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U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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FILE [REDACTED] Office: TEXAS SERVICE CENTER Date: NOV 25 2009
SRC 01 069 52458

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the preference visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

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

On appeal, counsel submits a brief and additional evidence, much of which is already part of the record of proceeding. We will consider counsel's specific assertions below. At the outset, however, counsel raises several general assertions that warrant discussion. First, counsel cites several non-precedent decisions by this office. As the facts of those cases are unknown, we cannot determine whether they are similar to the facts before us or even if they involve adjudications of petitions in the same classification as the one sought in this matter. Regardless, while 8 C.F.R. § 103.3(c) provides that

AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding.

Second, counsel asserts that the revocation notice did not provide specific reasons for concluding that the petitioner is ineligible. Counsel is not persuasive. While we will provide more in depth analysis below, we find that the director's decision was sufficiently specific such that the petitioner was able to file a meaningful appeal.

Third, one of the propositions for which counsel cites a non-precedent case is the proposition that evidence postdating the filing of the petition should be considered when submitted to "clarify" eligibility and arises from the petitioner's ongoing continuous work in the field. The regulation at 8 C.F.R. § 103.2(b)(12), precedent decisions and a federal circuit court decision, however, consistently and unambiguously hold that the petitioner must demonstrate his eligibility as of the date the petition was filed. As of the date this petition was filed, the regulation at 8 C.F.R. § 103.2(b)(12) provided that a petition shall be denied where evidence submitted in response to a request for initial evidence does not establish eligibility at the time the petition was filed. In addition, *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971), provides:

If the petition is approved, he has established a priority date for visa number assignment as of the date that petition was filed. A petition may not be approved for a profession for which the beneficiary is not qualified at the time of its filing. The beneficiary cannot expect to qualify subsequently by taking additional courses and then still claim a priority date as of the date the petition was filed, a date on which he was not qualified.

Section 204 of the Act requires the filing of a visa petition for classification under section 203(a)(3). The latter section states, in pertinent part: "Visas shall next be made available to *qualified immigrants* who *are members* of the professions." (Emphasis added.) It is clear that it was the intent of Congress that an alien be a recognized and fully qualified member of the professions at the time the petition is filed. Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts. To do otherwise would make a farce of the preference system and priorities set up by statute and regulation.

The Regional Commissioner continued this reasoning in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977). That decision reemphasizes the importance of not obtaining a priority date prior to being eligible based on future experience. This principle has been extended beyond the alien's eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg'l. Comm'r. 1977). That decision provides that a petition should not become approvable under a new set of facts. Recognizing that *Matter of Katigbak*, 14 I&N Dec. at 49 was not "foursquare with

the instant case" in that it dealt with the beneficiary's eligibility, *Matter of Great Wall*, 16 I&N Dec. at 145 still applies the reasoning. The decision provides:

In sixth-preference visa petition proceedings the Service must consider the merits of the petitioner's job offer, so that a determination can be made whether the job offer is realistic and whether the wage offer can be met, as well as determine whether the alien meets the minimum requirements to perform the offered job satisfactorily. It follows that such consideration by the Service would necessarily be focused on the circumstances at the *time of filing* of the petition. The petitioner in the instant case cannot expect to establish a priority date for visa issuance for the beneficiary when at the time of making the job offer and the filing of the petition with this Service he could not, in all reality, pay the salary as stated in the job offer.

Id. (Emphasis in original.) Moreover, when evaluating revisions to a partnership agreement submitted in support of a petition seeking classification as an alien entrepreneur pursuant to section 203(b)(5) of the Act, this office relied on *Matter of Katigbak*, 14 I&N Dec. at 49 for the proposition that "a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts." *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). Citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), *Matter of Izummi* concludes that we cannot "consider facts that come into being only subsequent to the filing of a petition." 22 I&N Dec. at 176. This reasoning has even been extended to nonimmigrant visa petitions, which do not have priority dates. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l. Comm'r. 1978). Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008).

In light of the above, the director did not err in refusing to consider evidence of achievements that postdate the filing of the petition. Counsel's specific concerns will be addressed below.

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (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 have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a transcultural management specialist. 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, international 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.

On appeal, counsel asserts that the director erred in requiring evidence beyond simply meeting the necessary three criteria. We do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. Rather, the director appears to have concluded that the petitioner submitted documentation which related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a 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. *See Kazarian v. USCIS*, 2009 WL 2836453, *5, 6 (9th Cir. 2009) (holding that it was not inappropriate to review the nature of the alien's judging experience or the alien's scholarly articles in the context of what is expected in the field).¹

The criteria at 8 C.F.R. § 204.5(h)(3) follow.

