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

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FILE:

[REDACTED]  
LIN 08 043 50895

Office: NEBRASKA SERVICE CENTER

Date: JUN 29 2009

IN RE:

Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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. The petition 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 the arts. 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.

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 to the United States will substantially benefit prospectively the United States.

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 has 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.

We note that the petitioner has previously been approved for a nonimmigrant visa as an alien with extraordinary ability under section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). We do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis on the evidence of record. Moreover, 8 C.F.R. § 214.2 (o)(3)(iv), relating to nonimmigrant aliens of extraordinary ability in the arts, provides for entirely different criteria than those for the immigrant classification discussed

below. Thus, the beneficiary could meet the nonimmigrant criteria and not the ones necessary for immigrant classification.

While U.S. Citizenship and Immigration Services (USCIS) has approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, that prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the beneficiary's qualifications).

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

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

This petition seeks to classify the petitioner as an alien with extraordinary ability as a senior art director. 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 of the criteria outlined in 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).

On appeal, counsel asserts for the first time that the Silver Award at the Cannes Lions Award Festival is a major, internationally recognized award, and that the petitioner's receipt of this award in 2005, qualifies the petitioner for approval for this visa preference classification under the "one-time achievement" provision.

Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (September 19, 1990). 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). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). 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 \$1 million 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 internationally recognized in the alien's field as one of the top awards in that field.

While the Cannes International Film Festival is a familiar name to the public and is often seen as a barometer as to who will be recognized by the Oscars,<sup>1</sup> the petitioner submitted no evidence that the Cannes Lions International Advertising Festival enjoys the same public name recognition. The petitioner submitted a page from the website of Cannes Lions Festival indicating that it "is the world's only true global meeting place for those interested in creativity in communications," and that the festival would celebrate its 55<sup>th</sup> year in 2008. The festival also bills its awards as "the world's most coveted advertising award." In an October 23, 2007 letter, [REDACTED] manager of creation for Kolle Rebbe Advertising Agency, stated that "winning the Silver Lion at the advertising festival in Cannes" "is approximately the same as winning a Grammy in the field of music."

The petitioner, however, submitted no documentation to support [REDACTED]'s assertion that winning a Cannes Lion award is similar to winning a Grammy. The petitioner provided no evidence of international media coverage regarding the festival or its winners similar to that which accompanies the announcement of Nobel Prize winners, winners of the Cannes International Film Festival, or winners of a Grammy. The petitioner's evidence does not establish that an award presented by the Cannes Lions International Advertising Festival is a major, internationally recognized award as contemplated by the Act. However, we will consider this award under the criterion discussed immediately below, as originally requested by the petitioner.

The petitioner has submitted evidence that, he claims, meets the following criteria.<sup>2</sup>

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<sup>1</sup> See, e.g., "Cannes exposure is no guarantee of success," <http://www.cnn.com/2009/SHOWBIZ/Movies/05/11/cannes.2008.review/index.html>.

<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

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

The petitioner provided a list of what counsel describes as “more than fifty major international awards that [the petitioner] has won since 1999.” This list includes competitions in which the petitioner listed himself as not only a winner, but as being a finalist, being on a “shortlist,” or simply being “officially nominated.” The petitioner submitted documentation regarding several of these “awards,” and counsel specifically addressed five of these.

In her November 20, 2007 letter accompanying the petition, counsel stated that the petitioner received a “Grand Award from the Advertising & Marketing Effectiveness Awards (AME)” in 2006. The petitioner provided documentation from AME’s website asserting that the “AME awards are the premiere showcase for the year’s best marketing and creative strategies.” The documentation also indicates that AME awards utilize a panel of international judges. However, other than information from AME’s website, the petitioner submitted no documentation to establish that an AME award is nationally or internationally recognized as an award of excellence in the petitioner’s field of endeavor. The petitioner similarly failed to submit such corroborative documentation regarding any of the other awards that, according to counsel, the petitioner won. These include the awards specifically addressed by counsel: the Cannes Lions Awards, the One Show Awards, the Clio Awards, and the London International Advertising Awards. While those writing letters of recommendation on behalf of the petitioner refer to the petitioner’s or their own receipt of these awards and refer to the awards as internationally recognized, the petitioner submitted no independent or objective evidence to confirm these statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As noted by the director, each of the organizations describes itself in terms that would indicate that it is the most prestigious awards event in the field of advertising. However, an organization’s self-promotion coupled with international judges and competitors do not implicitly imbue it with an aura of respectability such that an award given by the organization is recognized on a national or international level as a symbol of excellence. The petitioner submitted no documentation that can be evaluated to determine the veracity or extent of the organizations’ claims on their websites. The petitioner’s evidence does not establish that the AME award, the Cannes Lion, and the other awards he claims to have won, are nationally or internationally recognized as awards of excellence in his field.

