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



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Office: NEBRASKA SERVICE CENTER

Date:

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IN RE:

Petitioner:

[REDACTED]

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)

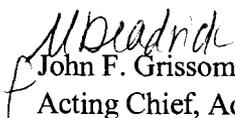
ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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


John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

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

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

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

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

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

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

This petition, filed on December 1, 2006, seeks to classify the petitioner as an alien with extraordinary ability as an attorney. The petitioner submitted supporting evidence with his initial application and in response to a Request for Evidence ("RFE") dated March 9, 2007 including letters of recommendation; copies of SEC filings in which he participated; information about his law firm, Skadden, Arps,, Slate, Meagher & Flom LLP & Affiliates

(“Skadden”); information about his role within Skadden; presentation materials; news articles; information about his participation with the New York Bar; academic prizes; recognition for conducting continuing legal education (“CLE”) courses; tax returns; and information about the average attorney salary in New York.

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 a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. We address the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner’s case. The petitioner does not claim eligibility under any criteria not addressed below.

(i) 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 of scholarships and awards received from 1991-1994 when he was enrolled in law school. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner’s field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Thus, they cannot establish that a petitioner is one of the very few at the top of his field.

The petitioner also submitted evidence of his inclusion in the 2005 Strathmore Who’s Who, the 2006 New York Super Lawyers, and the 2003 Initial Public Offering (“IPO”) Lawyer Yearbook as one of the year’s top 100 IPO Lawyers. First, being included in a publication is not evidence of a prize or award. Instead, inclusion in a publication is more applicable to the discussion about membership in associations under 8 C.F.R. § 204.5(h)(3)(ii) or published material about the petitioner pursuant to (h)(3)(iii). The information submitted about the Super Lawyers indicates that attorneys are selected for the publication based on a vote of their peers followed by a review of the attorney’s record by the research department of the organization and finally reviewed by other attorneys who were favorably received in the earlier steps. In all, Super Lawyers states that it selects five percent of the state’s attorneys for the distinction. Regardless, being selected as a Super Lawyer for New York does not indicate national or international acclaim as one of the very few at the top of his field since the award is given to hundreds of people every year and is limited to attorneys practicing in New York. The IPO Lawyer Yearbook recognizes attorneys based on the amount of money involved in the IPO and the legal fee generated by that IPO. No correlation has been presented between the amount of money involved in or generated by an IPO and excellence in the field.

For all of the foregoing reasons, the petitioner has not met this criterion.

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

The petitioner claims eligibility under this criterion by virtue of his membership in the Securities Regulation (“SRC”) and Financial Reporting Committees (“FRC”) of the Association of the Bar of the City of New York (“ABCNY”) and various Skadden committees. In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

Counsel asserted in the original submission that the SRC of the ABCNY “is composed of senior securities law practitioners, member of academia and SEC staff . . . [and that] selection is quite competitive and [the SRC] has historically been composed of partners at law firms who focus their practice on securities regulation, as well as representatives from investment banks, corporations and academia.” No evidence in the record supports counsel’s assertions, however, and without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). Counsel cites the November 28, 2006 letter from ██████████, head of the corporate finance department at Skadden, as evidence that membership on the SRC conveys eligibility under this criterion, however, that letter contains no information, such as about how the petitioner was chosen to serve on the Committee to demonstrate that his selection was based on his outstanding achievement as judged by recognized national or international experts.

A May 31, 2007 letter written by ██████████ chair of the FRC of the ABCNY, states that the FRC “currently has 35 members who have been selected for a three-year term from many qualified applicants . . . based on a recommendation from the chair of the [FRC].” ██████████ stated that applicants for the FRC are judged based on “stature, experience and depth of knowledge in the field” and the ability of the applicant to apply those qualities “meaningfully to the [FRC’s] objective of being an active and respected participant in shaping accounting and related disclosure policy that affects the capital markets.” As stated above, recommendations by colleagues or current members do not evidence selection for membership based on outstanding achievements. Although ██████████ speaks highly of the petitioner’s ability and stature, his letter does not show either that outstanding achievement is a prerequisite for membership in the FRC or that membership applications are judged by recognized national or international experts in the field.