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

The petitioner initially submitted a September 20, 1993 letter from [REDACTED] of the Institute of Personnel Management (IPM) journal *People Dynamics*, advising that the

¹ *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

petitioner had won the Anglo-Alpha Best General Article in recognition of his 1992 article in that journal. The award was also reported in the January 2004 issue of the journal. Initially, counsel also referenced the petitioner's Mustard Seed Scholarship as meeting this criterion but submitted no evidence to support that assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In the NOIR, the director concluded that the record lacked evidence that the petitioner's awards were nationally or internationally recognized, such as media coverage of the award selections. In response, counsel asserted that IPM is a distinguished entity and asserts that a 2001 award also serves to meet this criterion.

The petitioner submitted materials from IPM's website indicating that IPM is "a non-profit organization that was founded 59 years ago with the aim of providing appropriate, relevant knowledge and information on effective leadership and people management to human resource professionals and management in general." The materials do not discuss IPM's awards. Thus, the petitioner has not established information about these awards, such as the selection criteria or pool of competitors. The petitioner did not submit any media coverage of the selection of the IPM awardees.

The petitioner also submitted a 2001 *Daily News* article announcing the petitioner's selection as Communicator of the Year. According to the record, the award is cosponsored by British American Tobacco (BAT) Zimbabwe and the Zimbabwe Institute of Public Relations. Information from the World Health Organization's tobacco free initiative report provided by the petitioner reveals that BAT canceled the Communicator of the Year Award which it had been coordinating with the Zimbabwe Institute of Public Relations for 23 years. Nothing in these materials suggests that the award is for excellence as a transcultural management specialist rather than an editorialist.

The director concluded that there was no evidence that the IPM award is nationally recognized and that the Communicator of the Year Award postdates the filing of the petition. On appeal, counsel asserts that IPM's prestige is evidence that any award IPM issues is presumed to be equally prestigious. As discussed above, counsel acknowledges that the 2001 Communicator of the Year award postdates the petition but asserts that it was submitted to "clarify" that the petitioner has received qualifying awards and is admissible as evidence because the award arose from accomplishments predating the petition.

We will not presume that every award issued by an organization with a distinguished reputation is nationally or internationally recognized. For example, some prestigious organizations may choose to issue scholarships or awards limited to novices in the field. Such awards could not establish eligibility as one of the small percentage at the top of the field. In the matter before us, the IPM award recognizes an article published in IPM's own journal. While *People Dynamics* may be a prestigious journal, we are not persuaded that an award limited to authors who have published articles in this journal during a given year can serve to meet this criterion. Rather, this award is best

considered as evidence of the significance of the petitioner's scholarly articles pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

As stated above, the 2001 award postdates the filing of the petition and, thus, cannot be considered. *Ogundipe*, 541 F.3d at 261; *Matter of Izummi*, 22 I&N Dec. at 175-76 (citing *Matter of Bardouille*, 18 I&N Dec. at 114); *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, the record does not establish that this award recognizes excellence in the petitioner's field, transcultural management specialist or any management field.

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

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

Counsel did not initially claim that the petitioner meets this criterion.. In response to the NOIR, counsel asserted that the petitioner meets this criterion through his associate membership in the Institute of Personnel Management of Zimbabwe (IPMZ). The internet materials for this institute, provided by the petitioner, indicate that it is a "professional association of people with an interest in personnel, training and human resources, who want to improve their knowledge of, and skill in, professional personnel practices and principles."

The director concluded that the petitioner had not provided any evidence of the membership criteria for IPMZ. On appeal, counsel no longer asserts that the petitioner meets this criterion. We affirm the director's conclusion that the record lacks evidence of the membership criteria for IPMZ. Moreover, as the petitioner was only an associate member, he would need to demonstrate that associate membership requires outstanding achievements as judged by recognized national or international experts in the field. The record contains no evidence of the associate membership criteria.

In light of the above, 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.

Counsel initially listed the following articles as evidence to meet this criterion:

1. A 1995 article in the London *Financial Times* that is about a management philosophy based on the African concept of "ubuntu." While the first half of the article addresses the petitioner's views on this issue, the second half of the

article focuses on the application of ubuntu by [REDACTED]
[REDACTED] In response to the NOIR, the petitioner submitted evidence that this newspaper is one of the world's leading business newspapers with a daily circulation of over 480,000 and a readership of 1.6 million.

2. A 1995 article about the petitioner's book and a 1995 interview with the petitioner, both appearing in *The Sowetan*. Handwritten on the interview is the statement: "Interview with Sowetan Newspaper with the biggest circulation" in South Africa. It is not clear from this handwritten note whether the claim is that the newspaper has the biggest circulation in South Africa of any Sowetan newspaper or the biggest circulation in South Africa total. Regardless, 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). The record does not contain any evidence of this newspaper's circulation.
3. A barely legible 1995 article in *The Star* about ubuntu. In response to the NOIR, the petitioner submitted evidence that the circulation for this newspaper is 168,878 with a total readership of 618,000.
4. An article with an illegible date in the *Saturday Star* about the petitioner's radio interview. In response to the NOIR, the petitioner submitted information from *The Star's* website stating that the *Saturday Star* is "by far the biggest selling Saturday newspaper in South Africa."
5. Chapter 10 in *Hunter to Rainmaker* by [REDACTED] addressing the petitioner's "African Spirit Hierarchy." The record contains no evidence of the date of this book or evidence as to how well this book has sold.