The petitioner submitted a document entitled “2006 AME Awards Winners Credits,” which shows one of the winners of the Grand Awards for best product/service as Jung von Matt for “K-Fee ‘You’ve Never Been This Awake.’” Other documents printed from the adforum.com website indicate that Jung von Matt AG was the advertising agency for K-Fee, a non-alcoholic caffeine drink, and that the petitioner was the art director on the 20-second commercial spot. With the petition, the petitioner provided a photograph of the award; however, the names inscribed on the award were not legible. He also submitted a November 8, 2007 letter from [REDACTED] who

identified himself as a partner and chief operating officer of Jung von Matt AG. Mr. [REDACTED] stated that the petitioner “designed and implemented” the K-Fee campaign.

Documentation from the Cannes Lions website indicates that a K-Fee campaign also won the Silver Award at the 2005 festival. The documentation lists Jung von Matt as the advertising agency with the petitioner identified as the art director. The credits also identified the creative director, copywriter, and agency producer. Pages from the One Club website indicate that a campaign from the Jung von Matt agency won the 2004 Gold Award in the Promotional and Point of Purchase Posters. The documentation also identified the petitioner as the art director and included the names of the writer, creative director and illustrator. Similarly, documentation from the Clio Awards webpage indicate that the 2002 bronze and silver awards were awarded to Springer & Jacoby for the Smart-Micro Compact Car with the petitioner listed in the credits as art director, and copies of what appears to be plaques from the 17<sup>th</sup> Annual London International Advertising Awards, indicating that four entrants from Springer & Jacoby, with the petitioner identified as one of two art directors on each entrant, were finalists in the 2002 competitions. Most of the other documentation submitted regarding the other awards that counsel alleges that the petitioner won also indicate that the agency the petitioner worked for at the time won the various awards and the petitioner was identified as the art director.

The petitioner, did, however, submit a photograph of a pen engraved with his name from the 2004 One Show Design for the Der Kleine Nazareno Posters Campaign. The petitioner also submitted a copy of an October 18, 2000 letter from the Art Directors Club (ADC) Für Deutschland E.V., signed by [REDACTED] as Jury Chairperson, notifying the petitioner that his work “Sunway travel poster, ‘Sheets,’ and S&J promotion/own advertisement ‘Cardboard’” had been awarded one of the “coveted” prizes.

In a request for evidence (RFE) dated January 20, 2008, the director instructed the petitioner to provide copies of the “actual awards” that the petitioner claimed that he won and evidence of the actual recipients of the awards. In response, the petitioner resubmitted copies of the photographs previously submitted and resubmitted the letter by [REDACTED]. The petitioner also submitted a copy of a February 15, 2008 e-mail forwarded from [REDACTED] editor-in-chief of The One Club, which sponsors the One Show. [REDACTED] distinguishes the One Show from the One Show Design, stating that the design jury is “comprised of top creatives and designers” and that the Gold Pencil is the top award for both the One Show and the One Show Design.

In denying the petition, the director stated that the “Gold Pencil Award” from the 2004 One Show Design Awards “appears to be a personalized trophy to commemorate the petitioner’s involvement in the project.” The director further found “that such personalized awards are commonly available from the organizing entity at an additional cost.” However, the record does not include documentation to support the director’s conclusions. The director also noted that the “Gold Pencil” inscribed with the petitioner’s name was for design as opposed to art direction, and therefore was not evidence of the petitioner’s acclaim in his stated area of expertise.

On appeal, the petitioner submits a May 31, 2008 letter from [REDACTED], Chief Executive Officer of The One Club for Art & Copy. [REDACTED] confirms that the petitioner received the Gold Pencil Award in 2004 as an art director for Jung von Matt for his work on “Der Kleine Nazareno.” [REDACTED] further states:

Like other art direction and copywriting awards shows in the advertising industry, The One Show awards the team of people who collaborated to produce a winning campaign, then recognizes the significant contributors to that team individually. There are no individual awards that are given only to an Art Director. For example, we single out such creatives as art directors, copywriters, designers, and illustrators as representatives of the winning work and defining members of the winning agency.

[The petitioner’s] Gold Pencil was award to him as recognition for his guiding creative role as an art director on the creative team at Jung von Matt AG for this artistically brilliant campaign. [The petitioner’s] Gold Pencil award for this campaign is understood throughout the advertising industry to be an award given to him for his excellence in art direction as part of the winning team. The actual gold pencil with his name on it is the physical manifestation of his award for excellence in art direction.

[REDACTED] letter confirms that the winner of the Gold Pencil Award was the Jung von Matt AG team. Although [REDACTED] states that no individual awards are given “only” to art directors, she also stated that certain “creatives” were singled out. There is nothing in the record to indicate that any member of the team was omitted or that the award was intended to recognize the contribution of one team member over the other as the guiding or main creative force behind an advertisement. Counsel asserts that this is similar to all members of an Olympic team receiving the winning medal. However, in the Olympics, medals are not awarded to the country as the winner of the competition.

