7</sup> The plain language of this regulatory criterion, however, requires that the published material be “about the alien.”

---

<sup>6</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

<sup>7</sup> The book review of *Away* in *The Globe and Mail* states: “[The petitioner] has done full justice to *Away*, creating a book that gives as much pleasure to hold as to read. The Burne-Jones painting on the cover might well have been expressly commissioned, the type is clear, unfussy, and the smell of the rich silky paper reminds us that reading can be as much a sensuous as a cerebral delight.”

The petitioner submitted an image of his work accompanying an article in the September/October 1996 issue of *Applied Arts Magazine*. The article, entitled "You're Watching ID TV, Don't Go Away . . .," is not about the petitioner and includes images of work from multiple graphic designers.

In response to the director's RFE, the petitioner submitted a letter from [REDACTED] Manager of Program Development, NBC Universal Digital Studios, stating: "[O]n August 31, 2005, I asked [the petitioner] to participate in an interview on camera for a design and business show here at NBC about truly innovative design & business professionals." The record, however, includes no video footage or transcript of the petitioner's interview. Simply 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, there is no evidence showing that the interview was broadcast by major media outlets, that the footage aired nationally or internationally, or that it was otherwise distributed in a manner consistent with sustained national or international acclaim. Finally, the title of the show and the date of its broadcast were not provided as required by the plain language of this regulatory criterion.

The petitioner's response to the director's RFE included a four-sentence piece in the February 6, 2006 issue of *Teen Vogue* and a single sentence about the petitioner's Braille T-shirt in the April 2006 issue of *Child* magazine. This material was published subsequent to the petitioner's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this material in this proceeding.

The petitioner also submitted a six-sentence piece regarding T-shirts that he had designed in *Elle Girl*, but his name is not mentioned. Further, the date and author of the material were not provided as required by the plain language of this regulatory criterion.

The petitioner's response to the director's RFE also included a photograph of [REDACTED] wearing the petitioner's T-shirt in the August 15, 2005 issue of *New York*, but there is no indication that the petitioner's name was mentioned. Further, there is no evidence showing that *New York* magazine qualifies as major media. Nor has it been established that a photograph meets the plain language of this regulatory criterion.

The petitioner also submitted an October 13, 2004 article in the New York edition of *Daily Candy*. According to documentation submitted by the petitioner, *Daily Candy* is a free, internet-only newsletter with online editions specific to eleven cities. The article, entitled "Feeling Groovy," states:

NYC designer [the petitioner], inspired by a friend who suffered a stroke that left him temporarily blind, learned that most cases of blindness in Africa can be cured for \$30. Thus, See NYC T-shirts were born. The men and women's tops are embossed with sayings like "Come Closer," "I Love New York," and "Brooklyn," only they don't say it with letters. They say it with fuzzy Braille circles.

Profits raised are donated to charities that help the visually impaired, like Sight Savers International and Lions Club.

\* \* \*

Available at Lyd [REDACTED] . . .

The preceding article was accompanied by an article about *Daily Candy* in the online edition of *The Wall Street Journal* stating:

Daily Candy's business is a simple one: It produces urbane email newsletters that make daily recommendations on shopping, entertainment, food and media. Originally written for a clutch of trend-obsessed New York City women, the site produces 11 electronic newsletters, including editions for Chicago, San Francisco and London. Advertisers pay for access to the newsletter subscribers.

The documentation submitted by the petitioner reflects that the "Feeling Groovy" article appeared in the New York edition of *Daily Candy* rather than in all eleven online editions. There is no evidence showing that the local New York online edition qualifies as major media. Further, the author of the article was not provided as required by the plain language of this regulatory criterion. Finally, the record does not indicate whether the preceding article was a paid promotional advertisement or the result of independent media reportage. A paid promotional advertisement cannot serve to meet this criterion.

The petitioner's response to the director's RFE included a five-sentence piece about his T-shirts in *Trace* magazine. Information submitted by the petitioner reflects that *Trace* magazine has a circulation of 103,224 with editions printed in the United States and the United Kingdom. The petitioner has not established that this publication qualifies as major media in either country. Further, the date and author of the material were not provided as required by the plain language of this regulatory criterion.