Counsel also referenced articles in *Le Monde* and the *Sunday Times*, but these articles are not documented in the record. In addition, counsel referenced appearances on the following radio and television stations, channels or programs: Kaya FM radio, Radio 702, South African Broadcast Corporation, Zimbabwe Broadcast Corporation, Felicia Mabuz Talk Show, Channel Africa, Aangenam Afrika, The New World weekly series on VPRO, 1999 and Zambian TV. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The Kaya FM radio interview is referenced in the 1995 *Saturday Star* article.

In response to the NOIR, counsel also relies on citations of the petitioner's articles and books. The petitioner submitted evidence from an Internet search engine documenting that the petitioner has been moderately cited and some examples. Finally, the petitioner submitted evidence of the significance of media, such as the *Financial Gazette*, with no evidence that these publications have published articles about the petitioner.

The director concluded that while the 1995 articles may have appeared in major media, three articles from a single year cannot serve to meet this criterion. On appeal, counsel asserts that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) only requires evidence of published material and that the director erred in looking at the number of articles. Counsel relies on *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. E.D. 1995) and *Racine v. INS*, 1995 WL 153319 (N.D. Ill. E.D. 1995). Finally, counsel asserts that the director should have looked at the published material which arose after the date of filing because it arose from continuous work in the field. Once again, counsel relies on a non-precedent decision by this office in an unknown classification to support this assertion.

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value. As stated above, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Moreover, it appears from the decisions in *Muni*, 891 F. Supp. at 441, and *Racine*, 1995 WL at *1 that the aliens in those matters had been the subject of numerous articles and that the issue was the appropriateness of legacy Immigration and Naturalization Service (INS) inquiry into whether the articles themselves explicitly identified the petitioner as at the top of his field. The issue of the timing and number of articles was not addressed in either federal district court decision cited by counsel.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material about the petitioner relating to his work. Thus, according to the plain language of this criterion, materials about the petitioner's work cannot serve to meet this criterion. Compare 8 C.F.R. § 204.5(i)(3)(i)(C). The citations are primarily about the authors' own work or recent trends in the field and cannot be considered as evidence about the petitioner or his work. That said, we will consider the citations below as they relate to the significance of the petitioner's published articles pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

The only articles appearing in newspapers with a documented circulation are the three 1995 articles in the *Financial Times* and *The Star*. These articles may be considered to be about the petitioner's work, but cannot be credibly considered to be articles about the petitioner himself, relating to his work. Even if we concluded that the articles are about him, they all appear in October 1995, five years before the petition was filed. We affirm the director's finding that three articles from the same month five years before the petition was filed are not indicative of or consistent with sustained acclaim in December 2000 when the petition was filed.

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

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

Initially, counsel asserted that the petitioner meets this criterion because, as a professor, he judges his students. The petitioner submitted a January 24, 2000 letter from the University of Cape Town's Graduate School of Business addressed to the petitioner at Rainmaker Management Consultancy in Johannesburg appointing the petitioner as an external assessor of five research reports. A November 11, 1999 letter confirms the petitioner's agreement to serve as an external reviewer for five scripts for a single course at the University of Cape Town. The letter states that the university will provide the petitioner with the exam paper, model answers (where appropriate) and guidelines for external examiners. The petitioner's curriculum vitae indicates that he served as an external examiner for this business school as of 1996, but the record contains only the appointment letters for 1999 and 2000.

In the NOIR, the director concluded that judging student work does not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence of judging the work of others in the same field or an allied field. In response, counsel stated: "The regulations do not require an alien to be extraordinary in order to judge the work of others; rather it is the reverse that is true." Counsel relies on *Buletini v. INS*, 860 F. Supp. 1222, 1231 (E.D. Mich. 1994), which held that the regulation at 8 C.F.R. § 204.5(h)(3)(iv) does not require that participating as a judge was the result of having extraordinary ability.

As stated above, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. at 715. The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Regardless, we do not find it violates the reasoning in *Buletini*, 860 F. Supp. at 1231, to examine the evidence submitted as to whether it is indicative of or inconsistent with national or international acclaim. The court in *Buletini* was concerned that an alien would need to first demonstrate "extraordinary ability" in order to meet this criterion. We are not following this "circular exercise" that troubled the court. Rather, we are looking at the type of review responsibilities inherent to the

field and what review responsibilities might be indicative of or at least consistent with national acclaim. Significantly, the Ninth Circuit upheld a determination that internal review of student work was insufficient to meet this criterion. *See Kazarian*, 2009 WL 2836453 at *5.²

The petitioner also submitted an April 22, 2003 letter from the Rhodes University Investec Business School, where the petitioner was a professor, requesting that the petitioner serve as an evaluator by the Council on Higher Education in South Africa to analyze the reaccreditation of MBA programs at universities in South Africa.