On appeal, counsel cites to two decisions by the AAO which she states that the AAO concluded first that *nothing in the regulation precludes team awards* (EAC 03 135 50529) and second found that a petitioner was the recipient of an award although it had been presented to his employer (WAC 03 118 54147). As counsel correctly noted, while 8 C.F.R. § 103.3(c) provides that precedent decisions of the USCIS are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Counsel has furnished no evidence to establish that the facts of the instant petition are the same as those in the cited decisions. We note for example that the decision in WAC 03 118 54147 clearly indicates that the petitioner was named on the various awards as well as being listed in documents announcing the nominees. In the instant case, although the petitioner is listed among those responsible for the various advertisements, he is not listed on any of the awards as the art director.

In her December 3, 2008 letter supplementing her appellate brief, counsel asserts:

The Service claimed that the awards had not been given to him “personally,” but rather that he had received them as part of an advertising team. . . . The Service admitted that [the petitioner] “played an important role on the team that created these projects” but maintained that participation did not suffice. In dismissing [the petitioner’s] gold award from the One Show, the Service asserted that “this award appears to be a personalized trophy to commemorate the petitioner’s [sic] involvement in the project” and “the Service finds that such personalized awards are commonly available from the organizing entity at an additional cost.” . . . Therefore, on the one hand, [the petitioner’s] awards did not qualify because he received them for his contribution to a team and, on the other, they did not suffice because the Service alleged that members of the advertising community simply purchase individual recognition. This reasoning simultaneously dismisses [the petitioner’s] group awards, unfairly penalizing him for engaging in a field of endeavor that only recognizes team work, and arbitrarily concludes that any personal awards do not qualify anyway as they are available at a cost.

While we do not dispute the petitioner’s role as art director in the various advertisements, we cannot ignore the fact that the awards were presented to the agencies for which the petitioner worked and not to the petitioner. The plain language of this criterion requires the alien to document his or her own receipt of the award. With the possible exception of the ADC award, the petitioner has not done so. Awards presented to a third-party or organization are not sufficient to establish eligibility under this criterion. The petitioner submitted no documentation to establish that the ADC is a nationally or internationally recognized award of excellence in the petitioner’s field.

The petitioner also stated that he was a finalist, was “shortlisted,” or “officially nominated” for several awards including the Federal Republic of Germany Design Award. The petitioner failed to submit evidence to establish that these categories are awards or prizes or that they are nationally or internationally recognized as such.

The petitioner’s evidence fails to establish 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.*

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 work 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. The overall prestige

of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner claims to meet this criterion based on his membership in Design & Art Direction (D&AD), which, according to counsel, is "one of the most exclusive associations in the field of art direction." The organization's website indicates that the title of "Member" is still reserved for those creatives who are featured in the prestigious D&AD Annual and "Associate" for those credited in the Annual, but are not creatives." The website indicates that the organization also recognizes membership in the categories of "elective associate," "new creative," and "student."

In an October 18, 2007 letter, [REDACTED] chief creative officer (CCO), chief executive officer (CEO) and partner of DDB Group Germany, stated:

[The petitioner's] stellar achievements have led him to become a member at D&AD, one of the most exclusive associations in the field of art direction. To become a member one must have been featured in the prestigious D&AD Annual. The D&AD Annual features only the best advertising campaigns of the year. To be featured in the D&AD Annual is one of the highest accomplishments one can have in the field of art direction.

In response to the RFE, the petitioner submitted information from the D&AD website, indicating that "[j]udges initially vote the best work of the year into the prestigious D&AD Annual. The jury votes without discussion; over 50% of judges must vote for an entry for it to go in." The petitioner also submitted a February 22, 2008 letter from [REDACTED] Awards Director for D&AD, in which she certified that the petitioner's "press advertisement for the Ecover detergent . . . appeared as [an] In-book entry in the Non-English Language Press Advertising category" of the organization's 2004 annual. [REDACTED] further stated:

To have your work chosen to be in the pages of the D&AD annual is the single greatest accolade in the advertising industry. The Non-English Language Press Advertising category is where we awarded the best of international advertising for that year. To appear In-Book is an incredible honour for Art Directors.

[REDACTED]'s statements provide no independent evidence about the prestige of the D&AD Annual. Other than a statement by [REDACTED], the petitioner submitted no documentation to corroborate [REDACTED] assessment of the value of appearing in the D&AD Annual. 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 petitioner submits no new evidence of this criterion in support of this appeal. Counsel asserts that the director "simply ignores the evidence in the record in mistakenly concluding, without any reasoned explanation or rational basis, that the evidence does not establish that outstanding achievements are required for membership in this organization, which constitutes a violation of

due process.” Counsel argues that the selection by an international jury is evidence of outstanding achievement. However, as discussed, the only information regarding the “prestigious” nature of the organization’s annual is from a biased source – the organization itself. The petitioner submitted no independent documentation to establish that selection for inclusion in the annual and a subsequent designation as a member of D&AD constitute an outstanding achievement.

