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

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 0 2 2009

LIN 06 181 51132

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

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 and the AAO determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director and the AAO found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On motion, the petitioner argues that he has received a major, internationally recognized award, that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), and that he has submitted comparable evidence his extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). For the reasons discussed below, the petitioner's motion does not overcome the AAO's findings.

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 June 16, 2006, seeks to classify the petitioner as an alien with extraordinary ability as an architect. 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). On motion, the petitioner submits a March 11, 2009 news release issued by the International Interior Design Association (IIDA) stating that his architectural firm, Bluarch Architecture + Interiors, was among six winners of the IIDA's 36th Annual Interior Design Competition in 2009 for its project "Greenhouse Nightclub." The news release further states that the "judges selection for Best of Competition will be officially revealed . . . at COOL, IIDA's NeoCon Gala to be held on Sunday June 14, in the Grand Ballroom at the Westin Chicago River North." The petitioner's firm was selected as a winner of the IIDA's 36th Annual Interior Design Competition subsequent to the petition's June 16, 2006 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. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this honor in this proceeding.

Nevertheless, aside from the IIDA's self-serving news release, there is no evidence of the significance of the IIDA honor or its competition. Further, the news release identifies "Bluarch Architecture + Interiors" rather than the petitioner as one of the six winners and there is no evidence showing that his firm ultimately received IIDA's "Best of Competition" award on June 14, 2009. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field. In this instance, even if the petitioner's firm's selection was primarily attributable to his design work, there is no supporting evidence showing that being designated among several winners of the IIDA's 36th Annual Interior Design Competition equates to receipt of a major, internationally recognized award. Regardless, the IIDA honor cannot be considered in this proceeding because it post-dates the filing of the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[1]

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> The petitioner submitted copies of pages from the *Demonstrating Digital Architecture 5th Far Eastern International Digital Architectural Design Award* yearbook reflecting that he was among dozens of entrants whose projects were included in the yearbook. The petitioner's project appeared on page 159 of this 226 page publication. On page 6 of the yearbook, [redacted] states: "We are delighted to report that altogether we have received 87 pieces of work from 29 nations."
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> The petitioner also submitted copies of pages from *Web Design in Italy* reflecting that a website he designed for [redacted] was among dozens of websites profiled in the book. The petitioner's work appeared on page 38 of this 173 page publication. Under the heading "The web project," a contributor to this publication, [redacted] states: "We are . . . at a turn that allows us, once again, to try to contemplate this topic in the light of day: and this is exactly what this publication has done – a publication that has compiled nice examples of good Italian web design, examples that are different from one another . . . ." The director's decision noted that this book relates to "web design rather than architecture." The plain language of this regulatory criterion requires "prizes or awards for excellence *in the field of endeavor*." In this case, the petitioner seeks classification as an alien of extraordinary ability in the field of architecture and he has not established that website design represents his field of endeavor.
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> With regard to inclusion of the petitioner's design work in *Demonstrating Digital Architecture 5th Far Eastern International Digital Architectural Design Award* and *Web Design in Italy*, the plain language of this regulatory criterion requires evidence of his receipt

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

> of nationally or internationally recognized "prizes or awards" in the field. Aside from having his work appear in print, there is no evidence showing that the petitioner received a prize or award for his designs. Further, the petitioner has not established that selection of his work for these books was indicative of national or international recognition for excellence in architecture or was otherwise consistent with being in "that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).
>
> In this case, there is no evidence demonstrating that the petitioner has received nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

The petitioner's motion does not specifically challenge any of the AAO's appellate findings for this regulatory criterion. Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision.