According to the November 22, 2006 letter from ██████████, executive partner at Skadden, the Skadden Opinion Committee (“SOC”) is composed of “a select group of attorneys that reviews all legal opinions that are provided under [the] firm’s name” and that the SOC members are entrusted with “review[ing] the work of other partners and attorneys at the firm to ensure that their work meets the rigorous and exacting standards demanded of [the] firm as a leader in the field of corporate law.” This letter does not specify how the petitioner was selected to serve on the SOC nor does it state that the petitioner only became a member of the SOC due to his outstanding achievement. The petitioner presented no evidence that his membership in any of the other Skadden committees with which he has participated was awarded based on outstanding

achievement. A committee composed of members of one particular law firm for the purpose of managing that law firm does not amount to an “association” within the general field of law.

Finally, as it relates to the petitioner’s inclusion as a member of the 2005 Strathmore Who’s Who, the petitioner has not submitted evidence to establish that membership is based upon outstanding achievements and that membership is judged by national or international experts in the petitioner’s field.

For all of the foregoing reasons, the petitioner did not demonstrate eligibility under this criterion.

(iii) 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 regulation, 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 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.¹

The petitioner submitted a number of articles about initial public offerings and other business transactions in which he was mentioned as the attorney representing one of the parties or otherwise involved in the transactions. These articles, however, are not primarily about the petitioner as opposed to being about the business transaction and the company involved in that transaction. On appeal, counsel argues that the articles need not be about the petitioner as mention in these types of articles “indicate that the attorney (a) play[ed] a major role in the transaction; and (b) is prominent enough to deserve a mention in trade and major media publications.” The plain language of this criterion requires that the material be *about the alien* and by counsel’s own characterization, the articles are not about the petitioner, but instead are about businesses and their related transactions. Information about the petitioner’s role in these transactions is relevant to other criteria and will be discussed below.

Finally, although we again acknowledge the petitioner’s selection in for the 2005 Strathmore Who’s Who, we find that appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of published material about the petitioner in major media nor is it indicative of national acclaim.

For all of the above stated reasons, the petitioner has not demonstrated eligibility under this criterion.

(iv) 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.

¹ 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.

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 national competition for top performers is of far greater probative value than judging a regional, youth, or student competition.

The petitioner claims eligibility under this criterion by virtue of his participation in various internal Skadden committees. Specifically, the petitioner claims that his involvement on the summer associate committee qualifies him because of his evaluation of potential hires for Skadden; that his involvement with corporate finance associate attorneys qualifies him because of his action to review the work of other attorneys to determine their advancement opportunities and compensation; and that his actions on the SOC reviewing legal opinions drafted by other attorneys within Skadden for external distribution. The record in this case does not include supporting evidence establishing the level of acclaim associated with the petitioner’s involvement with these committees.

On appeal, counsel states that the petitioner’s experience should be evaluated within the confines of his field of the private practice of law and that participation on these committees is the only way of establishing this criterion in this specific practice. The regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria available for an alien to use in establishing the sustained acclaim necessary to qualify as an alien of extraordinary ability. The regulation only requires that an alien show that he qualifies under three of the criteria so that any criteria that are not applicable to a given profession may be omitted for others that more aptly apply. Accordingly, this criterion’s requirements will not be relaxed due to the inapplicability to a given profession, but instead, the alien should present evidence of his qualifications under criteria that apply to his given profession. We do not find that the petitioner’s participation on the internal committees of his own law firm, which includes review of summer law associates, is sufficient to establish that he has judged the work of others in a manner consistent with this highly restrictive classification.

For all of the above reasons, the petitioner has not established eligibility under this criterion.