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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a partial copy of a November 2007 issue of *Communication Arts Design Annual*, which apparently contains a discussion of an advertisement by the petitioner and a brief explanation by the petitioner of the advertisement. The article does not identify the title or author of the material as required by the regulation. Further, the petitioner submitted no documentation to establish that *Communication Arts Design Annual* is a major trade publication or other major media. The petitioner also submitted a copy of a June 28, 2006 article from adweek.com. The article describes an advertisement about a Motorola cell phone and identifies the petitioner as the art director for the ad. The ad is also discussed in another unidentified document, which does not list the source or a date and does not identify an author of the material, as required by the regulation. The petitioner submitted no documentation to establish that either of these publications constitutes a major trade publication or other major media.

The petitioner also submitted a copy of an interview that appeared on the July 30, 2005 website of agentur.de, which is apparently a magazine in Germany, and another document, *Careers under the Magnifying Glass: Art and Design*, which counsel states is a 2001 book. The petitioner submitted a CD, which counsel states contain files showing the petitioner’s work on international television and “selected copies of numerous other publications” which counsel states is about the petitioner and his work. We note that the petitioner’s work involves advertising, and many of the publications submitted by the petitioner either simply list the ad or are, as counsel indicated, full reproduction of the ads. Some include a brief description or a comment by the petitioner. The petitioner submitted no documentation to establish that these forums constituted major media or major trade publications. According to counsel, the CD shows the petitioner’s work as it appeared on television. A showing of the petitioner’s work is not about the petitioner or his

work. Furthermore, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself.

The petitioner has failed to establish 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 petitioner claims to meet this criterion based on his service as a jury member and judge "for the final projects of students at the Miami Ad School, Europe 2003."

In his November 8, 2007 letter, ██████████ stated that he was the president of the Miami Ad School, Europe which he co-founded in 2003. He further stated that because of the petitioner's "spectacular record of distinguished art direction and abilities," in 2003, he asked the petitioner to be a jury member and judge of the final projects of the students at the school.

The regulatory criteria are established to assist the petitioner in demonstrating national or international acclaim, and must be interpreted as a whole with the statute. Not all who sit as a judge will have extraordinary ability or will qualify under this criterion. The petitioner submits evidence that he served as a judge and jury member only once. The Act and the regulations require that the alien establish sustained acclaim through extensive documentation. A single act of judging, occurring four years prior to the filing of the visa petition on November 12, 2007 is not evidence that the petitioner has established sustained acclaim in his field.

The petitioner has failed to establish 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.*

In her letter accompanying the petition, counsel identifies the petitioner's "five most important accomplishments" that the petitioner claims meet this criterion. These include the advertising concept for the K-Fee campaign, the first viral campaign on the Internet, inventing a new artistic media for advertising; developing "an extraordinary and novel advertising campaign for Specialized Bicycles by using the product and the brand itself to create the music and look of the campaign;" and "creating [an] innovative campaign to convince consumers that the very compact Smart Car contained a roomy interior."

The petitioner submitted several letters of reference attesting to his original contributions to advertising. These include the following:

Mr. [REDACTED] stated that during his tenure at Jung von Matt, the petitioner “produced innovative and original advertising campaigns that have revolutionized the advertising industry.” [REDACTED] described the petitioner’s work as follows:

This campaign was innovative in several respects. It focuses entirely on the product’s effect. Viewers experience at close quarters how the caffeine drink wakes them up when they consume it. No advertiser had ever used a concept like this before. In addition, because it played a prank on people, hundreds of thousand of people sent it to their colleagues and friends via the Internet. In this respect the ad was a trailblazing example of viral advertising because, at the time, no one had used the Internet in this way before, even though it is now common. We are still immensely proud of the fact that he developed and implemented an ingenious campaign that resonated far beyond Germany and far beyond what is normally anticipated. The best example of this: The campaign was shown on the Tonight Show with Jay Leno. You cannot plan such an enormous presence; such an effect and range of influence are priceless. . . .

[The petitioner’s] advertising campaign for the South American relief organization “The Little Nazareno” was also a spectacular an innovative piece of advertising. . . . [The petitioner] had the difficult task of motivating people to donate money without enticing them with shocking and frightening pictures like most organizations do. He came up with the brilliant idea of treating the money playfully and integrating it directly in the advertisements and doing it in a particularly effective manner with a truly unusual design. This campaign was original because, for the first time ever, an advertising campaign for a charitable organization focused on money, rather than the charity itself and just mentioning in passing that the central aim was to raise money.

While [REDACTED] stated that the petitioner’s work “revolutionized the advertising industry,” his letter does not contain clear evidence of this. The letter indicates that the petitioner’s work was innovative; however, it does not indicate that these innovations were of major significance to the petitioner’s field of endeavor or how these innovations impacted or otherwise “revolutionized” the industry. The petitioner does not meet his burden of proof in this proceeding because he failed to submit documentary evidence to support of [REDACTED] statement. *Matter of Soffici*, 22 I&N Dec. at 165.