As discussed previously, the petitioner's motion includes a March 11, 2009 news release issued by the IIDA stating that his architectural firm was among six winners of the IIDA's 36th Annual Interior Design Competition in 2009. The petitioner's firm was selected as a winner of the IIDA competition subsequent to the petition's June 16, 2006 filing date. As previously discussed, 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. at 49. Accordingly, the AAO will not consider this honor in this proceeding. Nevertheless, aside from the IIDA's self-serving news release, there is no evidence of the significance of the IIDA honor or its competition. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the IIDA honor is recognized beyond the presenting organization and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field. Further, the news release identifies "Bluarch Architecture + Interiors" rather than the petitioner as one of the six winners. The plain language of this regulatory criterion, however, specifically requires "documentation of the *alien's receipt* of lesser nationally or internationally recognized prizes or awards." [Emphasis added.] Finally, there is no evidence showing that his firm ultimately received IIDA's "Best of Competition" award on June 14, 2009.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet 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 finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

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 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.[2]

The petitioner submitted August 17, 2005 and January 15, 2006 articles in the *New York Times* profiling New York clubs Home and Guest House, but neither article mentions his name. The petitioner also submitted material that does not mention him in publications such as *Citysearch*, *AM New York*, *IN New York*, *Us Weekly*, *Celebrity Living Weekly*, *New York News Day*, and *Bar Life*. The plain language of this regulatory criterion requires that the published material be "about the alien." Articles that do not mention the petitioner do not meet this requirement. In response to the director's request for evidence, the petitioner submitted additional articles from 2007 in *New York Magazine*, *Rolling Stone*, *Papermag*, and the *New York Post* discussing the Highline Ballroom and its musical acts rather than the petitioner. Aside from not being about the petitioner, the articles from 2007 were published subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *see Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the articles from 2007 in this proceeding.

The petitioner submitted an excerpt from *City Magazine* that is not primarily about him. Further, the date and author of the material were not provided and it has not been established that this local publication qualifies as a form of major media.

The petitioner submitted a February 2, 2006 article in *Caretas*, but the article only mentions his name in passing and it was unaccompanied by a certified English language translation. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Further, the author of the material was not identified and it has not been established that this publication qualifies as a form of major media.

As discussed, the petitioner submitted copies of pages from the *Demonstrating Digital Architecture 5th Far Eastern International Digital Architectural Design Award* yearbook reflecting that his design appeared on page 159 of this 226 page publication. The petitioner also submitted copies of pages from *Web Design in Italy* reflecting that his design appeared on page 38 of this 173 page publication. There is no evidence showing that the petitioner

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[2] 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.

was singled out from the dozens of other individuals whose designs were included in these books. The petitioner has not established these publications, or any significant portion of them, are about him. Further, there is no evidence (such as national or international book sales data) showing that either publication qualifies as a form of major media.

The petitioner submitted press releases prepared by promoting the openings of two nightclubs designed by him, but these announcements were not about him. Nevertheless, a press release is a written communication directed at the news media for the purpose of announcing information claimed as having news value rather than "published material . . . in professional or major trade publications or other major media." We cannot conclude that a press release, which is not the result of independent media reportage and which is sent to journalists in order to encourage them to develop articles on a subject, meets the plain language of this regulatory criterion.

The petitioner submitted a September 8, 2005 letter confirming an upcoming interview of him by a representative of New York's Q104.3 radio station, but the record does not include a transcript or a recording of the broadcast. Further, there is no evidence showing that this radio station qualifies as a form of major media, that the petitioner's interview aired nationally or internationally, or that it was otherwise broadcast in a manner consistent with sustained national or international acclaim.

The petitioner submitted material posted on Arquitectum.com, rhythmism.com, bluarch.com, archinect.com, the City College of the City University of New York's internet site, Parsons New School for Design's internet site, but there is no evidence showing that any of these internet sites qualify as major media or that the material mentioning the petitioner meets the other requirements of this regulatory criterion (such as being about the petitioner or including the date and author of the material).

The petitioner's motion does not specifically challenge any of the AAO's appellate findings for this regulatory criterion. Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision.

On motion, the petitioner submits a *New York Times* Green Inc. online blog posting dated November 25, 2008 and "Corrected 12/23/08." The entry, entitled "'Green' Nightclub Trend Comes to New York," does not mention the petitioner and was posted subsequent to the petition's filing date. The petitioner's motion includes additional material and articles about the petitioner's Greenhouse nightclub project posted online or published in late 2007,[3] late 2008, and early 2009. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12);

[3] The only material from 2007 was an online posting on the "Green Girls Global Blog" dated October 3, 2007 announcing the opening of the Greenhouse nightclub in New York. The four-sentence posting does not name the petitioner.