In the final revocation notice, the director stated that evidence postdating the filing of the petition could not be considered and that the evidence predating the filing of the petition was not indicative of national or international acclaim. On appeal, counsel asserts that the director went beyond the plain language of the criterion and that the 2003 letter should have been considered because it was submitted to "clarify" eligibility.

The 2003 request to serve on a committee to analyze the reaccreditation of MBA programs postdates the filing of the petition and, for the reasons discussed above, cannot be considered. *Ogundipe*, 541 F.3d at 261; *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 175-76 (citing *Matter of Bardouille*, 18 I&N Dec. at 114). Regardless, the petitioner was a professor at the university and, thus, this request does not establish his recognition beyond his employer.

We acknowledge that *Kazarian*, 2009 WL 2836453 at *5, dealt with internal review of student work rather than external review. Nevertheless, the court clearly found that it was appropriate to evaluate the nature of the alien's review responsibilities. While we recognize that the petitioner served as an "external" reviewer for the University of Cape Town, his duties did not rise to the level of an external Ph.D. dissertation reviewer. In 1999, the petitioner reviewed exams for a single course, with at least some sample answers being provided by the professor. In 2000, he reviewed five research "reports." There is no evidence that he attended the type of oral examination typical for Ph.D. dissertation reviews and it is not clear whether these reports arose from a single course or represented the type of independent, in depth research expected of a Ph.D. dissertation. The petitioner's duties as an external reviewer appear commensurate with his occupation as a professor and are not indicative of or consistent with national or international acclaim.

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

² *See also Yasar*, 2006 WL 778623 at *9; *All Pro Cleaning Services*, 2005 WL 4045866 at *11 (upholding a finding that evidence under the criterion at 8 C.F.R. § 204.5(h)(iv) must be indicative of or consistent with national or international acclaim).

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

Initially, counsel asserted that the petitioner meets this criterion through his work integrating the African philosophy "ubuntu" or "I am because we are" into a business model along with European, Asian and American management models.

The petitioner submitted the books, articles and published material discussed above as well as letters. The initial letters, which are all from individuals who have worked with the petitioner, are brief and provide general praise of the petitioner, characterizing him as "creative,"³ "a leading international management thinker"⁴ and within the "top 5% of thinkers and practitioners in his area of specialty."⁵ The letters, however, fail to identify specific contributions or provide examples of the petitioner's impact. The most specific letter is from [REDACTED], an experienced international relations and human rights professional. [REDACTED] asserts that the petitioner "made remarkable contributions to the theory and teaching of cross-cultural managements skills through his three books and his training seminars." [REDACTED] further asserts that the petitioner "is lauded for his unique theoretical and practical applications." Finally, [REDACTED] concludes that the petitioner "played a pivotal role in increasing racial harmony in Zimbabwe and South Africa" through his "groundbreaking workshops and seminars which elicited intense responses from participants." Even this letter, however, is mostly conclusory and fails to provide examples of how the petitioner's work has been applied by independent companies.

In the NOIR, the director stated that the record lacked evidence of the petitioner's impact. In response, counsel asserts that the regulation at 8 C.F.R. § 204.5(h)(3)(v) does not require evidence that the petitioner has revolutionized management, but that he has, in fact, done so. More specifically, counsel asserts that the petitioner has "pioneered novel business management models and transformed the business management field through his integration of African Principles and concepts, such as 'ubuntu,' into existing European, Asian, and American management models." Counsel concludes that the petitioner's scholarly articles, "display" of his work, service as a peer reviewer and awards provide "clear evidence that [he] has made original contributions that are widely recognized." The petitioner provided new letters and, as stated above, evidence of moderate citation.

³ [REDACTED] Chair of the Board of Conversion Technologies International in Florida; [REDACTED] of the Investec Business School at Rhodes University; [REDACTED] of Organisational Training & Development (Pvt.) Ltd. and [REDACTED] Officer of The John Joseph Group in Chicago. [REDACTED] of Career Development Services in Chicago. Other letters include similar language. [REDACTED] of the Murray and Roberts Group in South Africa. [REDACTED] ranks the petitioner in the "top 3% of thinkers."

The director concluded that the letters, mostly from colleagues, and citations were insufficient. On appeal, counsel asserts that the director did not give sufficient weight to the citations, that there is no minimum number of citations that must be documented and that the director erred in presuming colleagues are biased. The petitioner submits new letters. The letters submitted in response to the NOIR and on appeal will be considered below. We reiterate, however, that we can only consider claims of contributions that predate the filing of the petition. *Ogundipe*, 541 F.3d at 261; *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 175-76 (citing *Matter of Bardouille*, 18 I&N Dec. at 114).