[REDACTED] Mr. [REDACTED] identified himself as the founder and CCO of Futatsu Industries in Oslo, Norway. He stated in an October 15, 2007 letter:

[The petitioner] is one of the best art directors I have come across. It’s only fair to say I got to know his work before I got to know the person through his original and revolutionary ad campaigns like “Fat Man Walking” and “1.9” for smart cars, or “bedsheets” for sunway gravel. These ads are now classic stuff in the

advertising industry, the equivalent in Germany of ads like “Got Milk?” or “The Energizer Bunny” in the U.S. They’re ads everyone knows.

[The petitioner’s] “Fat man Walking” campaign for Smart Car was a highly original, innovative and clever campaign developed to convince consumers that the tiny Smart Car contains a room interior. . . . To demonstrate the spaciousness of the Smart Car in comparison to its competitors, they filmed the men trying out all the competitors’ cars and then trying the Smart Car . . . [His] ad was the first to use this concept of comparative advertising. Subsequent ad[s] tried to copy the style, but none were as impressive, witty or credible as [the petitioner’s]. Many people, especially those in the advertising industry still remember, and use [his] impressive and original ideas from this advertisement.

[His] tropical fruit campaign for TUI, the largest tour operator in Europe, was absolutely brilliant. He invented a media that had never been used before for advertising purposes. He added the statement “Do come and visit me at home” with the logo for TUI to the stickers that are placed on exotic fruit. No one had ever thought of advertising like this before. [His] placement of the stickers on tropical fruit completely changed its value and opened up opportunities for others to create imaginative advertising for other products. . . .

[The petitioner’s] Jellyfish campaign was truly clever and inventive. His goal was to advertise a biodegradable laundry detergent. . . . [H]e developed billboards showing laundry mutating into marine creatures in the detergent. He developed motifs for the campaign that had never been done before and linked washing and the sea in a fantastic way. . . . His approach shook the world of detergent advertising to its core and caused everyone to rethink their approach. This ad has been copied several times by other advertisers.

[The petitioner’s] bedsheet campaign was also truly remarkable and original. . . . [His] manipulation of a billboard by adding something to it and thus transforming them into a major experience had never been done before. This ad found many imitators, including ARAG, a major insurance company who used the same idea for advertising fire and property insurances.

As with [REDACTED] writes that the petitioner’s original ideas resulted in extremely successful advertising campaigns that were copied by others. However, the petitioner submitted no documentation to confirm that others utilized his ideas in their own work. Further, even assuming that others attempted to imitate his success, [REDACTED] does not assert and the record contains no evidence to establish that the petitioner has made a contribution of major significance to the field of advertising. Imitation, while flattering, does not necessarily constitute a contribution of major significance.

Mr. [REDACTED] is the co-founder and co-chairman of Goodby, Silverstein and Partners, an advertising agency in San Francisco. [REDACTED] stated in an October 15, 2007 letter:

[The petitioner] has produced campaigns consisting of original techniques and ideas that have transformed the advertising industry. For example, he developed an incredible electronic holiday greeting card campaign for our client Specialized Bicycles. He used [ ] bicycle parts to create an image that resembled a Christmas tree. He paired this image with Tchaikovsky's Nutcracker Suite played entirely on bicycle parts. This campaign was original in that it used the product and the brand itself to create both the music and the look of the campaign. No other advertisement has been able to use a product in such a way. This campaign became a phenomenon. The website traffic to the Specialized website increased exponentially. People who had nothing to do with the campaign posted it on the web because they were so impressed with it. It received worldwide press coverage, and NPR (National Public radio) introduced it on its morning show.

[The petitioner] also created an original print ad campaign for Specialized Bicycles that became extremely popular among the bicycle community. . . . [He] developed an idea to focus on the athletes' faces and hands, thus presenting them in a very heroic and strong manner. In the ad, the athletes used their hands to create an S, the specialized logo. . . . This ad campaign garnered much attention in the worldwide biking scene. The bicycle press covered it extensively . . . In addition, bicycle riders from around the world have been copying the campaign by using their hands to form the Specialized logo, and spreading their photos on the internet to show that they are part of the Specialized team.

[The petitioner] also produced an original and innovative viral campaign for Rolling Rock. The campaign solely existed on the internet and gained notoriety only because users disseminated it. . . . This campaign was an example of generating an extraordinary an extraordinary impact using very little media exposure. This novel approach earned [the petitioner] two awards in Cannes and unbelievably positive and wide-ranging press coverage.

[REDACTED] stated that the petitioner has produced campaigns consisting of original techniques and novel ideas that have "transformed the advertising industry." [REDACTED] provided no other information as to which of the petitioner's techniques and ideas "transformed" the advertising industry or the manner in which they did so.