The petitioner also submitted a nine-sentence piece in *20/20 Magazine*, an optical publication, discussing his T-shirts. The article was accompanied by *20/20 Magazine's* 2006 Media Planning Guide, which states: "With diverse and objective coverage on all optical products including eyewear, sunwear, lenses, contact lenses, accessories and equipment, *20/20* fully caters to the needs of opticians, optometrists and dispensing ophthalmologists." Information in the Media Planning Guide indicates that *20/20 Magazine* has a total circulation of 49,522 and that its top three categories of subscribers are optometrists (20,318), opticians (19,187), and ophthalmologists (3,109). While this magazine qualifies as a major professional publication in the optical industry, it has not been established that being mentioned in this publication is consistent with sustained national or international acclaim in the field of graphic design, the field for which classification is sought. Nevertheless, the date and author of the material were not provided as required by the plain language of this regulatory criterion.

In addition to the preceding deficiencies, the director's decision noted that the petitioner "did not submit copies of the actual articles" as they appeared in several of the above-referenced publications. The director's decision also stated that the preceding articles "are all relatively short articles that only briefly mention the petitioner." We concur with the director's observations.

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

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. 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). For example, judging a competition involving experienced professionals is of far greater probative value than judging a competition involving novices.

The petitioner submitted a letter from [REDACTED] Client Outreach Officer and Architect, Government of Manitoba, stating:

I was a student at the University of Toronto who, with a group of others, contracted [the petitioner] to teach portfolio design as a vehicle to gain entrance to architectural school. As a result of [the petitioner’s] . . . rigorous tutelage, I gained acceptance to Canada’s most competitive School of Architecture at the University of Toronto.

Teaching a portfolio design class to prospective architectural students is not tantamount to the petitioner’s participation as a judge of the work of others in his field or an allied one.

The petitioner submitted two letters from [REDACTED] Creative Director, Canadian Broadcasting Corporation (CBC), who supervised the petitioner at the CBC from June 1994 to December 1998. In discussing the petitioner’s work for the CBC’s design department, [REDACTED] October 26, 2006 letter states: “[The petitioner] created and taught a series of designer-based cinematography workshops attended by graphic design professionals. [The petitioner] actively reviewed, critiqued, analyzed, and judged the participants’ work, providing extensive professional evaluation.” We cannot conclude that teaching a workshop at the request of one’s employer is tantamount to judging the work of others in the field. While an instructor does evaluate the work of his or her pupils, this evaluation is inherent in the process of teaching. The petitioner’s assignment to teach a workshop for his employer demonstrates that the CBC design department valued his competency and knowledge, but it has not been established that simply performing one’s job duties (such as training students or subordinates) meets this regulatory criterion and demonstrates sustained national or international acclaim at the very top of the field.

The petitioner also submitted two letters from [REDACTED] Art Director, MuchMusic, a Canadian television network, discussing the petitioner's participation in the 2003 MuchMusic student image brand identity competition. [REDACTED] May 25, 2005 letter states:

I met [the petitioner] in 1988 in London[,] England, when we worked on, and collaborated on many successful projects together.

In 2003 [the petitioner] was invited to be a judge for the MuchMusic annual student identity competition, to select the best student work to be broadcast nationally. Several hundred applicants applied and a short list of 30 candidates was compiled [sic]. A panel of judges from the design world were asked to evaluate them in order to select the top candidates. Because Stephen has consistently sustained critical acclaim over a number of years, and the fact that he has achieved a degree of expertise demonstrating that he is one of those few who has risen to the top of his profession, we asked him to participate as we valued his judgment and integrity.

The plain language of this regulatory criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others in the same or an allied field of specification.” We cannot conclude that evaluating students, who have not yet begun working in the field, meets this requirement. Further, the record includes no supporting evidence establishing the level of acclaim associated with judging this student contest. Nor is there evidence showing the specific work judged by the petitioner, the names of those he evaluated, or documentation of his assessments. Without evidence showing, for example, that the petitioner has judged experienced graphic designers in a manner consistent with sustained national or international acclaim at the very top of his field, we cannot conclude that he meets this criterion.

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

The petitioner submitted several letters of support from his professional contacts. We cite representative examples here.

