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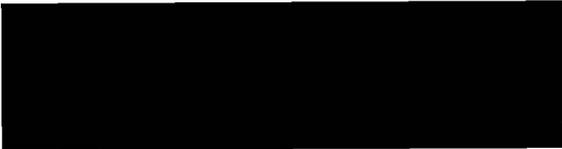
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: [Redacted]
SRC 07 282 57451

NOV 04 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:
[Redacted]

INSTRUCTIONS:

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

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 sciences. 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. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel for the petitioner argues that the petitioner meets the statutory requirements and 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 to the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and the 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, 60898-9 (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 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.

This petition, filed on July 30, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a programmer analyst. 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).

The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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

The petitioner submitted a copy of a document indicating that he received an Outstanding Doctoral Dissertation Award from the Stevens Institute of Technology in 2006, a copy of a December 7, 2005 certificate from the Department of Electrical and Computer Engineering of the Stevens Institute for the Best Research Poster/Presentation Award, a copy of a September 17, 2003 letter from the Stevens Institute offering him a "graduate appointment" as a research assistant in Electrical and Computer Engineering for the "September 2, 2003 – December 22, 2003 academic term," and a March 2, 2006 letter from the institution offering the petitioner a "Graduate Assistantship for the 2005-2006 academic year."

In response to the director's request for evidence (RFE) dated October 9, 2008, counsel stated that the petitioner's award for the best research poster/presentation was awarded to the "top three out of about 100 graduate students," and that the Outstanding Doctoral Dissertation Award "is only given to the top 5% of research dissertations which places [the petitioner] among a highly selected group" at the Stevens Institute. Counsel further stated:

Even though these awards are only drawn from the candidates from Stevens Institute of Technology, the Stevens Institute . . . is one of the top universities in

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

the U.S. . . . The administration of Ph.D. programs is more selective, the awards issued [the petitioner] should be weighted.

Nonetheless, there is no evidence demonstrating that the petitioner's university honors are tantamount to nationally or internationally recognized prizes or awards for excellence in the field. The petitioner's receipt of an award limited to graduate students at his academic institution reflects institutional recognition rather than national or international recognition. Further, university study is not a field of endeavor, but rather training for future employment in a field of endeavor. Honors and scholarships limited by their terms to graduate students are not an indication that the recipient "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's receipt of such honors offers no meaningful comparison between him and experienced professionals in the field who have long since completed their educational training.

The petitioner does not pursue this issue on appeal, and the record does not 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 the Institute of Electrical and Electronics Engineers, Inc. (IEEE) and as a member of its Signal Processing Society (SPS). The petitioner submitted a copy of his membership card in the IEEE and copies of pages from the organization's website. The documentation indicated that the petitioner was a student member of the organization and that IEEE has "more than 370,000 members, including more than 80,000 students." However the petitioner submitted no documentation regarding the membership requirements for the IEEE.

In response to the RFE, the petitioner submitted additional documentation from the IEEE website. The documentation indicates that a student member "must carry at least 50% of a normal full-time academic program as a registered undergraduate or graduate student in a regular course of study in IEEE-designated fields; and (2) not yet qualify for Member grade." The documentation also indicates that:

Member grade is limited to those who have satisfied IEEE-specified educational requirements and/or who have demonstrated professional competence in IEEE-designated fields of interest. For admission or transfer to the grade of Member, a candidate shall be either:

- (a) An individual who shall have received a three-to-five year university-level or higher degree (i) from an accredited institution or program and (ii) in an IEEE-designated field
- (b) An individual who shall have received a three-to-five year university-level or higher degree from an accredited institution or program and who has at least three years of professional work experience engaged in teaching, creating, developing, practicing or managing in IEEE-designated fields; or
- (c) An individual who, through at least six years of professional work experience, has demonstrated competence in teaching, creating, developing, practicing or managing within IEEE-designated fields.

Nothing in the qualifications indicates that IEEE requires outstanding achievements of its members. The petitioner also claims to meet this requirement based on his membership in the SPS, one of the "societies" within IEEE. However, he submitted no documentation to establish that one may belong to the SPS without first joining IEEE or that qualification for membership in the SPS requires outstanding achievement of its members.

The director determined that the petitioner's evidence did not establish that he meets this criterion and the petitioner did not pursue this issue on appeal. We concur with the director that the petitioner has failed to establish 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.