[REDACTED]. In his October 23, 2007 letter [REDACTED] stated:

[The petitioner] gained enormous respect for his advertising film concept for K-Fee. [His] development of a campaign that showed the consumer the effects of consuming the product was truly brilliant and original. This fresh and

groundbreaking idea spread over the Internet throughout the entire world. This illustrates the quality of his work since Internet users only pass on what they really enjoy. It even spread enough to warrant an appearance on the Tonight Show with Jay Leno, which I take to be a major honor. This campaign was also honored by the professional world and received international awards. In particular, winning the Silver Lion at the advertising festival in Cannes is a major achievement. For an advertiser, this award is approximately the same as winning a Grammy in the field [of] music. In addition, the K-Fee campaign is repeatedly used as a reference in articles on viral marketing. I was told that it was even the subject of scientific studies at universities.

The fact that an advertising campaign won awards is not automatically indicative of a contribution of major significance to one's field of endeavor. The petitioner submitted no documentation to corroborate [redacted]'s statement that the K-Fee campaign is "repeatedly used as a reference in articles on viral marketing," and [redacted] indicated that he was only "told" that the campaign was the "subject of scientific studies at universities." See *Matter of Soffici*, 22 I&N Dec. at 165.

In response to the RFE, each of the petitioner's references executed an addendum to his statement, opining that the petitioner was among the very small percentage of individuals at the top of his field of endeavor. On appeal, counsel asserts:

In denying this criterion, the Service concluded that the record contains "no objective documentary evidence" to demonstrate that he has made any "original contributions of major significance to the field." . . . In doing so, the Service ignores the substantial, objective, independent, verifiable documentation in the form of the awards, award certificates, statistics, and information about the awards, the extensive publications featuring [the petitioner's] artistic work and [the petitioner] in well-respected professional and major trade publications, the objective evidence of his membership in a pre-eminent industry organization, and his work as a judge of others in the advertising industry.

Counsel thus argues that evidence that the petitioner meets other regulatory criteria sufficiently establishes that he meets this criterion. Counsel's argument is seriously flawed. The regulations set out ten separate and distinct criteria to aid the alien in establishing sustained acclaim. The petitioner cannot meet one criterion because he has submitted evidence he believes establishes that he meets one or more of the other criterion. The Act requires that the alien establish sustained acclaim through extensive documentation. This burden cannot be met by claiming that one criterion is evidence of another.

Counsel also asserts that the director committed legal error by "discounting the highly-detailed, credible letters and affidavits that explain the prestige of the awards and publications honoring [the petitioner's] work." The letters are all from the petitioner's co-workers. While such letters

are important in providing details about the petitioner's role in various campaigns, they cannot by themselves establish the petitioner's acclaim beyond his immediate circle of colleagues.

The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. Further, as noted, the petitioner's references, while noting his novel and innovative work, do not provide any objective evidence of how his work has contributed significantly to the field of art direction.

Counsel states:

[The petitioner] performed art direction in an entirely new way to creatively market a product using what is called "viral advertising," which has attracted significant media attention and altered the way that advertisers disseminate information about the products. In doing so, he pioneered the first and most successful internet-based viral campaign.

Being first is not the equivalent of making a contribution of major significance. The record contains no documentary evidence to corroborate that the viral advertising has "altered the way that advertisers disseminate information" or that the petitioner was responsible for this "alteration." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has failed to establish 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.*

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

In her letter accompanying the petition, counsel asserted that Springer & Jacoby is "the most famous advertising agency in Germany." Counsel stated that [redacted] letter of October 18, 2007 provides evidence of the distinguished reputation of the agency. [redacted] stated that he had served as Executive Creative Director at Springer & Jacoby, where he developed major campaigns for Mercedes-Benz, Smart, Coco-Cola, Allianz, Apple and Adidas. Additionally, in his October 15, 2007 letter, [redacted] stated:

Springer & Jacoby is of all things the most famous advertising agency in Germany. [I]t's one of the biggest independent agency groups in this regions and S&J has consistently been one of the most creative agencies in continental Europe (in 2005 we were the 4<sup>th</sup> overall best agency in Cannes Lions, the world's most prestigious advertising festival).

The petitioner, however, submitted no documentation to corroborate the statements of Mr. [REDACTED]. *Matter of Soffici*, 22 I&N Dec. at 165. Although the agency represented well-known clients, this alone is not sufficient to meet the petitioner's burden of proof in establishing that the agency enjoys a distinguished reputation. Neither does the fact that the agency may have won advertising awards. The petitioner submitted no independent corroborative evidence to establish that Springer & Jacoby is an organization with a distinguished reputation.