[REDACTED] of [REDACTED] Design in Australia states that he met the petitioner when they were working for *Business Week* magazine in 1999. He further states: “[The petitioner’s] work has earned [sic] him many admirers and it would be an understatement to say the [petitioner’s] vision has changed the face of modern design.” [REDACTED] letter, however, does not specifically identify which aspects of the petitioner’s work “changed the face of modern design.”

[REDACTED] keyboard player and co-writer for the Grammy nominated musical group The Cure, states that he is a trained graphic designer currently responsible for the internet presence of his organization. He further states: “I have worked with [the petitioner] since 1992 on several projects and found him to be a person of exceptional and extraordinary talent and ability.”

The petitioner submitted multiple letters from [REDACTED] Co-founder and Chief Financial Officer of Outsider Pictures LLC. In his June 21, 2005 letter, [REDACTED] states:

I have known of [the petitioner] professionally for 14 years. I was first made aware of [the petitioner's] work when visiting a friend in Toronto, Canada who . . . worked for a TV station creating interstitials. . . . Over the years I have followed [the petitioner's] career, and seen his ideas spring into life with the recent fashion/lifestyle campaigns, which I personally believe to be a world class idea and one that can be adopted and franchised in countries around the world.

[redacted] initial letter expresses his opinion regarding future expectations for the petitioner's fashion/lifestyle campaign rather than addressing how the work has already had a significant national or international impact such that it can be considered a contribution of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 49.

[redacted] November 20, 2006 letter states:

[The petitioner] . . . recently brought to our attention a documentary project, "Re:Sight," which he is producing and directing. We are pleased to inform you that Outsider Pictures is interested in distributing this film in the U.S. We feel it could easily fit into our programming for national DVD distribution as well as limited theatrical exposure and would be worth at least \$50,000.

There is no evidence showing that the petitioner's documentary project constitutes a contribution of major significance in his field or that his documentary had been released as of the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

[redacted] Assistant Photo Editor, [redacted], states: "[The petitioner] is an extremely talented person in his field, a man that the world of graphic and television design definitely needs in its midst. I know [the petitioner] through our mutual posts on the committee of Stellar Network, one of New York's most successful film, theater, and television networking organizations."

[redacted] Senior Designer, Lifetime Television, states:

I first met [the petitioner] when we worked together at FOX News in New York. . . . [The petitioner] and I worked on numerous projects together and I always admired the dedication and steadfast work ethic that he brought to each assignment.

\* \* \*

[redacted] contributions to his profession are so profound that his influence reaches far beyond those he interacts with personally to reach those throughout the industry in different parts of the world.

[redacted] letter, however, fails to specify the petitioner's original contributions that have influenced his industry.

██████████ Owner and Director, Meta-Lingo Electronic Media, states: “[The petitioner] and I have worked together on numerous projects over the 6 years that I have known him for clients including Food Network, Fine Living, ABC, Discovery Networks, and many others. He is an extremely talented designer who I’ve always enjoyed collaborating with.”

██████████ Design Director, Fox 29 Television, Philadelphia, states:

I have known [the petitioner] since 1994 when we were both employed as Senior Graphic Designers with the Canadian Broadcasting Corporation in Toronto, Canada. . . . In this creative environment [the petitioner] shone brightly as an exceptionally talented designer of animated show openings, graphic production elements, print pieces and web design. [The petitioner] consistently provided creative and elegant design solutions that met both artistic and very specific technical challenges in the highly charged and time sensitive environment that is broadcast television.

██████████ Owner, Producer, and President, Beachfront Films, states:

[The petitioner] and I met on a Committee for the non-profit organization The Stellar Network, and we had the occasion to work very closely together on some large fund-raising events. We have subsequently collaborated on several other projects together . . . . [The petitioner] is an outstanding graphic designer, and in my experience, I’ve never met anyone with his ability to do print and tv animations combining traditional skills and computer techniques.

██████████ Creative Director, Chum Television, Toronto, states that he met the petitioner when he was working at the CBC in 1994. He further states: “Since then I’ve known [the petitioner] to be an extremely talented designer and animator for both print and broadcast television. He has a rare and unique ability to do exceptional design and animation work using both computer and traditional methods.”

██████████ Creative Director and Owner, Ipswich Inc., states:

Having had the opportunity to work with [the petitioner] for the last ten years while at various companies in New York and Toronto and now at Ipswich, I can tell you that he stands out to me as being wholly original in the approach to his craft. His experimentation in the field and devotion to creating a unique vision have time and again generated a superior end product.