Counsel is not persuasive that the regulation at 8 C.F.R. § 204.5(h)(3)(v) does not require significant evidence of the petitioner's impact. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of business, it can be expected that the petitioner's theories would have already been applied on a widespread scale, taught in business schools across South Africa or be similarly demonstrably influential.

The regulation at 8 C.F.R. § 204.5(h)(3) contains a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. *See also Kazarian*, 2009 WL 2836453 at *6 (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance). Similarly, we are not persuaded that the petitioner's seminars (comparable to scholarly articles), recognition for a scholarly article or service as an external reviewer (which we already considered under the more applicable criterion at 8 C.F.R. § 204.5(h)(3)(iv)) are presumptive evidence to meet this separate criterion at 8 C.F.R. § 204.5(h)(3)(v).

As stated above, we will consider the letters in detail. The opinions of experts in the field, however, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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 (Comm'r. 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. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify

contributions and provide specific examples of how those contributions have influenced the field. We are not persuaded that the director erred in noting that the reference letters were mostly from the petitioner's close colleagues and collaborators. While we do not allege any bias on their part, it remains that an individual with national or international acclaim, by definition, must be recognized beyond his close circle of colleagues. Letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian*, 2009 WL 2836453 at *5.

[REDACTED] of the Community and Individual Development Association (CIDA) City Campus, discusses the petitioner's work with CIDA through Rhodes University in support of the South African Parliament beginning in 2007. [REDACTED] of the Investec Business School at Rhodes University, and [REDACTED] a senior lecturer at Durban University of Technology, discuss the same project. [REDACTED] of Leadership Initiatives for Southern Africa at the Academy for Educational Development (AED), discusses the petitioner's work for the W. K. Kellogg Foundation (WKKF) in partnership with AED. [REDACTED] Director of Africa Programs for the Africa Regional Office of WKKF, discusses the petitioner's work with WKKF beginning in 2001. [REDACTED] of Electricity Distribution Industry (EDI) Holdings, discusses the petitioner's work on electricity distribution starting in 2006. This work all postdates the filing of the petition and will not be considered. *Ogundipe*, 541 F.3d at 261; *Matter of Izummi*, 22 I&N Dec. at 175-76 (citing *Matter of Bardouille*, 18 I&N Dec. at 114); *Matter of Katigbak*, 14 I&N Dec. at 49.

[REDACTED] of Skill Factor Consultants, asserts that the petitioner gave lectures on ubuntu theories of business management and that his presentation "has the power to captivate and inspire students." [REDACTED] does not provide examples of how these lectures had impacted business management in South Africa at the national level as of the filing date.

On appeal, the petitioner submits three "advisory opinion" letters from [REDACTED] a professor at the Maharishi University of Management in Iowa, [REDACTED] and Cofounder of TRANS4M, and [REDACTED] of the Ph.D. program at the Isenberg School of Management, University of Massachusetts. [REDACTED] asserts generally that the petitioner's work "shows rare breakthroughs and originality in concepts." [REDACTED] notes that the petitioner has authored books and articles, has served as a management consultant for prominent companies and parliament and has been covered in the media. As discussed above, we cannot conclude that evidence directly related to other criteria, such as those set forth at 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 204.5(h)(3)(vi), is presumptive evidence to meet this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(v). In addition, the fact that the petitioner is able to secure employment in his field as a

consultant, even for prominent companies, is not by itself evidence indicative of national or international acclaim.

who lectures at the CIDA City Campus among other positions, asserts that he is editing the petitioner's forthcoming book. He further asserts that he has read the petitioner's books and articles and has used the findings in his own research. [REDACTED] does not specify which findings he found useful and how he used them. [REDACTED] concludes that the petitioner's invitation to speak at the 1997 World Economic Forum "evidences his international renown and high standing in his field." The record does not contain any evidence regarding how many speakers participated in this forum or how the speakers were selected.

of the United Nations Development Programme (UNDP) Technonet Africa project, discusses the petitioner's work on an international and regional leadership program based at the University of Zimbabwe and the University of Pretoria. It is not clear that the petitioner worked on this project prior to the filing of the petition. Even if the petitioner did participate prior to the filing of the petition, the record does not establish that this work was a contribution of major significance. Specifically, while [REDACTED] asserts that the project garnered some media attention while it was ongoing, the ultimate impact of the project is undocumented. Not every project that garners media attention for its important goals necessarily has the projected impact.

[REDACTED] of Transcultural Research Centre at the University of Buckingham and whose book includes a chapter about the petitioner, provides general accolades and discusses the petitioner's assistance with the Masters program offered by the university in South Africa. [REDACTED] does not indicate when this work occurred. Regardless, [REDACTED] does not discuss the ultimate success of this project other than its completion. The record contains no evidence, such as media coverage, singling out this Masters program from others in South Africa.

who indicates that he has interacted with the petitioner at seminars, praises the petitioner's publication record. As stated above, however, published articles are not presumptive evidence of contributions of major significance. *Kazarian*, 2009 WL 2836453 at *6. While [REDACTED] identifies specific writings he has found interesting, he does not explain how this work has impacted the field.

