

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

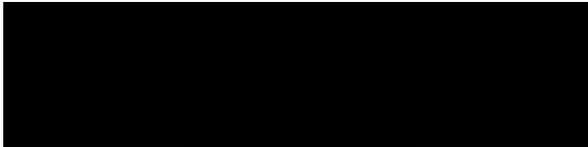
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [REDACTED]
LIN 08 045 50754

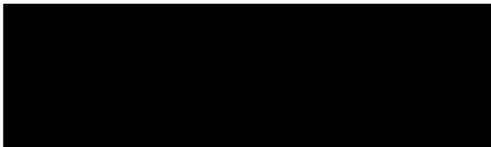
Office: NEBRASKA SERVICE CENTER

Date: OCT 28 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

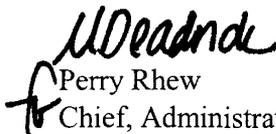
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in industrial design.¹ The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, previous counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that she submitted comparable evidence her extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4).

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition

¹ The petitioner was initially represented by [REDACTED] refer to [REDACTED]

In this decision, the term “previous counsel” shall

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 she has sustained national or international acclaim at the very top level.

This petition, filed on November 26, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an industrial designer. At the time of filing, the petitioner was working for DSP Electronics, Inc. in San Francisco, California. In 2009, aside from her employment at DSP Electronics, Inc., the petitioner taught two Product Design classes at the Academy of Art University in San Francisco.

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

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 an October 29, 2007 letter from [REDACTED] of Product Development, Home Automation, Inc., stating:

Last year, we engaged [the petitioner] to develop the industrial design for a new thermostat home control systems [sic], which is now known as Omnistat2 Thermostat. Her new thermostat design solution integrates new look and feel, aesthetics and usability that is user friendly, easy to operate and control. It is ergonomic and efficient, and blends into the home environment. The design challenge for her was to develop an innovative design that would blend into a home décor, be it a wall paper or paint, without standing out or looking out of place. The unique and simple solution that [the petitioner] introduced has round edges and flat surfaces to prevent dust and dirt collection on the product.

The final design reflects our initial goal of a stylish, elegant look and feel that would be appreciated by the largest segment of the market.

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

As I have stated, [the petitioner] has done excellent work for our company on this product, and we have submitted the Omnistat2 Thermostat in the 2008 International CES [Consumer Electronics Show] Innovations Design and Engineering Awards competition.

The petitioner also submitted material from the International CES internet site listing “Home Automation, Inc. Omnistat2” among eight “CES Innovations 2008 Awards Honorees” in the “Home Appliances” category.³ The material states: “The Omnistat2 is an advanced programmable, communicating thermostat. Features energy graphs, and easy-to-program scheduling, coupled with over one hundred backlight choices and three case choices: Black, White, and Silver.” We note Mr. [REDACTED] statement that the petitioner introduced a “unique and simple solution that . . . has round edges and flat surfaces to prevent dust and dirt collection on the product.” Nothing in the product description posted on the International CES internet site focuses on the design features for which Mr. [REDACTED] specifically credits the petitioner with developing. Further, the preceding documentation indicates that “Home Automation, Inc. Omnistat2” received the honor rather than the petitioner. The plain language of this regulatory criterion, however, requires “documentation of the *alien’s receipt* of lesser nationally or internationally recognized prizes or awards.” [Emphasis added.] In this instance, there is no evidence from the competition’s organizers showing that the petitioner received a prize or an award at the 2008 International CES or that the preceding honor focused primarily on features which she developed. It cannot suffice that the petitioner was one member of a large group of Omnistat2 product contributors that earned collective recognition. The petitioner does not address the contribution of Home Automation Inc.’s own engineering staff in developing the Omnistat2 Thermostat. We cannot ignore information submitted by the petitioner from Home Automation Inc.’s internet site stating: “The Engineering Staff consistently receives awards for their design and creativity.” One of the many forms of recognition received by Home Automation Inc.’s engineering staff and identified on the company’s internet site is the 2008 CES Innovations Design and Engineering honor claimed by the petitioner.