The preceding letters of recommendation demonstrate that the petitioner’s talent as a graphic designer has earned the respect and admiration of those with whom he has worked, but these letters fail to demonstrate that he has made original contributions of major significance in his field.

██████████, Director of Development and Communications, ██████████ International, states: “I work with [the petitioner] and SeeNYC on their line of Braille merchandise. . . . [The petitioner’s] exceptional and inspirational work with his creation and marketing of products with ██████████ has had a positive impact for organizations like HKI by raising needed funds and public awareness.” ██████████ letter does not specify the amount of funding attributable to the petitioner’s merchandise, nor is there evidence showing that his products generated substantial national or international sales. While the petitioner’s creation and marketing

of products with [REDACTED] has helped raise funds and public awareness, it has not been established that his work constitutes original artistic contributions of major significance in the field of graphic design.

The petitioner submitted two letters from [REDACTED] Head of Communications, Sightsavers International. In his May 19, 2005 letter, [REDACTED] states: "I have known of [the petitioner] professionally for two years. [The petitioner] has provided a very exciting creative talent in producing t-shirts and other merchandise which have contributed greatly to our organization. The use of [REDACTED] across his work has been very innovative and really made his work unique."

[REDACTED] November 2, 2006 letter states:

Since he first approached our organization three years ago with plans to donate proceeds from the innovative SeeNYC line of [REDACTED] T-shirts, [the petitioner] has contributed greatly to our operations. We are fortunate to have partnered with [the petitioner] as his is not only an extraordinarily talented designer, but one of only few in the world who has chosen to apply his skills to [REDACTED]. As such, Sightsavers has found his contributions invaluable. We contracted him to work with us on our September 2006 New York photo exhibition . . . . Based on the success of this event and his prodigious talents, we have since asked him to design and produce an ongoing series of DVD designs and packaging and we are currently discussing future work around [REDACTED] wallpaper to utilize in schools for the blind around the world.

[REDACTED] letters do not specify the dollar amount of the proceeds the petitioner has donated or the sales volume generated by the SeeNYC line of [REDACTED] T-shirts. While the petitioner's work is certainly admirable, it has not been established that it was tantamount to original contributions of major significance in his field. With regard to the petitioner's work on the 2006 photo exhibition, the request that he design and produce DVD designs and packaging, and the discussions pertaining to the utilization of [REDACTED] wallpaper in schools for the blind, we note that these activities occurred subsequent to the petitioner's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider these activities in this proceeding.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner is admired for his creative talent and charitable endeavors, there is no evidence demonstrating the national or international success of his work such that it can be considered original artistic contributions of major significance in his field. For example, the record does not indicate the extent of the petitioner's influence on other graphic designers nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner's professional contacts are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is

not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a graphic designer who has sustained national or international acclaim. 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 contributions of major significance, we cannot conclude that he meets this criterion.

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

The petitioner submitted a May 5, 2005 letter from [REDACTED] Art Director, [REDACTED] Ltd., a Canadian publishing company, stating that the petitioner "was employed by [REDACTED] as an Associate Art Director, from June 1991 to Dec. 1995" and that he designed "many critically acclaimed covers, and book designs, including [REDACTED] and Booker Prize winner [REDACTED]. The petitioner also submitted examples of book jackets he designed. In these examples, the artwork featured on the covers of these books consisted of photographs and paintings from other artists. For example, the cover of *Away*, the book that was the subject of a review in *The Globe and Mail*, shows a painting "The Evening Star" by [REDACTED]. We cannot conclude that the petitioner's production of a book cover displaying other individuals' artwork is tantamount to the display of his work at artistic exhibitions or showcases. The director's decision noted that the petitioner's creation of book jacket designs was inherent to his occupation and would be expected of any successful graphic designer. Further, the record lacks supporting evidence showing that the petitioner's book jacket designs were singled out for critical acclaim by others in his field.

In response to the director's RFE, the petitioner submitted an October 20, 2006 letter from [REDACTED] owner of the [REDACTED] New York, stating: "I have invited [the petitioner] to hold an exhibition of his East-meets-West Braille designs and concept rooms at my gallery in November 2007." This exhibition was scheduled subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this exhibition in this proceeding.

