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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 17 2009
LIN 06 219 50737

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in airport operations. 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, the petitioner argues that he 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 July 19, 2006, seeks to classify the petitioner as an alien with extraordinary ability in airport operations.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner did not initially submit any documentary evidence for this criterion. However, in response to the director's Request For Evidence ("RFE"), the petitioner submitted a Diploma of Merit, issued on October 12, 2006 by the General Consulate of El Salvador in Florida. The Diploma was given for "standing out in commercial aviation in El Salvador" and was submitted without a certified translation. In addition, the petitioner provided six different pictures of recognition awards from his employer, TACA International Airlines, with captions translating three of the awards into English. However, the translations failed to fully translate the inscription on the awards and they were not certified as required by 8 C.F.R. § 103.2(b)(3). An award from JFK Airport in recognition of 25 years of excellent service was also provided. No new evidence for this criterion was submitted on appeal.

The director did not find that the evidence provided was sufficient to satisfy this criterion. We concur, after a review of the entire record, that the evidence fails to establish the petitioner meets this criterion. The record lacks proof to demonstrate that the awards received by the petitioner constitute nationally or internationally recognized prizes for excellence in his field, such as supporting evidence showing the prestige associated with receiving the awards or some other evidence consistent with national or international acclaim at the very top of the field. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. Moreover, the record also lacks general information about whether the petitioner was competing against other employees for his awards from his employer or other aviation professionals for the other awards (such as the award criteria, the area from where participants were drawn, the number of entrants, or the percentage of entrants who earned some type of recognition).

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

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

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner initially submitted several reference letters to establish his membership in various organizations. In a letter from the International Air Transport Association ("IATA"), dated January 26, 2006, the Regional Vice President stated that the petitioner,

> "has integrated his thorough knowledge in the airport operation field with his ability to be as a airline delegate (TACA representative) in 2002 IATA ground handling council in Las Vegas working together with vendors and other airline worldwide delegates (370 airlines) and Airports, under the auspices of IATA airport service committee ASC all together developed those new standards and to update the new IATA Ground handling agreements and standards SGHA January 2004."

In addition to this letter, the petitioner provided pages from IATA's website, www.iata.org, detailing the history of the IATA trade organization, its goals and policies. In the petitioner's initial brief, he also claims to be a member of the Airline Association in El Salvador ("ASLA") for more than a decade. However, the only proof of membership appears to be a recommendation letter from the President of ASLA, which did not state that the petitioner was a member.

In response to the RFE, the petitioner claimed in his brief to be a member of IATA, stating that his membership was confirmed through the above-referenced reference letter. The letter, however, only stated he is "a recognized authority in the Airline Business" and did not mention his membership in the organization. His brief also stated that he is IATA's TACA delegate, an IATA council member, a LACSA representative and a North American Airport Network member and a member of the Inter Airport worldwide council. However, the only new evidence provided was a letter from a member of the Airline Management Council Board, dated October 16, 2007, stating that the petitioner was an active member of the Airline Management Council since 2003. The petitioner also provided two emails with meetings and news updates from the American Association of Airport Executives ("AAAE"), as well as an internet printout from its website, www.aaae.org. The internet site explained that the professional membership requirements "consist of a management paper or case study written on some phase of airport management, a comprehensive multiple-choice exam and an oral examination on a level comparable to other professional certificates." After these

requirements are fulfilled, an "Accredited Airport Executive is admitted to the membership as an executive member and may use the initials A.A.E." after his name.

In his decision dated February 12, 2008, the director did not find the petitioner had provided enough evidence to satisfy this criterion. The petitioner argued in his appeal brief that he belonged to IATA and made many contributions through his involvement in this group. The petitioner also submitted a copy of the Current Standard Ground Handling Agreements ("SGHA") of 2004, which he says that he developed through his involvement in various councils. However, the SGHA is written in Spanish, and no English translation was provided. Other than the SGHA, no new information was provided on appeal for this category.

We agree with the director's finding that the record lacks independent documentary evidence to prove the petitioner's membership in any of the aforementioned organizations. The petitioner only provided three reference letters, and one of the letters from IATA fails to even directly state that the petitioner is a member of the organization. Even assuming the petitioner proved his membership sufficiently through reference letters, the petitioner's submissions including the three reference letters, the internet pages from the IATA and AAAE websites, and the SGHA, fail to state the requirements of membership (such as membership bylaws or official admission requirements) or state what types of outstanding achievements, if any, are necessary for membership. Although the AAAE website provides the requirements for membership, the information provided fails to show that such requirements represent outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

In addition, the record also lacks evidence demonstrating that membership in any of the above organizations is judged by recognized national or international experts in the field.