Matter of Katigbak, 14 I&N Dec. at 49. Accordingly, the AAO will not consider material posted or published in 2007, 2008, or 2009 in this proceeding.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet 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.*

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> The petitioner submitted an undated letter from , City College of New York, stating: "[The petitioner] teaches *Design Studio* courses, the very academic core of our **program, and has been participating on panels as judge on final design reviews. His** students' work shows exciting speculative reach and definitely proves his outstanding quality as a professional and as an educator." 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 the final design reviews of architectural students, who have not yet begun working in the field, meets this requirement. With regard to the petitioner's activities as an educator, we do not find that teaching core courses to architectural students 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 employment by the City College of New York demonstrates his competency as a teacher, but he has not established that such employment meets the plain language of this regulatory criterion or that it is indicative of sustained national or international acclaim at the very top of his field.
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> The petitioner submitted an undated letter from New York, stating:
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> > I met [the petitioner] a couple of years ago when we both participated on a panel as judges of the competition Europan, evaluating design proposals of professionals from around the world. The project had a very articulate program requiring extensive analysis and production.
> >
> > The jury was comprised of 4 judges with preeminent academic and professional relevance, and [the petitioner's] work was already familiar to me thanks to his research on architectural space as a pre-existing epitome.
>
> The petitioner also submitted information printed from the Europan internet site stating:

> Jury and Adjudication – In each country a jury is put together. The members of the jury are appointed by the national organization and approved by the international organization of Europan. Each jury comprises nine members and two substitute jury members who have no connection with the sites . . . .

There is no evidence originating from the Europan organization confirming the petitioner's participation as a judge or his dates of service. Further, according to the information from Europan's internet site, "[e]ach jury comprises nine members and two substitute jury members." However, letter states that the petitioner's "jury was comprised of 4 judges." 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).

In response to the director's request for evidence, the petitioner submitted a May 16, 2006 letter from , New York, stating:

> In 2002, [the petitioner] and I were jurors on a panel of five evaluating entries for the International Bamboo Building Design Competition. In that occasion, architects and designers submitted ideas on innovative ways to employ bamboo in buildings of different typologies.
>
> * * *
>
> [The petitioner] showed outstanding expertise and played as significant a role as the rest of the panel in judging the proposals.

The petitioner submitted information printed from the internet regarding the "2006 International Bamboo Building Design Competition," but there is no information regarding the 2002 competition. Further, the petitioner has not submitted evidence originating from the competition organizers confirming his participation as a judge or his dates of service.

Rather than submitting evidence from the competition organizers confirming his participation as a judge in the Europan competition and the 2002 International Bamboo Building Design Competition, the petitioner instead submitted brief letters from and attesting to his involvement. 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 record does not include primary evidence from the competition organizers demonstrating the petitioner's participation as a judge. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, the petitioner has not overcome the

> absence of primary and secondary evidence of his participation as a judge for preceding competitions. Further, the record lacks evidence establishing the level of acclaim associated with judging these competitions. Nor is there evidence showing the specific work judged by the petitioner, his dates of participation, the names of those he evaluated, their level of expertise, or documentation of his assessments. Without evidence showing, for example, that the petitioner has participated as a judge of experienced architects 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.

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." The evidence submitted to meet 8 C.F.R. § 204.5(h)(3)(iv), or any criterion, must be indicative of or consistent with sustained national or international acclaim.[4] 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).

On motion, the petitioner states:

> I produced two testimonial statements from other colleagues who had served with me as judges. I could not provide primary, contemporaneous documentation of the actual invitation, because modern life and technology have moved at such a fast pace, that in some instances, written communication that can be preserved and photocopied, has become passe. Very often invitations and other evidence that can be saved and submitted, are relayed via electronic messages and are therefore of ephemeral nature. At the time that they are transmitted, without the forethought that they would eventually be useful in proving tangible written evidence in an application for extraordinary ability classification, they are automatically deleted or even email addresses use up all allowable bytes, and are closed by the server, or the owner of the email address is denied access. Also, websites that initially have the USCIS-required data are updated, and prior, all-important information to the USCIS, are supplanted by updates. Therefore, secondary or comparable evidence has to be proferred [sic]. . . . I submit that it is reasonable, and just that comparable evidence such as letters of people who know about the events, be accepted, when, despite numerous, due-diligence searches, prior, available information, is no longer available.