In light of the above, 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 order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

With regard to the petitioner's role at the CBC, the petitioner initially submitted a letter from John Vegter stating:

Among his duties while he worked for me were to design and produce promotional and print campaigns for the CBC nationwide news, financial programs, art programming, and merchandising. In the course of working on many projects, [the petitioner] acted as team leader and held a critical role in the projects he undertook. He invented concepts, oversaw projects, taught classes in design and cinematography, interacted with clients and other departments.

In response to the director's RFE, the petitioner submitted an October 26, 2006 letter from [redacted] stating:

In his capacity as lead designer and project manager, [the petitioner] produced work of the highest quality and consistently kept the award-winning CBC design department at the top of the industry. He was chosen to design the complete packaging for *Canada: A People's History* the 30-hour documentary TV series that has been recognized with three Gemini Awards . . . . [The petitioner] also designed, art directed and produced financial and arts programming (including the *More Tears* and *Foolish Heart* series) . . . .

In addition to these projects, [the petitioner] played a critical role in the development of the CBC design department overall. He created and taught a series of designer-based cinematography workshops attended by graphic design professionals.

\_\_\_\_\_ letter indicates that the petitioner contributed his talents to departmental projects and training, but it has not been established that his role was leading or critical to the CBC as a whole.<sup>8</sup>

On appeal, the petitioner submits an organizational chart for the CBC Design Department reflecting that the Lead Designer is subordinate to the Design Manager, Creative Director, Graphics Coordinator, and Art Directors (2). The petitioner also submits a document entitled "CBC/Radio-Canada: Facts at a Glance" stating: "The Corporation is governed by a Board of Directors, made up of 12 Directors, including the Chair and the President and CEO [Chief Executive Officer]." Another document submitted on appeal identifies the CBC's "key people" as its President, Executive Vice President, and Editor-in-Chief for news operations.

While the record includes documentation showing that the CBC has a distinguished reputation, the evidence submitted by the petitioner does not establish that his role as Lead Designer was leading or critical for the CBC. There is no evidence demonstrating how the petitioner's role differentiated him from the multiple senior managers in his department, let alone the CBC's executive leadership. The documentation submitted by the petitioner shows that he performed admirably on the projects assigned to him, but it does not establish that he was responsible for the CBC's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

With regard to the petitioner's role for the Stellar Network, the petitioner submitted a May 17, 2005 letter from Nicola Behrman, Founder, Stellar Network, New York, who states that her organization connects "New

---

<sup>8</sup> With regard to the petitioner's packaging design for *Canada: A People's History*, there is no evidence identifying the specific categories for which this documentary won Gemini Awards or showing that receipt of these awards was primarily attributable to the petitioner's work.

York's film, theatre and television professionals" through "professional and social events." further states:

[The petitioner] is a member of our committee, which actively supports talented up and coming filmmakers, who are working to establish themselves in the world of film. Stellar Network's board of directors . . . includes:

is a **valuable** part of the stellar community – he contributes knowledge and creative energy to our events, and was heavily involved with starting stellar school for NY film makers are [sic] series of workshops and lectures.

In response to the director's RFE, the petitioner submitted the October 30, 2006 letter from stating that she "founded Stellar Network in 2004." She further states that the petitioner's "enthusiasm and skill were invaluable to the launch of Stellar" and that he "continues to perform a critical and leading role" for the organization. The bottom of her letter lists 18 members who serve on the "Stellar Network Board." The petitioner's name does not appear on this list. The petitioner also submitted information printed from Stellar Network's internet site indicating that he is one of 12 members of the "Stellar Network NY Committee."

While the Stellar Network Board includes several renowned members, there is no evidence (such as published media reports) showing that the Stellar Network has a distinguished reputation. The petitioner submitted information printed from the Stellar Network's internet site, but the self-serving nature of this documentation is not sufficient to demonstrate that the organization has earned a distinguished reputation. Further, there is no evidence differentiating petitioner's role from that of the other committee members, let alone the 18 individuals who serve on the board of directors and the organization's two co-founders. As such, the petitioner has not established that his role was leading or critical.