As such, the petitioner has not established that he meets this criterion.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication or broadcast, or from a publication printed in a language that the vast majority of the country's population cannot comprehend. 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 initially submitted two articles without English translations, one that was published by his employer, TACA, and the other, an editorial, without a publication source or complete date. In response to the RFE, counsel argues that the petitioner has fulfilled this criterion through "publications from major aviation media sources detailing celebrated career as an "Executive Airport Director" that it purports to have submitted. The actual evidence provided in an attempt to support this claim included a copy of the same article published by TACA in 1986 entitled "We can go as far as we want to; – Employee of the Year of TACA-SAL/85." Unlike in the petitioner's initial submission, the petitioner submitted a translation of the article, yet failed to certify it. In addition, the petitioner submitted another article from *Nuestro Grupo*, dated April 2006, entitled, "Successful Career in TACA." The accompanying translation was likewise not certified. No new evidence to support this criterion was submitted on appeal.

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. None of the preceding articles were certified by the translator as required by 8 C.F.R. § 103.2(b)(3). The AAO is, therefore, unable to determine whether the evidence supports the petitioner's claims. Accordingly, these articles are not probative and will not be accorded any weight in this proceeding. Moreover, none of the articles contain the author of the material as required by 8 C.F.R. § 204.5(h)(3)(iii).

Finally, even if the evidence without the requisite certified translations were considered, there is no evidence (such as circulation statistics) showing that any of the preceding articles submitted by the petitioner were printed in professional or major trade publications or some other form of major media. In fact, the petitioner only submitted a publication name in English for one of the articles, and that article was published by the petitioner's employer, TACA. It is unclear whether the article appeared in an internal company newsletter or elsewhere. Without further evidence, this publication cannot be equated with a professional or major trade publication or a form of major media.

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

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and

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[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.

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).

The petitioner did not initially submit evidence specifically for this criterion. In response to the RFE, counsel for the petitioner asserted the petitioner has "participated in events, conferences, and discussions of distinguished reputation in the Aviation field" and that he has "frequently participated as an expert speaker in the area." The following was submitted to support these claims and as evidence of this criterion:

1. Two emails with "Passenger Terminal Expo 2008" in the subject field written by the conference director to the petitioner. One of the emails stated, "we definitely want to include the first proposal of yours in the conference, however, I [she] must have the attached form completed and returned;"
2. A flyer regarding the Passenger Terminal Expo 2008 in Amsterdam announcing the keynote speaker of the convention (who was not the petitioner) and making an open call for papers;
3. A pamphlet for a convention called Network 2006, held in San Antonio. The pamphlet lists all the speakers, and the petitioner was not on the list. It indicated only that the petitioner was an airline delegate from TACA;
4. A letter from the Airline Business President that invited the petitioner to attend Network 2008 in San Diego;
5. An email in Spanish, without an English translation, regarding a Network Latin American Convention in Mexico;
6. A flyer regarding the Network Latin America conference in Mexico that generally provides information regarding the program, and does not mention the petitioner;
7. A flyer for the Inter Airport Europe Conference in 2005 in Munich, Germany, that lists all the speakers and the petitioner was not one of them;
8. A description was provided for the following three Items (9-11), which noted that the petitioner "served as one of the IATA council members who reviewed, modified and approved the final ground handling standard agreement" and that "the work reviewed was submitted by all participants and the council judged the work and approved the amendments and new Items that were included."
9. A letter from IATA stating his involvement in the organization and in developing the SGHA (a copy of the agreement was provided);
10. A description of the IATA organization; and
11. Various pieces of evidence attempting to establish the petitioner's membership as an Air Carrier representative at Los Angeles Airport.

The director did not find the evidence provided was sufficient to satisfy this criterion, and no new evidence was provided on appeal.