Even if the petitioner were to submit evidence demonstrating that this honor was primarily attributable to her design work, which she has not, she has not established that selection as a CES Innovations 2008 Design and Engineering Award Honoree constitutes a nationally or internationally recognized prize or award for excellence in the field of endeavor. The petitioner submitted information about the CES Innovations Design and Engineering Award program, but the self-serving nature of this material is not sufficient to demonstrate that selection as an honoree has a significant level of recognition beyond the context of the Consumer Electronics Association’s CES. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* and it is her burden to establish every element of this criterion. In the 2008 CES alone, multiple Innovations Design and Engineering Award honorees in each of 34 different categories were chosen and scores of products were bestowed this same honor. We cannot conclude that selection for an honor that is annually conferred upon a substantial number and percentage of product entries is indicative of national or international recognition in the field of industrial design. To find otherwise would contravene the regulatory requirement at 8 C.F.R.

³ CES’ selection of Home Automation, Inc.’s Omnistat2 Thermostat for this honor in November 2007 predates the filing of this petition.

§ 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Furthermore, among the eight honorees in the “Home Products” category in which the petitioner’s product was recognized, we note that iRobot Corporation’s Gutter Cleaning Robot earned the top honor in that category as a “Best of Innovations” recipient. Moreover, according to the “Rules and Eligibility” material submitted by the petitioner, companies participating in the CES Innovations Award program self-nominate their own products and must pay a substantial entry fee. For example, the “Regular Entry Fee” for non-members of the Consumer Electronics Association and non-exhibitors at the CES is \$950. True awards for excellence in the field are generally not contingent upon payment of a fee.

In response to the director’s request for evidence, previous counsel states that “Ominstat2 received many more awards, among them: a 2008 Electronic House Product of Year, Innovative Housing Technology Award, CEDIA [Custom Electronics Design and Installation Association] Manufacturer’s Excellence Finalist, one of the Best 100 New Products by *Professional Builder Magazine*.” The record reflects that these awards were all conferred subsequent to May 2008, several months after the petition’s November 26, 2007 filing date. On appeal, the petitioner also submits a Home Automation, Inc. press release dated March 19, 2009 stating that the Omnistat2 Thermostat won a “2009 Mark of Excellence Award” from Consumer Electronics Association for “Best Green Product.” Home Automation, Inc.’s Omnistat2 Thermostat was selected for and received the preceding honors subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider these honors from 2008 in this proceeding. Nevertheless, there is no evidence showing that the petitioner herself received these honors or that they were primarily attributable to her work. For example, the material posted on the awarding organizations’ internet sites focuses primarily on Omnistat2’s precise temperature and humidity control technology rather than the petitioner’s design features as discussed in [REDACTED] letter.

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

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

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

The petitioner submitted a November 7, 2007 from [REDACTED] San Francisco Chapter, Industrial Designers Society of America (IDSA), stating that the petitioner is a member of IDSA. On appeal, the petitioner submits general information about the IDSA from its internet site, but there is no evidence (such as membership bylaws) showing the official admission requirements for the IDSA. In this case, there is no evidence showing that the IDSA requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, the petitioner has not established that she meets this criterion.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁴

In response to the director's request for evidence, the petitioner submitted product reviews, press releases, and descriptions for Omnistat2 posted on the internet sites of *Electronic House*, Mavromatic Blog, ASI Home, SmartHome, HAI Blog, *This Week in Consumer Electronics*, *Embedded Computing Design*, and Home Controls Inc. The petitioner also submitted marketing material prepared by Home Automation, Inc. about Omnistat2. The petitioner's response also included information about the Octet RED System posted on the internet site of its manufacturer, ForteBio. The petitioner also submitted a January 17, 2008 press release regarding Bio-Rad Laboratories, Inc.'s receipt of a patent for its BioOdyssey Calligrapher Miniarrayer and marketing material for the product. None of the preceding material is about the petitioner and almost all of it post-dates the filing of this petition. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider material published in 2008 or later in this proceeding. The plain language of this regulatory criterion requires "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The documentation submitted by the petitioner does not meet the preceding requirements. With regard to the press releases, we note that those product announcements were not about the petitioner. Further, a press release is a written communication directed at the news media for the purpose of announcing information claimed as having news value rather than "published material . . . in professional or major trade publications or other major media." We cannot conclude that a press release, which is not the result of independent media reportage and which is sent

⁴ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

to journalists in order to encourage them to develop articles on a subject, meets the plain language of this regulatory criterion.