The petitioner requests that the letters from [redacted] and [redacted] be accepted as "comparable evidence." The specific deficiencies regarding these letters were addressed in the AAO's appellate decision and will be further discussed below. Regardless, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria

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[4] We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS,* 2006 WL 778623 *9 (S.D. Tex. March 24, 2006) and *All Pro Cleaning Services v. DOL et al.,* 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

"do not readily apply to the beneficiary's occupation." The regulatory language at 8 C.F.R. § 204.5(h)(4) 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). We cannot ignore that the petitioner has specifically argued that he meets the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (iv), (v), (vi), (vii), (viii), and (ix). Where an alien is simply unable to meet three of the regulatory 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.

The petitioner refers to an unpublished California Service Center decision in which USCIS allegedly approved an extraordinary ability petition based on "a letter certifying that a gymnast contemporaneously knew that another gymnast had represented her country in the Olympic Games, when the record no longer existed in Romania." The petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished California Service Center 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 service center decisions are not similarly binding. Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. The AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The brief letters from [redacted] and [redacted] attesting to the petitioner's involvement in the Europan competition and the International Bamboo Building Design Competition are not sufficient to meet this criterion. The classification sought by the petitioner requires "extensive documentation" of "sustained national or international acclaim" for recognized achievements in the field. *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). As discussed, 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. at 158, 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii).

With regard to the petitioner's request that the letters from [redacted] and [redacted] be accepted as secondary evidence, we find that their letters do not equate to secondary evidence (which is defined by 8 C.F.R. § 103.2(b)(2)(i) as institutional "records"). Further, contrary to the regulation at 8 C.F.R. § 103.2(b)(2)(ii), the petitioner did not submit a statement from the competition organizers indicating that their records from the Europan competition and the International Bamboo Building Design Competition do not exist. Even if the petitioner were to demonstrate such secondary evidence to be unavailable from the preceding competitions' organizers, the letters from [redacted]

and were not affidavits. Moreover, the information in letter was found to contradict information originating from the Europan internet site. As discussed in the AAO's appellate decision, 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. at 582, 591-92.

Section 291 of the Act provides:

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant; immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be.

The law goes on to assert that the evidence must establish eligibility "to the satisfaction" of the adjudicating officer. This burden is confirmed in *Matter of Soo Hoo,* 11 I&N Dec. 151 (BIA 1965) and *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). In this instance, the petitioner's motion does not include evidence of the petitioner's participation as a judge that meets the requirements of this criterion and of 8 C.F.R. §§ 103.2(b)(2)(i) and (ii), that overcomes the information in letter contradicting the information originating from the Europan internet site, and that is commensurate with the statutory and regulatory requirement of sustained national or international acclaim. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> The petitioner submitted several letters of support. We cite representative examples here.
>
> states:
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> > [The petitioner] has been carrying out an advanced research in architectural design investigating the concept of architectural space as a pre-existing narrative streaming on the timeline, where the quadrangular space (archetype) is continuous, and bends along opportune programmatic needs (key-frames) of the design process (design moment). The cultural approach of this study is dynamic and flexible and delivers new exciting formal possibilities explored through advanced three-dimensional software and technologies.

> Also most notable is his transposition of string theory to architecture, a breakthrough contribution of major significance, which has gained him international exposure in publications and at the exhibition on advanced digital architecture at the Graduate Institute of Architecture, National Chiao Tung University [Taiwan].

New York, states:

> I have known about [the petitioner] though articles and exhibitions of his work. He was part of a group exhibition at the Museum of Modern Art in New York City (MoMA), and more recently at the Graduate Institute of Architecture, National Chiao Tung University [Taiwan]. At the Far Eastern Conference he presented his research project on string theory applied to architecture. The project examines scale as physical and non-physical relationship, where the non-physical accommodate the ever-changing need of human feelings and moods, thus offering architectural space which changes in real time along the physical scale. In this scenario [the petitioner] engages architecture in a unique frame work of evolving processes and design outcomes. This is a breakthrough contribution of major significance.
>
> He has recently presented a book proposal to the Research Institute for Experimental Architecture in Switzerland and to me. The book entitled *Edge* negotiates a concept of space as an ever-changing narrative of surfaces . . . .