The petitioner submitted a copy of an article dated February 9, 1998, reprinted from the website of adweek.com, indicating that Goodby, Silverstein & Partners were the Western Agency of the Year, a copy of an article from the January 29, 2001 edition of *Advertising Age*, which named the firm as the organization's Agency of the Year for 2000, and a copy of an article reprinted from the April 22, 2007 edition of the *San Francisco Chronicle*, which focuses on the agency's successful shift to nontraditional advertising. The article indicated that the agency had been named *Adweek U.S. Agency of the Year*, *Advertising Age's Digital Agency of the Year* and *Creativity Magazine's Agency of the Year*. It also indicated that one of the agency's campaigns for Hewlett Packard was named *Advertising Age's U.S. Campaign of the Year*. The evidence sufficiently establishes that Goodby, Silverstein & Partners is an organization with a distinguished reputation.

The director found that the petitioner had worked for agencies with distinguished reputations; however, he determined that the petitioner had failed to establish that he performed in a leading or critical role for the organization.

The evidence indicates that the petitioner has served as an art director with Jung von Matt, Springer & Jacoby, and Goodby, Silverstein & Partners. During his tenure with Jung von Matt, the petitioner was involved in developing the K-Fee and "The Little Nazareno" advertising campaigns, both award winners. The petitioner, however, did not claim that his work with Jung von Matt meets this criterion.

[REDACTED] stated that he worked with the petitioner at Springer & Jacoby Advertising:

In 2001, I was granted managerial responsibility for my own agency within the agency group of Springer & Jacoby Advertisement. As an Executive Creative Director, I managed the "smart" automobile brand of the Daimler-Chrysler Group. To help with this challenging task, I hired [the petitioner] as the Art Director for the team. His ability and inspiring presence were the right engines to give this brand a distinctive face and unique character. We accomplished this in a very short time and celebrated numerous successes for this customer with [the

petitioner]. He understood the brand and left his own distinctive impression on it. He is responsible for giving the brand “smart” the image by which it is perceived in Europe and in Asia. Furthermore, it must be emphasized that [the petitioner] also contributed to various other projects of widely varying sizes with his effective approach.

stated that at Springer & Jacoby, the petitioner “played a critical role in developing some of the most creative and visual artwork in the field of advertising today.” Mr. also stated:

He was instrumental in the development of famous and awarded advertising campaigns for big clients like Mercedes-Benz and smart (Daimler Chrysler Group). He had enormous influence over the agency’s business. Because he was a key participant in many pitches his contributions helped win many new clients. He was the person we chose for special assignments and troubleshooting other projects. He and his partner were the lead creative team on Daimler Chrysler’s worldwide Smart Car campaign. He created and then managed brand identity across Europe and Asia and directed all work done by the agency on this effort. He was also the principle creative liaison between the agency and client.

These letters indicate that petitioner worked for who was in charge of his own accounts within the Springer & Jacoby organization and that the petitioner was one of an untold number of art directors within the Springer & Jacoby organization. The record also reflects that the petitioner performed his job in an exemplary manner. However, excelling in one’s job is not the same as performing in a leading or critical role. Counsel asserts in her brief that:

[The petitioner] did far more than perform well in his job. He brought international recognition to this agency through his award winning campaigns, he brought in key revenue generating clients through his creative brilliance; he created and left his own distinct impression on the brand for a top billing client.

Counsel’s summation does no more than reemphasize that the petitioner was a valued member of his agency, but provides no insight as to the critical nature of his position within the agency. He was a member of team and responsible for assisting that team in generating revenue for the company. In that regard, the petitioner has submitted no documentation that his role as art director for team was in a role that was more critical to Springer & Jacoby than art directors on other teams.

stated that the petitioner has been in the employ of Silverstein & Partners since January 10, 2006 as its senior art director, and that the petitioner has been critical to the agency’s success:

He has brought a fresh perspective to Goodby and his experience and training enable him to approach problems and challenges in a unique way. He started as a

leading senior art director on our new client Motorola and developed a campaign that was one of the clients most successful ones in recent years. He was part of a small group of leading creatives that won us the 750 Mio. Account of Hyundai America. He is our creative director on the specialized bicycles account that we lead international and one of a few senior creatives on our 1.2 Billion sprint account. And we just made him recently to an associate creative director on this account. His ideas excite clients and entice them to continue working with our agency.

[The petitioner] was one of the key senior art directors on the Hyundai pitch and his brilliant work was the key to the positive outcome of the assignment.

In a February 29, 2008 letter, [REDACTED], the co-chairman and founder of Goodby, Silverstein & Partners, stated that the petitioner had worked for the agency for two years and described the petitioner's role with the agency as "absolutely indispensable." He further stated that the petitioner has become "irreplaceable as an art director, designer, and leader on several accounts." He reiterates the petitioner's successes as outlined in [REDACTED]'s letter.

However, as with the petitioner's work with Springer & Jacoby, neither [REDACTED] nor Mr. [REDACTED] provides any information to establish that the petitioner's role in the organization goes beyond that of a valued employee. At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. The evidence submitted by the petitioner does not indicate that such was the case in this petition.