In the initial submission, counsel stated that the petitioner's "research and the laboratory he worked in were reported by New Jersey News." Counsel provided what he stated was an Internet link to the broadcast, a summary of what the petitioner stated was included in the broadcast, and the documentation of what counsel describes as photo shots from the video. The screen captions

and summary of a live broadcast provided by the petitioner do not meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence of published material to be accompanied by the title, date, and author of the material, and any necessary translation.

In his letter accompanying the petitioner's response to the RFE, counsel stated that the petitioner also meets this criterion based on publication of his work in IEEE journals and makes reference to a book chapter that was authored by the petitioner. Counsel renews these arguments on appeal. However, the publication of the petitioner's work such as in refereed journals is the subject of the criterion listed at 8 C.F.R. § 204.5(h)(3)(vi) and will be discussed further below.

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 submitted documentation indicating that he had reviewed four papers that had been submitted for presentation at the 2006 International Conference on Communications General Symposium sponsored by the IEEE. The requests to review the papers were from the petitioner's advisor, [REDACTED] at the Stevens Institute and indicated that if the petitioner was unable to perform the review, he was requested to name another individual who could be a colleague or one of his graduate students.

The petitioner also submitted documentation indicating that he had reviewed an article for *IEEE Transactions on Signal Processing* and was assigned by [REDACTED] to review an article for the *IEEE Journal on Selected Areas in Communications* (JSAC). The petitioner also reviewed an article for the *IEEE Transactions on Circuits and Systems for Video Technology*, an article for the Image and Vision Computing journal *IMAVIS*, and a paper for *Advances in Multimedia*.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained

national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

Counsel asserted in his November 7, 2008 letter accompanying the petitioner's response to the RFE that the petitioner's review of others' work "is aside from peer reviews which are inherent to the occupation, but because of his distinguished reputation and expertise in his field." However, the record does not support counsel's assertion. While the request for review from the editor of *IEEE Transactions on Signal Processing* indicated that the request was made because the petitioner was a "recognized expert in the field," others only refer to the requests as being within the petitioner's area of expertise.

The director determined that the petitioner meets this criterion; however, for the reasons discussed above, we do not concur and withdraw this determination by the director. 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 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.

The petitioner claims to meet this criterion based on his development of several data hiding algorithms. The director determined that the petitioner meets this criterion; however, we do not concur and withdraw the director's determination.

In support of his petition, the petitioner submitted letters from several individuals who attest to his achievements, intelligence, and skill as a researcher. These individuals attest that the petitioner is innovative and contributed significantly to the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), however, an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning.

an assistant professor at the Stevens Institute, provided a comprehensive analysis of the petitioner's contributions. In an undated letter submitted with the petition, she stated that she had known the petitioner since September 2002 when he entered the graduate Ph.D. program.

[The petitioner] quickly assumed the leading role on the research project: "Improving Steganographic Capacity in the Presence of Attacks via Multiple Description and Joint Source-Channel Coding" supported by the U.S. Air Force Research Lab., Rome, NY. As part of this project, [the petitioner] developed several algorithms that improved data-hiding capacity while keeping robustness high and distortion low.

. . . He initially developed several host distribution matched quantizers based data hiding schemes, which greatly improved the embedding capacity of quantization based data hiding against additive Gaussian noise attack.

As his next project, [the petitioner] considered attacks on data hiding schemes [He] creatively modeled both the embedding induced noise and quantization error due to JPEG compression as additive uniform noise. By analyzing the embedding capacity using those models, [the petitioner] became the first to derive the optimal quantization based data hiding algorithm against JPEG attack. The derived solution provides the best strategy of embedders against non-malicious JPEG compression attack. All his work in this project is of utmost importance to the information security research field.

Beginning in September 2005, [the petitioner] was also in charge of the research project entitled "Perspectives on Information Hiding for Multimedia Security" supported by the National Science Foundation. The goal of this project was to study the information hiding problem from both embedders' and attackers' aspects, and develop security enhanced information hiding algorithms . . . [The petitioner] initially proposed a hash-based randomized embedding algorithm (HRE) to enhance the security of the hidden data without impacting the robustness-distortion-capacity trade-off. The proposed algorithm showed that the security of quantization based data hiding can be enhanced independently from its capacity achieving efficiency.

The final and main problem that [the petitioner] worked on for his dissertation was on modeling the data-hiding problem as a game between the embedder and the attacker Quantization based data hiding is the most efficient capacity-achieving data hiding technology. [The petitioner] creatively proposed to model the quantization based data hiding as a two-person continuous game between embedder and attacker. Using game theoretic approaches, he derived the closed form expression for the solutions of the game. Based on the result, [the petitioner] was the first to derive the optimal strategies of both the embedders and attackers for the two-person quantization based data hiding game. This result is a great breakthrough in the information security research field, because it represents the best lower bound for the achieved capacity of secure-data for embedders against any additive malicious attacks. More importantly it gives the first closed form, full fledged solution to this problem. This result greatly improved the practical

applications of the data hiding research field and also the possibility of commercial success in this field. [Emphasis omitted.]