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

On appeal, counsel asserts that the petitioner made a major contribution to the practice of law by making “innovative contributions . . . in structuring extremely innovative financing transactions.” Counsel cites as examples the USAA Catastrophe Bond and the petitioner’s participation with Merrill Lynch, Goldman Sachs, and Lehman Brothers to use these bonds to offset risk. We note that the article about catastrophe bonds in *Investment Dealers’ Digest* is dated July 1997, which is only three years after the petitioner graduated from law school and while he was still an associate attorney with Skadden. None of the letters submitted from Skadden attorneys mention the petitioner’s role in the catastrophe bonds deal and no evidence in the record shows that the petitioner was involved in this transaction. Without documentary evidence to support the

claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. at 534 n.2; *Matter of Laureano*, 19 I. & N. Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. at 506. Instead, the article entitled "Even Nature Can Be Turned Into a Security" that appeared in *The New York Times*, states that "[n]early every big house has a team arranging deals. Goldman, Sachs alone has a dozen people working on them full time." Even if the petitioner established his involvement in arranging these bonds for the three insurance companies, he provided no evidence that his involvement was original or that it was of major significance to the field such as by submitting evidence that he either created this new category of bonds or was otherwise instrumental in ensuring its usage or viability.

Counsel also claims that the petitioner's involvement with a number of IPOs and other business transactions including representing Lehman Brothers in its relationship with Pacific Gas & Electric Company and HealthSouth Corporation in recapitalizing. We note that duties or activities which nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the occupation itself. We note that as part of their representation of clients, corporate attorneys are expected to engage in IPOs, corporate mergers, and other business transactions. Successfully arranging an IPO or otherwise representing a client in a business transaction cannot alone establish eligibility under this criterion. Instead, the petitioner must further demonstrate that his involvement with the transaction made a contribution of major significance in his field. Such a demonstration may be made through other evidence such as, for example, the adoption of certain practices by other attorneys in the field, letters attesting to the importance of the transactions to the development of the law or business, or other evidence that the methods used by the attorney attracted significant attention in the corporate law field. The petitioner submitted no evidence showing that he used original methods in accomplishing any of these business transactions such that these transactions made a significant impact upon the field of corporate law. Counsel cites the financial stakes in these transactions as evidence of impact under this criterion, however, the amount of assets involved in these transactions is largely irrelevant to the discussion as to whether the petitioner's actions impacted the field of corporate law.

The petitioner submitted letters of recommendation supportive of his claim of eligibility under this criterion. While letters such as these provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim.

Examples of the letters submitted by the petitioner include: a letter from [REDACTED] which states that the petitioner has "tremendous depth of experience in capital markets and securities law matters and his high level of expertise have situated him at the top of [the] field." A May 31, 2007 letter from [REDACTED] states that the petitioner "was integrally involved in writing several comment letters on major rule-making proposals by the SEC [for the Securities Regulation Committee], including several significant and high profile initiatives such as the new rules governing asset-backed issuers . . . and a broad reform of the securities offering process." [REDACTED] also stated that the petitioner would not have been chosen for the Skadden Opinion Committee if he were not viewed as an expert in the field. A November 28, 2006 letter from [REDACTED]

█ vice president of Goldman, Sachs & Co., states that the petitioner “exhibited unparalleled skills in leading the transaction” and that █ “ha[s] developed an appreciation of [the petitioner’s] expertise in capital markets and securities law matters and his expert judgment in difficult disclosure matters and do[es] not hesitate to place him at the very top of his profession as one who has so clearly distinguished himself from his peers.” A November 27, 2006 letter from █ executive vice president and chief financial officer of National Financial Partners Corp. (“NFP”), credited the petitioner with “guid[ing] [NFP] in a number of significant transactions” and playing a “critical role . . . in advising NFP in on-going reporting matters with the SEC.” Although the letters in the record are complimentary of the petitioner’s abilities as an attorney, they do not state that he acted in an original manner or describe how his actions significantly impacted the field of corporate law.

Counsel states that four letters submitted by █, Senior vice president and general counsel of Champion Enterprises; █, senior vice president and general counsel of Selective Insurance Group; █, vice president and treasurer of Fisher Scientific International; and █ should have extra weight because these four men are “acclaimed worldwide in their own right.” First, none of these letters state that the petitioner made an original contribution of major significance to the field of corporate law as opposed to stating that the petitioner is a highly regarded and successful attorney. Second, counsel refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of this criterion through letters submitted from “witnesses . . . so highly placed within their fields that their testimony carried considerable weight.” Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, in this case, no evidence appears in the record as to the stature or reputation of these men except for their own statements. 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)).