In addressing the evidence submitted by the petitioner for this criterion, the director's decision stated:

In response to the USCIS' request for evidence, counsel contends that product reviews, marketing material and press releases about products which the petitioner has designed should be considered to meet the requirements of this criterion. While conceding that none of these contain a single mention of the petitioner, counsel argues that industrial designers rarely, if ever, receive this sort of recognition. However, none of the submitted evidence can be considered major trade publications or other major media. Press releases prepared by the manufacturer, advertising, and product reviews which appear on websites where the products are sold do not carry the same evidentiary weight as independently produced material which appears in major trade publications and major, national media. Further, the bulk of this material focuses on the technological innovations of the various products, and only briefly touches upon the industrial design elements for which the petitioner was responsible.

We concur with the director's findings. On appeal, previous counsel argues that the preceding evidence should be considered as comparable evidence for this regulatory criterion. Previous counsel states: "The designers' names are neither published nor advertised. Even designers of the most successful gadgets that people use every day and consider prestigious remain largely anonymous." In support of this contention, previous counsel cites a September 11, 2008 letter from [REDACTED] San Francisco Chapter, IDSA, which states that "industrial designers have a quiet but profound presence in almost everything people encounter during the day."

The multiple deficiencies in the petitioner's evidence for this regulatory criterion have already been discussed. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Nevertheless, the letters of support submitted by the petitioner do not specifically address or establish the inapplicability of this regulatory criterion to the petitioner's occupation. In the absence of further evidence, we cannot conclude that the nature of the petitioner's occupation precludes published material about acclaimed industrial designers. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." In this case, the regulatory language at 8 C.F.R. § 204.5(h)(4) precludes the consideration of comparable evidence, as there is no evidence that eligibility for visa preference in the beneficiary's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Further, we note that the statute and regulations require "extensive documentation" of "sustained national or international acclaim" for recognized achievements in the field. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Previous counsel does not explain how the petitioner was purportedly able to achieve sustained national or international acclaim if she remains "largely anonymous."

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

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.⁵ A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

On appeal, the petitioner submits a July 21, 2009 letter from [REDACTED], School of Industrial Design, Academy of Art University, stating: “It is my great pleasure to introduce [the petitioner], our Instructor for the FA 2009 semester. . . . [The petitioner] is a graduate of our department. She graduated in the spring of 2002. She has returned to our school and taught a successful IDS 411: Product Design 6 in the spring semester of 2009.” The petitioner also submits an April 14, 2009 e-mail from [REDACTED] Graduate School, Academy of Art University, inviting the petitioner to join the university’s “Final Review Committee” to review the work of graduate students. The petitioner’s appellate submission also includes a March 18, 2009 e-mail from [REDACTED] thanking the petitioner for participating in the “IDSA Student Mixer Portfolio Review 2009.” The petitioner also submits March 20, 2009 and April 3, 2009 e-mails from [REDACTED] regarding the petitioner’s participation in “the IDSA’s Student Merit Award Selection process.” The petitioner’s submission also includes a September 28, 2008 letter from [REDACTED] confirming that the petitioner “reviewed portfolios for the IDSA-SF [San Francisco] 2008 Mixer.”

The petitioner’s appointment as an instructor at Academy of Art University and her local reviews of students’ work in the preceding instances post-date the filing of this petition. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the preceding evidence in this proceeding. Nevertheless, the plain language of this regulatory criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others in the same or an allied field of specification.” We cannot conclude that evaluating students, who have not yet begun working in the field, meets this requirement. Further, the record does not include supporting evidence establishing the level of acclaim associated with performing reviews at these local student events. Internal review of student

⁵ We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006) and *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion. *Kazarian v. USCIS*, 2009 WL 2836453, *5 (9th Cir. 2009).