While the petitioner's work is no doubt of value, it can be argued that any architectural research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every architectural scholar who creates original work that has been published or displayed has inherently made a contribution of major significance in the field.

, City College of the City University of New York, states: "[The petitioner's] work is of major significance to the architectural practice, as it offers new archetypical formats in understanding human interaction in the architectural space."

Urban Design and Landscape Architecture, City College of the City University of New York, states:

> [The petitioner] has recently presented a theoretical essay entitled *Edge* to the prestigious Research Institute of Experimental Architecture in Switzerland. The outcome of the research is outstanding in its forward-thinking approach to the design process, and most prominent in its philosophical accomplishments.

There is no evidence demonstrating that *Edge* was published as of the petition's filing date. As discussed, 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. at 49. Nevertheless, the petitioner's

Edge essay is far more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will further address the petitioner's authorship of scholarly material and the attention that it has garnered under the next criterion.

School of Architecture, Urban Design and Landscape Architecture, City College of the City University of New York, states: "[The petitioner's] major contribution to field relates to the new theoretical shifts emerging from the introduction of digital production and representation. His technique is widely accepted and used by many colleagues, and has put him at the top of our field and given him continuing preeminence." letter does not specifically identify the original architectural technique developed by the petitioner, nor does it provide specific examples of its widespread acceptance and use.

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 has earned the admiration of those offering letters of support, the documentation submitted by him does not establish that his work has had major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other architectural scholars 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 support submitted by the petitioner 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. USCIS 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, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. 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 an architectural scholar who has sustained national or international acclaim.

The petitioner's motion does not specifically challenge any of the AAO's appellate findings for this regulatory criterion. Upon review, we find the AAO properly considered the evidence submitted,

thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision.

On motion, the petitioner states that the 2007, 2008, and 2009 articles and online material about his Greenhouse nightclub project demonstrate his design's originality and major significance. Aside from the preceding documentation, the petitioner submits requests from various publishers in 2009 to include his Greenhouse nightclub project in their publications. The petitioner also submits e-mail requests from three students in 2009 for information about his project. The petitioner argues that the preceding documentation is further evidence that his work is tantamount to original contributions of major significance. The preceding evidence from 2007, 2008, and 2009 post-dates the filing of the petition. As discussed previously, 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. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Without evidence in existence at the time of filing 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 reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> The petitioner submitted evidence showing that he coauthored an article entitled "The Virtual Shopping Mall as a Tool for the Recovery of the Historical City Center of Senigallia" posted on *Adriatico*, an "online journal for cultural and scientific cooperation." The petitioner has not established that this article represents a scholarly article in the field of architecture or that this online journal qualifies as a major publication. The petitioner also submitted evidence of lectures he prepared for New York colleges and his authorship of a theoretical essay entitled *Edge*, but there is no evidence showing that this material was published in professional or major trade publications or some other form of major media. The director concluded that the petitioner's evidence did not establish that the material authored by him has significantly impacted his field or has otherwise garnered him national or international acclaim. The petitioner does not challenge this conclusion on appeal.

The petitioner's motion does not specifically challenge any of the AAO's appellate findings for this regulatory criterion. Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> In addressing this criterion, the director's decision stated:
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> > The petitioner is claiming work that was displayed at the [Museum of Modern Art]. However, it appears that the work consisted of photographs taken by the petitioner rather than his architectural designs. As such, this display does not satisfy this criterion. The petitioner also had works displayed at the Far Eastern Memorial Foundation, The Van Allen Institute, and Centro Arquitectum. The Service requested additional documentary evidence regarding the nature and standing of these organizations. The Service also requested evidence which demonstrates the means by which his works were chosen for display; the nature and purpose of the exhibit; and the dates that his works were on display with each organization. However, the petitioner failed to provide the evidence requested. In the absence of additional evidence including the nature and purpose of the exhibit and the means by which his works were chosen for display, the record fails to establish that the [petitioner's] works were displayed at artistic exhibitions or showcases consistent with national or international acclaim.
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> We agree with the director that the petitioner has not established that the photography exhibition in which he participated at the Museum of Modern Art was based on his work in the field of architecture. With regard to the institutions where the petitioner's works were shown, it must be stressed that an artist or architect does not satisfy this criterion simply by arranging for his work to be displayed. In this case, there is no indication that the petitioner's works have consistently been featured along side those of artists or architects who enjoy national or international reputations, that he has regularly participated in exhibitions at significant venues devoted primarily to the display of his work alone, or that his exhibited work was singled out for critical acclaim by others in his field. Upon review, we find the director properly addressed the petitioner's evidence in the decision. Accordingly, we concur with the director's finding that the petitioner does not meet this criterion.