Counsel also claims that the petitioner established eligibility under this criterion by assisting in the authorship of the comments letters from the SRC. The letter from █ states that the petitioner “was involved in drafting the [SRC’s] comment letter to the SEC with respect to the securities offering reform rules, which was cited repeatedly by the SEC in the release adopting the proposed rules.” The petitioner submitted copies of the Federal Register reflecting the SEC’s usage of the comment letter as well as the comment letter itself. However, no evidence appears in the record that the petitioner played a major role in the drafting of the letter so that it can be attributed to him nor is there evidence that this letter made a major contribution to the field since the comment letter was not the only document cited by the SEC. Instead, the SEC rules contain hundreds of footnotes citing at least sixteen letters.

The petitioner presented evidence that he served as the instructor at several continuing legal education (“CLE”) courses including “Introduction to Opinions” in January 2004, “Partners Retreat 2005 – Corporate Partners’ Meeting” in April 2005, “Due Diligence in a Post-WorldCom Era” in May 2005, “Restatement of Financial Statements” in May 2005, “The Wonderful World of High-Yield Covenants” in September 2005, “Securities Offering Reform: Communications Reforms” in November 2005, “The Wonderful World of High-Yield Goes to Europe” in January 2006, and “Partners’ Retreat 2006 – Corporate Finance Department Meeting” in April 2006.

In addition to the CLE presentations, the petitioner also gave the following presentations: “High Yield Debt Offerings” made to JLL Partners; “A New SEC Regulation on Selective Disclosure” made to Screaming Media Inc. in October 2000; “An Introduction to Rule 144” in December 2001 and May 2003; “Introduction to Underwriting Agreements” in February 2003 and April 2006; “Going Public” in July 2003, June 2004, June 2005, and July 2006; “Restatement of Financial Statements” in April 2005; “Due Diligence in a Post-WorldCom Era made to Sandler O’Neill & Partners LP in May 2005; “Securities Offering Reform” in February 2006; “Introduction to Corporate Finance” and “Anatomy of a Public Offering: An IPO Case Study” in March 2006; and “Overview of High Yield Debt” made to UBS in May 2006. The petitioner also submitted evidence of his participation in the May 17, 2005 Roundtable hosted by Deloitte & Touche LLP.

We note that most of these events occurred at and/or were hosted by Skadden and that some of these events were not open to the public. The petitioner submitted evidence of the audience in only two of these presentations: the Roundtable and the workshop on high-yield covenants in September 2005. The information about the Roundtable indicates that it was attended by 35 individuals who listened to four Deloitte & Touche employees speak. On appeal, counsel notes that the petitioner was the only attorney invited to participate at the Roundtable, however, being asked to participate does not convey national or international acclaim without some other sort of evidence. The information about the workshop states that “[a] ‘standing-room-only’ audience of more than 130 professionals from major investment banks, rating agencies and companies attended the workshop.” This information does not indicate that participation conveyed national or international acclaim and as the petitioner submitted no evidence concerning the other events, such as the size of the meetings or CLEs, the attendees, the selection criteria for presenters, or the acclaim due to those chosen as presenters, he failed to demonstrate that his participation influenced his field or that he otherwise made a contribution of major significance to the field.

Accordingly, the petitioner failed to establish that he meets this criterion.

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence of his authorship of two articles appearing in external publications: “A different kind of security” published in *Business Law Today* in the July/August 1995 edition and “The unexpected ascent of covenant defaults” published in *Financier Worldwide* in the October 2005 edition. Evidence submitted about the American Bar Association’s *Business Law Today* states that the publication is published bimonthly and is provided “as a membership benefit for about 55,000 Section [of Business Law] members.” Information submitted about *Financier Worldwide* indicates that it is a free publication and according to the publication’s website, “has become recognised [sic] as a leading source of intelligence to the deal community.” This information does not document the impact factor and rank within the discipline of these publications so that we are unable to ascertain whether they constitute professional or major trade publications or other major media. In addition, no evidence in the record documents what impact any such articles had upon the field either through citation by other authors or other evidence that these articles were relied upon by practitioners. Without further evidence regarding these publications, the petitioner cannot establish that he meets this highly restrictive classification based on two articles which span an entire decade.