In light of the above, the petitioner has not established that she 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 submitted letters of support from Bloomsbury Publishing, Qoop, Bio-Rad Laboratories, ForteBio, Bar Ilan University, Embarcadero Systems Corporation, Home Automation Inc., El Al Airlines, and Ebril & Ebril expressing admiration for her design work. While the petitioner's design work has contributed in part to the marketability of her clients' products, there is no evidence demonstrating that her work constitutes original contributions of major significance in the industrial design field. In addressing the petitioner's evidence for this criterion, the director's decision stated:

Evidence has been submitted which demonstrates that the petitioner has designed, or had a large part in designing, various products, including laboratory equipment, a thermostat, electronics accessories and a snowball launcher. While much evidence was submitted regarding her design of an e-book, there is no evidence that this product has gone to market or progressed beyond the design stage. Reference letters from the petitioner's clients indicate that they were pleased with her work, and that the products have done well in the marketplace, thanks in part to her efforts. The totality of this evidence indicates that the petitioner is a successful industrial designer, but does not support the conclusion that her work has had a major impact on the field of industrial design.

We concur with the director's findings. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted the field of industrial design. For example, the record does not indicate the extent of the petitioner's influence on other industrial designers nationally or internationally, nor does it show that the field has somehow changed as a result of her work. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the beneficiary has helped improve the appearance and functionality of various products for companies that contracted her services, there is no evidence demonstrating that the design aspects specifically attributable to her are recognized beyond her employers and clients such that they equate to original contributions of major significance in the field.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, 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. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an industrial designer who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's design work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

In response to the director's request for evidence, the petitioner submitted information from the internet sites of ForteBio, Bio-Rad Laboratories, and Home Automation, Inc. reflecting that products for which the petitioner provided design services were displayed at trade shows, meetings, conferences, seminars, symposiums, and expositions in the biotechnology, consumer electronics, building, and security industries. The petitioner has not established that such events for facilitating the sale of a product in the biotechnology, consumer electronics, building, and security industries equate to the display of her work at artistic exhibitions or showcases in the field of industrial design. Further, the information from the internet sites of ForteBio, Bio-Rad Laboratories, and Home Automation, Inc. indicates that the events displaying their products took place in 2008 and 2009. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the events from 2008 and 2009 in this proceeding. Aside from its listing of 2008 and 2009 product display events, the ForteBio internet site included information indicating that its Octet System was marketed at 2007 events such as the Octet User's Group Meeting in the Northeast, Bioprocess International Conference and Exhibition, New Products Online Webinars conducted by ForteBio, the Laboratory Robotics Interest Group Mid-Atlantic Technology Exhibition, the CHI PEGS Protein Engineering Summit, and the 9th SAPA West Annual Conference. Nothing in ForteBio's events listing indicates that the petitioner's design work was the focus of these displays rather than the detection and analysis functionalities of the Octet System. Further, there is no evidence establishing that these product displays were consistent with sustained national or international acclaim at the very top of the petitioner's field or that such displays equate to the exclusive showcases of an artist's work that are contemplated by this regulation for visual artists.

In addressing the evidence submitted for this criterion, the director's decision stated:

In responding to USCIS' request for evidence, counsel contends that the display of products for which the petitioner can claim industrial design credit at domestic and international trade shows qualifies under this criterion. However, this criterion was written primarily for the visual arts. It has not been established that renting space at a trade exhibition is comparable to a significant, exclusive artistic showcase. Further, an exclusive, artistic exhibition not only

recognizes the artist's work as significant, but serves to enhance the artist's acclaim. In the petitioner's case, as has been stressed by counsel in responding to USCIS' request for evidence, she received no acclaim or even acknowledgement by having these products displayed at trade shows.