The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. The record, however, contains little in the way of specific evidence to show what major improvements the petitioner had wrought in his field of endeavor as of the date of filing.

We acknowledge that the record demonstrates that the petitioner has been moderately cited. We concur with the director, however, that the citation level does not reflect widespread use of the petitioner's materials such that this evidence is indicative of a contribution of major significance. The record contains no evidence that the petitioner's books are routinely assigned as course material at business schools throughout South Africa or similar evidence of their influence.

In light of the above, the petitioner has not established that he met this criterion in December 2000 when the petition was filed.

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

The petitioner initially submitted three books: *Ubuntu: The Spirit of African Transformation Management*, *Ubuntu: The African Dream in Management* and *In Search of the African Business Renaissance*. The petitioner also submitted articles in the following journals:

1. *People Dynamics*, including one in 1992, one in 1993, one in 1994, and two in 1998. This journal is the "Official Publication of the IPM."
2. *Tribute*, including one undated and one in 1996.
3. *Enterprise*, including two in 1995 and two in 1996
4. *Sawubona Magazine* (syndicated column), including two in 1997
5. *Flying Springbok*, including four in 1997
6. An unknown journal on an undocumented date.

Counsel also asserted that the petitioner authored articles in *Training and Development* and the *Zimbabwe Independence*. The record, however, did not initially contain these articles although the article in *Training and Development* was submitted in response to the NOIR. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

In the NOIR, the director concluded that the record contained no evidence that the books are still in circulation or that the articles appeared in major media.

In response, counsel asserted that the petitioner has authored five books and numerous articles and that four of his books are currently available. Counsel further asserted that the petitioner's books and articles have received critical acclaim and are frequently cited. Counsel stated that the petitioner is not required to demonstrate "the significance and importance of every trade publication or major media source." Counsel relied on American Immigration Lawyers Association/Texas Service Center Liaison Meeting notes from October 7, 2002 stating that journals do not have to be in the highest tier of ranked publications. Counsel discussed the significance of *HR Future Magazine*, *Training and Development Magazine*, *Prophesies and Protests*, *People Dynamics* and *Succeed*. The only

documented articles or chapters by the petitioner in any of these journals or books as of the date of filing, however, are the petitioner's articles in *Training and Development* and *People Dynamics*.

The petitioner provided promotional materials stating that *HR Future Magazine* is South Africa's only independent, most forward thinking human resource magazine with the richest content wealth of HR related issues on the continent of Africa to help executives recruit, manage, train, reward and retain the best talent. The petitioner's article in this publication, however, postdates the filing of the petition.

The petitioner also submitted evidence that his book, *Ubuntu: The Spirit of African Transformation Management*, the 2005 10th anniversary edition, is available from Knowledge Resource Publishing. The petitioner also submitted similar information for *The Spirit of African Leadership*, published for the first time in 2005, and *African Business Renaissance*, initially published in 2000. The petitioner provided no evidence of the sales of these books, but the publisher lists two books as examples of the company's best sellers. Without evidence of the actual volume, however, this evidence only compares the petitioner's books with others published by this company, whose own reputation is not established. The materials about the petitioner's book, submitted by the petitioner, are from the website of Knowledge Resources. Thus, the petitioner has entered that website into the record. A review of the website reveals that the publisher is a vanity press that publishes books for a fee. See <http://www.kr.co.za/publishing.htm> ("publication process" link, accessed October 29, 2009 and incorporated into the record of proceeding). While it is possible for a self-published book to be successful, it is the petitioner's burden to demonstrate that his books have sold well or are in widespread use in business schools throughout South Africa if we are to conclude that they are comparable to professional or major trade journals or other major media.

The petitioner also submitted electronic-mail messages from eight individuals in 2000 responding to the petitioner's article in *Training and Development*. In addition, the petitioner submitted promotional information from the American Society for Training and Development that publishes the magazine indicating that it is the world's largest association dedicated to workplace learning and performance professionals.

In addition, the petitioner submitted his chapter in the 2007 book *Prophesies and Protests*. The petitioner did not provide evidence of sales such that we can conclude that it is comparable to a professional or major trade journal or other major media. Regardless, the book postdates this 2000 petition and cannot be considered. *Ogundipe*, 541 F.3d at 261; *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 175-76 (citing *Matter of Bardouille*, 18 I&N Dec. at 114).

The petitioner also submitted an article in a 2002 issue of *Succeed*, advertised as Southern Africa's Journal of Entrepreneurship and Management. The petitioner submitted evidence that this journal has a readership of over 200,000. The petitioner's article, however, postdates the filing of the petition and cannot be considered. *Ogundipe*, 541 F.3d at 261; *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 175-76 (citing *Matter of Bardouille*, 18 I&N Dec. at 114).