Counsel also stated both in the original submission and on appeal that the petitioner authored an article entitled “Understanding Free Writing Prospectuses” which had been accepted by *NYU Journal of Law and Business*. Counsel supplied no evidence to support this assertion, however, and without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *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. In any event, a petitioner 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). The *acceptance* for an article for publication is not sufficient to demonstrate that the article was actually published in professional or major media.

The petitioner also claims eligibility under this criterion through his authorship of training materials, participation in drafting comment letters and monthly updates on behalf of the SRC, and memoranda produced on behalf of Skadden for the firm's clients. *The petitioner submitted no evidence to show that any of these materials was published in professional or major trade publications or other major media. Instead, the articles and memoranda were distributed to a discreet list either of Skadden clients, presentation attendees, or SOC members. On appeal, counsel argues that these materials should be accepted as comparable evidence under this criterion because “articles’ are not the sole method of presenting critical information to other professionals in the legal field.” We first take administrative notice of the fact that attorneys do write articles and that those articles are published in law review journals managed by the various law schools operating within the United States. Those articles may be judged by the same standards as any other profession as they are cited within the community and can otherwise be shown to have an impact upon the profession. Even assuming that such material as the petitioner presented does amount to comparable evidence, the regulation at 8 C.F.R. § 204.5(h)(3) requires 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 authorship 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. The petitioner presented no evidence that his training materials, client memoranda, or SRC documents convey national or international acclaim. We also note that although counsel on appeal categorizes the petitioner as “a major participant” in drafting the SRC documents, no evidence appears in the record to show that the petitioner exercised more of a role than any other SRC member in drafting these documents and thus should be accorded credit for them.*

For all of the foregoing reasons, the petitioner failed to establish eligibility under this criterion.

(vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.

Counsel claims that the petitioner meets this criterion through his participation in the roundtable discussions and CLEs outlined in the discussion above. The plain language of this criterion reveals that it relates to the visual arts, such as sculptors and painters, rather than to presentations made by attorneys. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner’s participation in these discussions and presentations has previously been addressed under the major contribution criterion at 8 C.F.R. § 204.5(h)(3)(v). The petitioner has not established that his participation in these events compares to the artistic showcases contemplated by the regulation for visual artists.

Accordingly, the petitioner has not established eligibility under this criterion.

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

In order to meet this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Counsel claimed that the petitioner met this criterion through his representation of major companies and resulting business or financial transactions. The petitioner submitted no evidence to establish that Reliant Resources, Inc., Lehman Brothers, UBS Securities LLC, National Financial Partners, Goldman Sachs & Co., HealthSouth Corporation, TELUS Corporation, Revlon, Inc., Golden State Bancorp, Union Pacific Corporation, Citigroup and Travelers Property Casualty Corporation, Salomon Smith Barney, Merrill Lynch & Co., Credit Suisse First Boston, or the SRC, the organizations specifically referenced by name in the petitioner's submissions, have a distinguished reputation. No evidence was included regarding the companies' backgrounds, standing in the community or world, or any other aspect of their reputations. While many of these names are recognizable, name recognition does not necessarily equate to a distinguished reputation. Instead, the petitioner submitted information generated by the companies themselves that provided basic information about the companies, but did not contain information about their reputations.