The petitioner's motion does not specifically challenge any of the AAO's appellate findings for this regulatory criterion. Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> At issue for this criterion is the position the petitioner was selected to fill. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. The director concluded that the record did not establish that the petitioner's teaching positions with the City College of the City University of New York and the Parsons School of Design were leading or critical. We concur with the director's findings. The petitioner also submitted evidence showing that he worked for Bluarch Architecture and Interiors, but there is no evidence showing that this company has a distinguished reputation. With regard to the petitioner's teaching positions and his role for Bluarch, there is no evidence demonstrating how the petitioner's role differentiated him from others holding similar positions (such as their other instructors or architects), let alone their tenured faculty or senior management. In this case, the evidence does not establish that the petitioner was responsible for his employers' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.
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> On appeal, the petitioner states that he recently redesigned the website for the School of Architecture, Urban Design and Landscape Architecture, City College of the City University of New York, and that this work distinguished him from other employees in the institution. There is no evidence demonstrating that the petitioner had completed his work on the school's website as of the petition's filing date. As discussed, 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. at 49. Nevertheless, the petitioner has not submitted evidence from City College of the City University of New York officials discussing the importance of this website project or the nature of his role for the project.

The petitioner's motion does not specifically challenge any of the AAO's appellate findings for this regulatory criterion. Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision.

On motion, the petitioner asserts that the 2007, 2008, and 2009 articles and online material about his Greenhouse nightclub project and Bluarch Architecture + Interior's selection as one of six winners of the IIDA's 36th Annual Interior Design Competition in 2009 demonstrate his firm's distinguished reputation and that he performed in a leading or critical role for his firm. As previously discussed, the preceding evidence from 2007, 2008, and 2009 post-dates the filing of the petition. 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 evidence in this proceeding.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

> In response to the director's request for evidence, the petitioner submitted his U.S. income tax return for 2006 reflecting employment-related compensation of $61,426. The petitioner also submitted information from the U.S. Department of Labor's internet site showing the median earnings of architects in the New York and New Jersey metropolitan region. For example, the Level 4 Wage (fully competent) for architects in this area was $89,357 per year. According to the documentation submitted by the petitioner, his earnings of $61,426 fall substantially below the median wage for fully competent architects in the New York and New Jersey metropolitan region. As such, we cannot conclude that the petitioner has commanded a high salary in relation to others in his field.
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> The petitioner's response to the director's request for evidence also included information from "O-Net OnLine" indicating that the national median wage for architects in 2005 was $62,850. We note that the petitioner's employment-related compensation of $61,426 in 2006 falls below the median national wage for 2005. Thus, the petitioner has again failed to establish that he has commanded a high salary in relation to others in his field. Moreover, we find that the petitioner's reliance on median salary statistics is not an appropriate basis for comparison. The petitioner must submit evidence showing his salary places him among that small percentage at the very top of the field rather than in the top half of his field. *See* 8 C.F.R. § 204.5(h)(2).
>
> On appeal, the petitioner submits a monthly bank statement from HSBC Direct for the period of September 7, 2007 to October 5, 2007 as further evidence for this regulatory criterion. This bank statement post-dates the filing of the petition. As discussed, 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. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, this bank statement does not establish that the petitioner has received compensation that is significantly high in relation to others in his field.

The petitioner's motion does not specifically challenge any of the AAO's appellate findings for this regulatory criterion. Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

In this case, we concur with the director's determination and our appellate findings that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Therefore,

the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The AAO's March 19, 2009 decision dismissing the appeal is affirmed. The petition will remain denied.