The petitioner has failed to establish that he meets this criterion.

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

With the petition, the petitioner submitted a November 6, 2007 letter from Goodby, Silverstein & Partners confirming that the agency intended to continue the petitioner's employment with the agency and that he would receive an annual salary of "at least \$200,000." The petitioner submitted a page from the website of the Foreign Labor Certification Online Wage Library & Data Center (FLC Data Center), indicating that art directors in the San Francisco-San Mateo-Redwood City, California metropolitan area earned a top salary of \$124,925 per year and a summary report about art directors from the Occupational Information Network (O\*Net) indicating that the national media wage in 2005 for art directors was \$63,950.

In his RFE, the director noted that the petitioner failed to provide evidence of his actual remuneration. The director also stated:

[T]he Service acknowledges the information from the Department of Labor regarding the wages of art directors. However, the Service does not find that this general information is an accurate representation of the wages earned by similarly employed individuals in the field. Moreover, the information pertains to a specific geographic area. . . . In view of the foregoing, you must provide evidence that demonstrates how your remuneration compares to similarly employed individuals in the field, including art directors and senior art directors employed by your current employer.

In response, the petitioner submitted a copy of his Form W-2, Wage and Tax Statement, for the year 2007, indicating that the petitioner received \$207,369 in wages from Goodby, Silverstein & Partners. The petitioner also submitted another summary report from O\*Net reflecting that the median national wage for art directors in the United States is \$68,100, and information from the FLC Data Center reflecting wages for art directors in various areas of the United States, which ranged from a minimum of \$65,894 in the Miami-Miami-Kendall, Florida metropolitan area to a maximum of \$130,541 in the New York-White Plains-Wayne, New York, New Jersey metropolitan area. The petitioner did not address the director's other issues outlined in the RFE regarding this criterion. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In denying the petition, the director again stated that the information from the FLC Data Center is not "an accurate representation of the wages of similarly employed individuals in the field," and that the "petitioner has not otherwise demonstrated how his salary as a Senior Art Director compares among other similarly employed individuals in his own organization as well as the industry as a whole."

On appeal, counsel states that the AAO has previously found the type of information submitted by the petitioner sufficient to establish this criterion. Counsel asserts that by requiring the petitioner to provide evidence that his wages are high compared to those of similarly employed individuals, the director "has arbitrarily and capriciously augmented the regulations." Counsel asserts that:

By imposing this requirement, which is absent from the regulations, and not providing any guidance of what or who might be considered similarly employed or why the top level Art Directors from the DOL survey are not considered similarly employed, the Service fails to follow its own regulation and interpretation, and therefore violates due process of law.

We note that the salary and wage information from O\*Net and the FLC Data Center provided by the petitioner reflects information for art directors in all industries. Additionally, the summary report indicates that the duties of this position are to "[f]ormulate design concepts and presentation approaches, and direct workers engaged in art work, layout design, and copy writing for visual communications media, such as magazines, books, newspapers, and packaging." The evidence does not suggest that these duties, while perhaps included in those of the petitioner's

position, are indicative of an art director in the highly competitive field of commercial advertising. To compare the petitioner's salary with those in, for example, a newspaper agency, would result in a skewed result always in favor of the industry in which the petitioner works. For example, an actor uses the same skill set regardless of the medium in which he performs. However, a highly successful actor on the stage is paid less than an actor in television who in turn is paid less than an actor in movies. According to a July 22, 2008 article on the website Forbes.com, from June 1, 2007 to June 1, 2008, the top ranked Hollywood actor earned \$80,000,000. Nonetheless, the FLC Data Center indicates a top salary for an actor in the Los Angeles area was \$59,280. A salary of \$270,000 is not significantly high if the average salary as an art director in advertising is \$500,000.

Counsel, citing an unpublished AAO decision (SRC 06 002 51884), alleges that the AAO has previously held that the type of documentation submitted by the petitioner is acceptable and sufficiently supports this criterion. Counsel, however, has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. As previously discussed, AAO precedent decisions are binding on all USCIS employees in the administration of the Act; however, unpublished decisions are not similarly binding. 8 C.F.R. § 103.3(c).

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor. Review of the evidence submitted, however, 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.

For example, the petitioner claims to have won a Silver Award at the Cannes Lions Award Festival, and that it is a major, internationally recognized award. However, he failed to provide documentary evidence to establish that the award is internationally recognized as a major award. Additionally, while the petitioner's evidence establishes that he participated in advertising campaigns that won awards for his agency, he failed to submit documentation confirming that he has been the recipient of a nationally or internationally recognized award of excellence. Further, the petitioner claims to have made major contributions to his field of endeavor; however, he failed to provide corroborative evidence of these major contributions. He also failed to submit corroborative evidence that his salary as an art director is significantly high relative to others in his field. The evidence therefore is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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

**ORDER:** The appeal is dismissed.