Further, the petitioner submitted evidence from IPM's website indicating that its monthly journal is *People Dynamics* but providing no evidence of the journal's readership. Finally, as stated above, the petitioner submitted evidence that his work is moderately cited.

The director concluded that the evidence submitted under this criterion, when considered with other evidence, is ultimately insufficient. On appeal, counsel asserts that the plain language of this criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi), requires only evidence of scholarly articles and that the director's evaluation of the evidence went beyond the regulatory requirements. Counsel acknowledges that articles alone may not be sufficient evidence of sustained national or international acclaim but notes that it is meeting three criteria that establishes eligibility.

While we acknowledge that we must avoid requiring acclaim within a given criterion, it is not a circular approach to require some evidence of the community's reaction to the petitioner's published articles in a field where publication is expected of those merely completing training in the field. *Kazarian*, 2009 WL 2836453 at *6. The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on October 29, 2009 and incorporated into the record of proceeding), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure.

That said, the director erred by implying that the petitioner's failure to meet other criteria precludes him from meeting this criterion. We are satisfied, given the citations provided and the Anglo-Alpha General Article recognition from IPM, that the petitioner meets this criterion.

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

Counsel initially asserted that the petitioner meets this criterion through his presentations at international meetings and symposia. In the NOIR, the director noted that this criterion is limited to visual artists. In response, counsel asserted that the petitioner's active participation in international meetings and symposia is comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

The director concluded, in consideration of the other evidence, that the evidence submitted to meet this criterion is insufficient. On appeal, counsel asserts that the director did not explain why the evidence submitted is not comparable to display of an artists work at an artistic exhibition or showcase.

We find that the petitioner's presentations are comparable to scholarly articles, a criterion the petitioner already meets. We are not persuaded that his presentations warrant a finding that he meets this unrelated criterion as well. Without evidence that the symposia were designed to exclusively showcase the petitioner's work as opposed to serving as general symposia in the field, we cannot conclude that the

evidence is comparable to the type of exclusive artistic exhibitions designed to showcase an artist's work that would meet this criterion.

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

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

Initially, counsel relied on the following positions to meet this criterion:

1. Appointment as a professor extraordinarius at the University of South Africa (UNISA). The petitioner submitted a reappointment letter for this position dated February 14, 1998, from [REDACTED] at UNISA, but no evidence of the number of professors extraordinarius at UNISA or the basis of their selection for this title.
2. Membership on the Board of Directors at Rhodes University, Investec School of Management. The petitioner submitted a June 23, 2000 letter from [REDACTED] of Rhodes University, thanking the petitioner for agreeing to serve on the Board of Advisors. The Chair of this board is listed as a different individual.
3. Director at Nampak Management Services. The petitioner submitted a letter from the University of Pretoria dated December 13, 1993, congratulating the petitioner for his appointment as Executive Director of Nampak Management Services and Nampak Corrugated Containers. The record contains no evidence from Nampak.

Counsel also relied on the petitioner's purported positions with the Eastern Highlands Tea Estates, Manica Freight and Rainmaker Management Consultants but the record contains no evidence regarding these positions. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

As stated above, the petitioner submitted evidence that he served as an external reviewer for the University of Cape Town. The petitioner also claims to have served as a consultant for the University of Zimbabwe, Witwatersrand Graduate Business School, De Montfort University and the Global School of Business at Bond University. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Finally, the petitioner claimed to have served as a consultant for the UN Children's Fund (UNICEF). The petitioner submitted a December 13, 2000 letter from [REDACTED] an officer in

UNICEF's human resources division. The letter is not on UNICEF letterhead. [REDACTED] states that UNICEF was "in the process" of considering the petitioner to co-facilitate a Global Management Workshop in New York. The petitioner was a guest speaker at a Food for Thought session. She further indicates that one of the petitioner's articles appeared on UNICEF's learning website.

In the NOIR, The director concluded that a board of directors is an important body, but that only the chair position is leading or critical. In response, the petitioner provided evidence of his role with WKKF and the South African Parliament. Specifically, the petitioner submitted an April 29, 2005 letter from [REDACTED] for WKKF, addressed to "Dear Sir/Madam" recommending the services of African Intellectual Resources (AIR) and the petitioner based on an Executive Leadership Programme covering seven countries. The petitioner also submitted contracts between WKKF and AIR for 2003, 2004, 2005 and 2006. The contracts for 2003 and 2006 are the only ones that are signed. Finally, the petitioner submitted pages 1 and 14 of a contract between the Secretary to the Parliament and AIR plus two other firms. The petitioner signed the contract on behalf of AIR on February 28, 2006.

The director concluded that, when weighed with other evidence, the evidence submitted under this criterion is insufficient.