Others provide similar information about the petitioner's research. Nonetheless, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a researcher who has sustained national or international acclaim.

The letters submitted are primarily from the petitioner's collaborators and immediate circle of colleagues. While such letters are important in providing details about the petitioner's role in various projects, 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.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. The petitioner's references do not indicate that his research was of major significance to his field.

In response to the RFE, counsel alleged that the petitioner meets this criterion based on his "great original contributions in the system design and software development to CDMA [code-division multiple-access] communication system." The petitioner submitted a November 3, 2008 letter from ZTE Corporation R&D Centre indicating that he played a key role in the development of the ZTE CDMA wireless communication system project, which became the first commercial CDMA wireless system in China. Nonetheless, the petitioner submitted no documentation indicating that his participation in helping ZTE to develop its CDMA wireless communication system was a contribution of major significance to his field of endeavor.

Accordingly, the petitioner has failed to establish 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.

The petitioner submitted documentation indicating that three articles on which he had served as co-author had been published in *IEEE Transactions on Multimedia*, the *International Journal of Network Security*, and *Electrical Engineering* 84. The petitioner also submitted an abstract of a paper that counsel alleges was published in the *Journal of Tongji University*. However, the petitioner did not submit a copy of the article, and the abstract, partially in English, was not accompanied by a complete English translation and does not identify the publication. The document therefore does not comply with the terms of 8 C.F.R. § 103.2(b)(3), which provides:

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which 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.

Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner provided a copy of an e-mail indicating that a paper he had submitted for publication in *IEEE Transactions on Information Forensics and Security* had been recommended for revision for publication but had not been published as of the date of his petition. The petitioner also provided a copy of six papers that he had presented at various conferences and a copy of a book chapter that he had co-authored.

In response to the RFE, the petitioner submitted documentation on the ranking of the journal *IEEE Transactions on Multimedia*. The petitioner also provided a listing of the top 65 conferences in computer science as ranked by cs-conference-ranking.org. Although the petitioner indicated that the International Conference on Image Processing was ranked number 31, the record does not clearly establish that he had made a presentation at one of these conferences. The petitioner also submitted documentation from Amazon.com, Elsevier, Textbookx.com and Google. Although the petitioner indicates that this documentation is evidence of the book's circulation, the documentation does not indicate the number of books that had been sold.

The petitioner submitted a list of his publications including a list of those who had cited to his work. However, this list was compiled by the petitioner and does not include the source of the information. The petitioner provided a list from Google Scholar, accessed by the petitioner on November 6, 2008, indicating that one of his articles had been cited 14 times. The report indicates that of these 14 citations, at least eight were by one or two of the "key authors" of the paper. Google Scholar also indicated that of 16 citations to the petitioner's conference papers, 11

were by at least one of the "key authors." The petitioner alleged that his work had been cited by "famous scientists for information security research." However, the petitioner provided no documentation to establish that his work served as a major stepping stone for these researchers or that his research carried more weight than others whose work was also cited.

In denying the petition, the director stated that "[t]he evidence does not indicate that the petitioner's published articles have garnered national or international attention, for example by being widely cited by independent researchers." [Emphasis in original.] On appeal, counsel asserts that the petitioner's record of publication in prestigious journals and citation record ("31 times in total (19 times by others)") is a clear indication that the petitioner's research has garnered national and international acclaim. As previously discussed, many of the citations to the petitioner's work were made by the authors of the original work. Also as previously discussed, 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. The petitioner's research record and his record of independent citations to his work are not clear evidence that the petitioner's work demonstrates national or international acclaim.

Counsel further asserts that the fact that the book in which the petitioner contributed a chapter is in its fifth edition and is "easily accessed online or in book stores and libraries," and because of its "large circulation . . . should be considered a major media." Regarding the petitioner's book, the record does not support that it has a "large circulation." The petitioner submitted no information regarding the sales of the book, which would be more applicable to the criterion listed under 8 C.F.R. § 204.5(h)(3)(x). Further, in today's world, many printed materials, regardless of size and distribution, are posted on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. We are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication is "major media." The petitioner must still provide evidence, such as a widespread distribution, readership, or overall interest in the publication in order to demonstrate that the publication is a professional or major trade publication or major media in order for us to credit information available on the Internet.