None of the items above provide evidence that the petitioner was a judge, or even that he was a speaker at a conference, as the petitioner's counsel claimed. Item 1 was not sufficient to support that the petitioner was a judge or speaker as the email did not confirm his participation in the conference. Rather, the email remained contingent upon his resubmitting documents to the conference director. Further, even if he resubmitted his proposal, it is unclear whether he would have been a speaker or just would have had his proposal incorporated into the conference in some other way. Additionally, the portions of the emails allegedly written by the petitioner do not have the caption indicating when the emails were sent by the petitioner and appear to be cut and pasted on the email from the conference director. Therefore, these emails purportedly written by the petitioner are inherently unreliable. Items 2, 3, 4, 6 and 7 provide information on various conferences. However, they do not establish that the petitioner's role in the conferences included anything other than possibly attendance. Item 5 was not translated as required by 8 C.F.R. § 103.2(b)(3), and therefore it cannot be considered. Items 9 and 10 were submitted, as explained in Item 8, to establish that the petitioner reviewed and judged the amendments to the final ground handling agreement. However, the petitioner's involvement in the review and development of regulations for ground handling was not confirmed through the evidence. There was no evidence to establish whose work he reviewed nor was there any proof that the petitioner was specifically involved in reviewing anyone's work. The letter provided only indicates he "developed" new standards, and does not confirm he actually was involved in reviewing the work of others. Item 11 may evidence his membership as a carrier representative, but does not establish that he was a judge in order to fulfill this criterion.

Even assuming the petitioner was involved as a panel member at any of the above-referenced conventions or as a judge of work with regard to ground standards, the record lacks evidence establishing the level of prestige associated with participating in these conventions or judging the amendments of the ground standards, the requirements necessary to become a judge, and the names of the participants he evaluated and/or their levels of expertise or other evidence of his judging that is indicative of this highly restrictive classification.

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

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

The petitioner did not originally claim this criterion. However, in response to the RFE, counsel claimed that the petitioner contributed through the guidelines he created for airport security and procedure including; TACA/LACSA Ground Handling Handbook, Emergency Response Manual TACA and LASCA, The Key Issues in the Emergency Response 2004, and APIS Implementation Working with US Customs & Immigration. These guidelines could not be located in the record. The actual evidence in the record provided to support this criterion included a picture of the petitioner and former Governor Jeb Bush during a celebration of Independence Day in 2006. It was accompanied by an article regarding the event, which did not mention the petitioner and did not

discuss anything related to the petitioner's field. Therefore, this evidence did not support the proposition that the petitioner made a contribution of major significance in his field. In addition, a power point presentation, prepared by the petitioner for TACA airlines for negotiations with U.S. Customs and Border Protection over landing rights, was submitted. However, other than creating the power point document, it is unclear whether the petitioner solely contributed to this document. And, even if he alone prepared this document, there is no supplemental evidence to show this presentation represents a major contribution in his field. We additionally considered the several letters of recommendation that were submitted, although not specifically for this criterion, to be potential evidence. However, none of these letters demonstrated what, if any impact the petitioner had made in his field that could be synonymous with making a contribution of "major significance." Moreover, none of the evidence illustrated that the petitioner's position as an Airport Operations Director conveyed him national or international acclaim or that his participation in negotiations or other aspects of the airline industry made a contribution of major significance to his field.

As discussed above, the petitioner has failed to establish how his work has influenced his field and how it is considered to have been a contribution of major significance to his field. Accordingly, the petitioner has not established that he meets this criterion.

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

In counsel's initial brief, he claims that the petitioner has recently published the following publications; TACA/LACSA Ground Handling Handbook, Emergency Response Manual TACA and LASCA, The Key Issues in the Emergency Response 2004, and APIS Implementation Working with US Customs & Immigration. However, none of the evidence provided corresponds with these publication titles. In response to the RFE, the petitioner provided the following as evidence of this criterion:

1. A letter from the petitioner, dated May 30, 1999, requesting approval for a procedures manual and an accompanying approval for "Procedimentos de Rampa;"
2. Two additional letters and one approval document written in Spanish with no English translation;
3. A Memorandum, dated March 3, 2000, regarding the new ramp procedures manual;
4. An uncertified, partial translation of the Ramp Operation Manual written by the petitioner that states its approval by TACA International, AVITECA S.A. and LACSA;
5. The Ramp Procedures Manual written in Spanish and partially in English;
6. A letter from Author House, dated October 23, 2007, indicating that it is anticipating the petitioner's book, "The Messenger of Hope: Chronicles of a Holy Journey," will be published on November 23, 2007;
7. An article written by the petitioner in *La Estrella de Nicaragua* entitled, "Security Inspection-Carryon Bags at Airports in Your Next Trip," accompanied by a partial, uncertified translation. The article was also purportedly published by the government of El Salvador, but the article provided to support this did not contain a source; and

8. An Airline Emergency Planning and Response Management Assignment, dated February 5, 2004, accompanied by a certificate stating that the petitioner passed the Airline Emergency Planning and Response Management course with distinction.