In addition, the petitioner failed to submit evidence showing that he played a leading or critical role for the above listed companies. Counsel argued on appeal that the petitioner's role in major transactions for these companies qualifies him under this criterion. Although the petitioner submitted SEC filings indicating that he was involved in IPOs and news articles identifying him as the attorney involved in these business transactions, he failed to provide evidence that his role was leading or critical to the company as a whole. The letter from [REDACTED], vice president of Champion Enterprises, Inc., states that the petitioner "represented Champion in a number of different significant capital markets transactions and has provided Champion advice in capital markets and securities law matters." In this representation, the petitioner shepherded Champion through "a \$200 million debt offering . . . and a \$150 million high yield debt offering by a subsidiary of Champion." The letter from [REDACTED] senior vice president and general counsel of Selective Insurance Group, Inc., states that the petitioner handled "three capital raising transactions[:] . . . a \$50 million senior notes offering, a \$100 million senior notes offering and . . . a \$100 million offering of junior subordinated notes" as well as "providing . . . advice in connection with privately negotiated exchange transactions . . . [and] a variety of general advice on securities law and public company reporting matters." [REDACTED] states that the matters handled by the petitioner "are of great significance to [Selective]." The letter from [REDACTED], senior vice president of finance for El Pollo Loco, Inc., states that the petitioner helped negotiate the purchase of El Pollo Loco, "led the team that worked on concurrent high yield debt offerings," and "was also involved in two debt tender offers." After the purchase of El Pollo Loco, the petitioner continued to aid the company "in [the] reporting and disclosure obligations under the [SEC]." The letter from [REDACTED], former vice president and treasurer of Fisher Scientific International, Inc., stated that the petitioner represented Fisher in its acquisition of another company, "took charge of various filings that were required to be made with the SEC," and "represented Fisher in a tender offer and consent solicitation to retire . . . high yield debt." The letter from Douglas Hammond, executive vice president and general counsel of National Financial Partners, stated that the petitioner "served as . . . lead counsel" for the company's IPO and represented the company "in three subsequent equity offerings." [REDACTED], executive vice president for Revlon, Inc.,

stated that the petitioner “has represented Revlon over the years in a wide variety of extremely complex capital markets transactions . . . includ[ing] multiple high yield debt offerings . . . [and] a complicated debt-for-equity exchange offer.” [REDACTED], vice president and head of managed care investment banking with Goldman, Sachs & Co., stated that the petitioner represented Goldman and other underwriters during HealthSpring, Inc.’s IPO. The letter from [REDACTED], chairman and chief executive officer of National Financial Partners Corp., wrote that the petitioner handled National’s IPO in 2002 and otherwise advised the company on securities law matters. These letters are all complimentary of the petitioner’s work for the company, but none demonstrated that the petitioner played a leading or critical role for the company as a whole as opposed to helping the companies with a discreet project or problem.

Although he did not specifically claim eligibility pursuant to his employment with Skadden, his role as partner relates to this category. The evidence submitted, including firm rankings and news articles about the firm, indicates that Skadden enjoys a distinguished reputation. The petitioner submitted evidence about his role within the firm through information about his involvement with the SOC, which shapes the public position of the firm, and the Summer Associate Committee, which evaluates potential employees for fitness for permanent positions with the firm. According to [REDACTED]’s May 31, 2007 letter, the petitioner was asked to join the SOC because of his “acknowledged expert[ise] . . . on the extensive changes engendered by the new rules that directly affected many aspects of the securities offering process.”

However, as the petitioner failed to show that he performed a leading or critical role for an organization other than his own law firm, or that any of the companies he represented enjoy a distinguished reputation, he has failed to submit the “extensive documentation” required for this highly restrictive classification.

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

The petitioner submitted evidence that his income is significantly higher than the average salary listed by the United States Department of Labor Employment and Training Administration. Accordingly, the petitioner established eligibility under this criterion.

On appeal, counsel argues that the decision of the Director should be overturned because he “fail[ed] to consider all of the relevant evidence submitted” and made the decision ““based on an improper understanding of the law.”” Even if the director did fail to consider all of the evidence submitted, it is not clear what remedy would be appropriate beyond the appeal process itself. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Therefore, any violation by the Director would be remedied by the AAO’s *de novo* consideration on appeal.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her

field. The evidence in this case indicates that the petitioner is a successful attorney. However, the record does not establish that the petitioner achieved sustained national or international acclaim as an attorney so as to place him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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.