Counsel also asserts on appeal that the petitioner's work has been adapted to industrial use including his current job and his work at ZTE. However, the use of the petitioner's work in industry is not evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

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.

Counsel claims that the petitioner meets this criterion based on serving as chair of a section in an IEEE international annual meeting and on a panel in IEEE meetings. In an undated letter, [REDACTED] of Media Technologies at Huawei Technologies, USA, stated that the petitioner was invited to chair a section of the IEEE International Symposium on Multimedia (ISM) 2006 because of his "research reputation." However, the petitioner submitted no documentation to establish that his chairmanship at a section of this symposium was a leading or critical role for the IEEE.

Counsel also asserted that the petitioner meets this criterion based on his review of manuscripts for various journals. However, the petitioner submitted no documentation to establish that his work as a reviewer was in a leading or critical role and was in some way more significant than other reviewers. The petitioner also submitted additional reference letters that counsel stated were evidence of the petitioner's distinguished reputation. However, the criterion at 8 C.F.R. § 204.5(h)(3) requires the petitioner to establish the reputation of the organization or establishment, not of the petitioner himself.

Counsel repeated these assertions in response to the RFE. Counsel also asserts that the petitioner meets this criterion based on his invitation to serve as editor of one of Bentham Books new E-books or E-book series and an invitation by VDM Verlag to publish his dissertation. First, both of these invitations occurred in 2008, after the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Further, the petitioner submitted no evidence that his editing of an unspecified E-book for Bentham Books or the publication of his dissertation by VDM Verlag would be a leading or critical role for the organizations mentioned or that either of the organizations enjoys a distinguished reputation.

On appeal, counsel asserts that the director concentrated only on the petitioner's role at the IEEE conferences and his role as a reviewer for journals and failed to consider the petitioner's role at eSpeed and ZTE Corporation. We note that the appeal was the first occasion that the petitioner alleges that his roles with these companies satisfy this criterion.

In an undated letter, [REDACTED] at eSpeed, Inc., stated that the petitioner was "now vital to our software development efforts." [REDACTED] stated that the petitioner "is currently playing a leading role in our ongoing foreign exchange options development." The petitioner provided no documentation to establish that eSpeed is an organization with a distinguished reputation.

In response to the RFE, the petitioner submitted a November 3, 2008 letter from ZTE Corporation R&D Centre certifying that:

[The petitioner] had been the principal developer in the CDMA wireless communication system project Research and Development ("CDMA R&D") Division of ZTE He played a key role in the development of the ZTE CDMA wireless communication system project. This project is one of the C3G (China's three generation telecommunication) projects of the national 863 R&D program. At the end of 2001, the ZTE CDMA system was released successfully This was the first commercial CDMA wireless system in China. It's a breakthrough success in China's communication technology field. Since then, the ZTE CDMA system and later versions have taken 32 percent (32%) of the national market of CDMA communication equipment in China.

The petitioner also submitted a printout from the website of China Information Industry (CNII), which describes ZTE as "China's largest listed telecom company specializing in offering customized network solutions for telecom carriers worldwide" and that the company has "become an important global player in the telecommunications industry with products deployed in over 40 countries." The document further states that the company's "respected position as a forward looking global organization within the industry is also reflected by membership of, and participation in, a variety of International Organizations of Standardization." We find that the evidence sufficiently establishes that ZTE is an organization with a distinguished reputation and that the petitioner worked in a leading role for the organization.

The record sufficiently establishes that the petitioner 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.

The petitioner did not initially allege that he meets this criterion and submitted no documentation relevant to this criterion either during his initial submission or in response to the RFE. On appeal, counsel asserts that the petitioner failed to submit such documentation in response to the RFE because the director failed to request it. Counsel's argument is without merit. As noted, the petitioner did not allege or submit any evidence to lead the director to believe that the petitioner claimed to meet this criterion.

On appeal, the petitioner submits a March 9, 2009 letter from E*Trade Financial, stating that the petitioner "has been employed with the Company on a full-time basis since November 3, 2008" with an annual salary of \$103,000. The petitioner also provides information from the Bureau of Labor Statistics indicating that the mean wage for computer software engineers, applications was \$85,660. However, the petitioner submitted no documentation of his remuneration prior to the date he filed his petition. The regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to establish that he "has commanded a high salary or other significantly high remuneration" relative to others in his field. The petitioner's salary subsequent to the filing date of this petition is not evidence that he meets this criterion. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

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 record, 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. 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.