On appeal, counsel asserts that the director failed to explain why the evidence submitted is insufficient. Counsel discusses both the petitioner's pre- and post-filing roles. For the reasons discussed above, we will not consider the petitioner's roles after the date of filing. *Ogundipe*, 541 F.3d at 261; *Matter of Izummi*, 22 I&N Dec. at 175-76 (citing *Matter of Bardouille*, 18 I&N Dec. at 114); *Matter of Katigbak*, 14 I&N Dec. at 49.

At issue for this criterion are the role for which the petitioner was selected and the reputation of the entity that selected him. In other words, the nature of the role, in itself, should be such that the very selection for that role is indicative of or consistent with national or international acclaim. As of the date of filing, the petitioner documented that he had been appointed a professor extraordinarius, a director of a company with an undocumented reputation, a member of a board of advisors at a university and as an external reviewer. The record contains no evidence regarding the number of professors extraordinarius at UNISA. The petitioner also failed to provide an organizational chart or other evidence establishing how this position fits within the hierarchy of UNISA. Similarly the record contains no evidence regarding the number of external reviewers utilized by the University of Cape Town or how they fit within the hierarchy of the university as a whole. In addition, the record contains no evidence regarding the number of advisory boards at Rhodes University or the role the petitioner's board played for the university. Finally, the record contains no evidence regarding the reputation of Nampak.

In light of the above, the petitioner has not established that he met this criterion as of the date of filing.

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

Counsel initially asserted that the petitioner meets this criterion based on the \$1 million cost of his project. The petitioner submitted a 1999 *Sunday Times* story about a course purchased by the South African Post Office for 8.2 million Rand. The article does not reflect the petitioner's personal remuneration.

In the NOIR, the director stated that the record contained no evidence of the petitioner's actual remuneration or data for comparison purposes. Specifically, the director stated:

First, if you claim to have received significant remuneration you must provide documentary evidence to corroborate such statements. Further, you must provide verifiable comparative information by which [USCIS] may evaluate this salary and make a determination whether or not such remuneration is significantly above that of others in your field.

In response, counsel stated: "The high project fees, which amount to the equivalent approximately of over \$1 million per project, serve to demonstrate not only his considerable accomplishments, but also the importance of his work to the continued success of the institutions to which he provides his services." Counsel further indicated that the petitioner was providing further evidence of high remuneration. The petitioner submitted the following:

1. A 2006 contract between WKKF and AIR. The contract lists a price of \$196,000, which includes all costs such as travel and accommodations.
2. A 2005 contract between WKKF and AIR listing a price of \$195,000. the contract is unsigned.
3. A 2004 contract between WKKF and AIR executed May 26, 2004 but inexplicably covering the period March 1, 2004 through February 28, 2004. The price for this course is \$996,500. This contract is unsigned.
4. Two 2003 contracts between WKKF and AIR. The course costs are listed as \$850,000.
5. 2006 purchase orders for Nehanda Management Consultants issued by EDI Holdings.

The director concluded that the record contained insufficient evidence to evaluate a claim under this criterion.

On appeal, counsel erroneously asserts that the director did not explain in the NOIR that evidence of the alien's personal remuneration and evidence for comparison purposes were required. As quoted above, the NOIR explicitly advised counsel that such evidence was required. Counsel further asserts that the petitioner's post-filing remuneration resulted from continuous work in the field and was submitted to "clarify" the petitioner's eligibility. For the reasons stated above, we cannot consider evidence of accomplishments that postdate the filing of the petition. *Ogundipe*, 541 F.3d at 261; *Matter of Izummi*, 22 I&N Dec. at 175-76 (citing *Matter of Bardouille*, 18 I&N Dec. at 114); *Matter of Katigbak*, 14 I&N Dec. at 49.

In addition, counsel reiterates the claim that the petitioner earned \$20,000 per workshop and just under \$1 million for consulting services for the Academy of Educational Development. Counsel states that this remuneration is much higher than the mean salary of a senior management analyst in Suwanee, Georgia (\$110,198). Counsel provides no explanation for comparing the petitioner's salary with the mean salary in Georgia rather than high-level salaries nationally. Regardless, contrary to counsel's assertions on appeal, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was revoked. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. at 537. The petitioner also submitted consulting agreements which, once again, provide the total cost of courses rather than the petitioner's personal remuneration. At no point has the petitioner submitted tax returns or comparable documentation establishing his personal annual remuneration.

The record remains absent evidence of the petitioner's personal remuneration. In addition, the petitioner's salary or other remuneration must compare with the remuneration earned by the most experienced and renowned members of the petitioner's field nationally. The record contains no evidence of the high end remuneration for management consultants in South Africa or in Zimbabwe, where the petitioner was employed prior to the date of filing.

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

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner has never claimed to meet this criterion, which relates to the performing arts, and has not submitted comparable evidence to meet this criterion under 8 C.F.R. § 204.5(h)(4), such as evidence of commercial success through book sales.

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 have risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a transcultural management specialist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a transcultural management specialist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in 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 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.