In his decision, the director found the evidence to be insufficient to fulfill this criterion. On appeal, the petitioner provided his book, "The Messenger of Hope: Chronicles of a Holy Journey." The book indicates it was first published on December 11, 2007.

The book provided on appeal was published after his petition was filed, and therefore it may not be considered. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Although the petitioner provided notice of the future publication of his book in Item 6, the actual publication of the book did not occur until after the petition was filed.

The petitioner failed to provide certified translations for Items 4, 5 and 7 as required by 8 C.F.R. § 103.2(b)(3). Moreover, the translations in Items 5 and 7 were only partial translations. Without the proper complete, certified translations, the AAO is unable to confirm the accuracy of the petitioner's statements regarding his claimed published materials. Accordingly, these articles are not considered probative and may not be accorded any weight in this proceeding. Further, a translation was not provided at all for Item 2.

The petitioner also failed to submit evidence which demonstrates that Items 4, 5 and 7 were published in professional or major trade publications or other major media. The only accompanying evidence provided were letters confirming the approval of the Ramp Operation Manual (Items 1 and 2). However, these letters did not address where the Manual was published or that it was published in a professional or major trade publication or other major media. Further, it appears that Item 8 was not published, but instead was an assignment completed by the petitioner in order to gain credit for the course entitled, Airline Emergency Planning and Response Management. The certificate indicating the petitioner passed the course with distinction, and the fact that the work was referred to as an "assignment" appears to demonstrate this is the case.

As such, the petitioner has not established that he meets this criterion.

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

In the petitioner's response to the RFE, counsel claims that the petitioner's position as Director of Logistics for TACA Airlines during the Pope's three visits to North America and that his service as Director of Airport Operations for TACA Airlines would qualify him to meet this criterion. The petitioner submitted the following evidence relevant to this criterion:

1. A letter from [redacted], Apostolic Nuncio in El Salvador, dated December 1, 2005, which states that the petitioner was an asset to the Pope's visits in 2002, 1996 and 1983;

2. A power point presentation by TACA Airlines, dated June 30, 2002, entitled "Pope John Paul II: Chronicles of trip to: Toronto, Guatemala and Mexico;
3. A power point presentation with Oakland Airport written on the bottom right hand side, undated (unclear whether this is part of Item 4);
4. A power point presentation written by the petitioner, dated May 12, 2005, entitled "Oakland Airport: Operational Field Audit Technical Study;"
5. The petitioner's curriculum vitae was provided to prove that he has served as the Director of Airline Operations for years; and
6. Several reference letters which confirm the petitioner's involvement in the Pope's visits and his work in the airline industry.

The director did not find the record contained sufficient evidence to satisfy this criterion. Nonetheless, no new evidence was provided for this criterion on appeal.

In order to establish that the petitioner performed in a leading or critical role for an organization or establishment with a distinguished reputation, he must establish the nature of his role within the organization or establishment and its reputation. The position should also 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. In this instance, the petitioner claims that his position as a Director of Airline Operations and as Director of Logistics for the Pope's visits evidence that he has performed a leading role. The evidence regarding the Papal visits demonstrates that the petitioner took a leading role in his preparing the airport for the Pope's visit. However, the evidence addressing the petitioner's work as a Director of Airline Operations, including Item 5 and 6, only address the petitioner's specific role within the organization and details his work and accomplishments, and does not establish he has played a leading or critical role.

The regulation also requires that documentation be submitted by the petitioner to establish that the various organizations, in which he purports to have performed leadership roles, have a distinguished reputation. Similar to the aforementioned reasoning regarding the title of a position, the name recognition associated with a particular organization or entity is not tantamount to a distinguished reputation. The petitioner failed to submit any evidence demonstrating that TACA Airlines enjoys a distinguished reputation.

As such, the petitioner has not established that he meets this criterion.

On appeal, counsel argues that the reference letters submitted on the petitioner's behalf are comparable evidence of the petitioner's extraordinary ability as an Airport Operations Director. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence 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). 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 reference letters submitted in support of this petition have already been addressed. Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

In this case, the petitioner has 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).

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

The 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.