With regard to the petitioner's role for he submitted the May 5, 2005 letter from who states that the petitioner "was employed by as an Associate Art Director, from June 1991 to Dec. 1995." further states: "During the time that we worked together, [the petitioner] was able to take on new responsibilities on a regular basis. I found him to be a pleasure to work with and extremely cable. statements do not establish that the petitioner's role as Associate Art Director at was leading or critical. There is no evidence differentiating the petitioner's role from others in the company holding similar positions or more senior management. The petitioner also submitted information printed from internet site, but the self-serving nature of this documentation is not adequate to demonstrate that the company had a distinguished reputation during the petitioner's employment.

Regarding the petitioner's role for he submitted a June 5, 2005 letter from Executive Producer, The Concept Farm, stating:

[The petitioner] worked under my supervision at Entertainment from November 1999 to November 2000. It was a pleasure to have him on my team. In the course of working on many

projects, he handled many of our large clients from ABC to NASDAQ. [The petitioner] was closely involved in many aspects of creative work covering live action, post-production and print design.

\* \* \*

[The petitioner's] is a special talent as he has mastery of traditional drawing and computer skills, a combination of skills that you don't find every day in the design world.

In response to the director's RFE, the petitioner submitted a November 10, 2006 letter from [redacted] stating:

As Talent Director at [redacted] Entertainment our Emmy winning production team first hired [the petitioner] in 1997. Impressed by his critically acclaimed body of work and his original ideas he was immediately placed into the role of senior graphic designer; winning this position over a myriad of other candidates. [The petitioner] worked with me on projects for CBS, USA Networks, Discovery Networks, TLC and HGTV proving to be a remarkably gifted designer and a celebrated team member.

While [redacted] assert that the petitioner was a valued team member at [redacted] Chief Entertainment, there is no evidence differentiating the petitioner's role from others in the company holding similar positions or more senior management. The evidence submitted by the petitioner does not establish that he was responsible for the company's success or standing to a degree consistent with the meaning of "leading or critical role." The petitioner also submitted information printed from Big Chief Entertainment's internet site, but the self-serving nature of this documentation is not adequate to demonstrate that the company had a distinguished reputation during the petitioner's employment.

On appeal, counsel argues that the October 17, 2006 letter [redacted] discussing the petitioner's involvement as judge for the 2003 MuchMusic student competition meets this regulatory criterion. We cannot conclude that the petitioner's involvement in this single event is tantamount to a leading or critical role for the MuchMusic television network.<sup>9</sup> Further, while the petitioner submitted general information from MuchMusic's internet site, there is no evidence showing that this organization has a distinguished reputation. Counsel also argues that the captioned photograph in the July 15 – 22, 2004 issue of *Time Out New York* shows that the petitioner performed in a leading or critical role for Ana Data Consulting, Inc. The caption states: "Ana Data's designer [the petitioner], is revamping a graphic design icon for a good cause. See NYC T-shirts bear the phrase I ♥ NY in Braille . . ." Nothing in this material demonstrates that the petitioner's role for this company was leading or critical.<sup>10</sup> Although the petitioner has identified Ana Data Consulting as his employer from April 2003 to September 2005, the record does not include a letter of support from this company discussing his role as a graphic designer. The evidence submitted by the petitioner does not establish that he performed in a leading or critical role for Ana Data Consulting or that the company has a distinguished reputation.

<sup>9</sup> There is no evidence showing that the petitioner was ever employed by MuchMusic.

<sup>10</sup> According to the petitioner's Form G-325A, Biographic Information, he was employed by Ana Data Consulting, Inc. from April 2003 to September 2005.

In this case, we concur with the director's determination that the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner's work as a lecturer and instructor in the field of design, his work for the *More Tears* and *Foolish Heart* series at CBC,<sup>11</sup> and the letters of support from his professional contacts are comparable evidence of his extraordinary ability pursuant to C.F.R. § 204.5(h)(4). Much of this evidence has already been addressed under the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Further, there is no evidence that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. While expert opinion letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. 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 commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

Nevertheless, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, the petitioner has submitted evidence specifically addressing seven of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Documentation in the record indicates that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition filed in his behalf by Ana Data Consulting, Inc. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, "The term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines 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

---

<sup>11</sup> While the petitioner contributed to these productions, there is no evidence showing that his design and art direction for these series were singled out for critical acclaim.

evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner's prior receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability.

While CIS has approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, that 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).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) 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.