On appeal, previous counsel argues that the director's comment that the petitioner had not "established that renting space at a trade exhibition is comparable to a significant, exclusive artistic showcase" mischaracterizes information regarding the CES Innovations Design and Engineering Awards program. Previous counsel asserts that nowhere in the "Rules and Eligibility" material for the 2009 CES Innovations Design and Engineering Awards program "does it state that honorees must rent the space to have their winning products shown." While we agree with counsel that the "Rules and Eligibility" material for the awards program does not expressly state that honorees must "rent" space at the International CES, the "Entry Fees" section on page one of the "Rules and Eligibility" material indicates that all participants in the CES Innovations Design and Engineering Awards program must pay non-refundable entry fees. For example, the "Regular Entry Fee" for exhibitors and non-members of the Consumer Electronics Association at the International CES is \$650. Accordingly, the evidence submitted by the petitioner indicates that all participants paid an entry fee for taking part in the CES Innovations Design and Engineering Awards program.

We further note that awards program honorees that are non-exhibitors at the International CES are precluded from display in the Innovations Showcase. Thus, unless a company whose product was honored has exhibited that product at the International CES, it cannot be displayed in the Innovations Showcase. On page 5, under "Product Entry Rules," the "Rules and Eligibility" material states:

Selected products must also be available for display in the Innovations Showcase at the Sands Expo and Convention Center at the 2009 International CES, held January 8-11, 2009 in Las Vegas, Nevada. *However, non-exhibitor honoree products will not be included for display in the innovations 2009 Design and Engineering Showcase at the International CES.*

[Emphasis added.]

With regard to the director's observation about "renting space," the petitioner has not submitted evidence from the International CES organizers to refute the conclusion that companies whose products were displayed in the Innovation Showcase were required to have paid a separate fee as exhibitors at the International CES. We cannot conclude that selection for an Innovations Showcase which was contingent upon an award program entry fee and/or having paid for space as a trade show exhibitor equates to the exclusive showcases of an artist's work that are contemplated by this regulation for visual artists.

Finally, although selection of Home Automation, Inc.'s Omnistat2 Thermostat as a 2008 CES Innovations Design and Engineering Awards program honoree in November 2007 pre-dates the filing of this petition, the honorees were not displayed at the International CES until January 7-10, 2008. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not

consider Home Automation, Inc.'s Omnistat2 Thermostat display at the International CES in January 2008 in this proceeding.

With regard to the director's observation that the petitioner herself "received no acclaim or even acknowledgement by having these products displayed at trade shows," previous counsel states: "Simply because her name is not known or readily attached to her products, it does not mean that she did not distinguish herself through her work." As discussed, the statute and regulations require "extensive documentation" of "sustained national or international acclaim" for recognized achievements in the field. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Previous counsel does not explain how the petitioner was purportedly able to achieve sustained national or international acclaim if "her name is not known" or recognized throughout the field. Accordingly, we concur with the director's observation.

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

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The petitioner submitted a November 14, 2007 letter from _____ of DSP Electronics, Inc., stating:

DSP Electronics, Inc. design group is a creative product design and innovation consulting firm that specializes in product design development, prototyping, and engineering. DSP was founded in 2003 in San Francisco, California. DSP Electronics Inc. provides full product-development services and design strategy from concept development to production. We offer extensive knowledge and experience of design and development solutions to companies that want to extend their brand's identity into the future technology environments. Our industrial design team specializes in bestowing emotional appeal on physical products, and bringing a new look and feel to customers' products.

* * *

I have been [the petitioner's] direct manager for nearly 3 years; [the petitioner] assumed a leadership role in running the Industrial Design department to improve DSP's project management efficiency and productivity. She is the core asset of DSP Electronics. [The petitioner] develops unique design solutions, has a wealth of knowledge, and conducts comprehensive research and studies on each of our customer projects. She has an exceptional understanding of fundamental design disciplines, including form, color and graphics.

* * *

As if it weren't enough, [the petitioner] is also immensely instrumental in other areas. She is [sic] frequently works with the marketing team resolving product marketing issues, where she puts to a further use her wide knowledge and experience in fields of biomedicine and pharmaceuticals, security, consumer electronics, engineering, ergonomic, and materials. She is consistent in tackling all her assignments with dedication and utmost professionalism, is very well respected by her peers and always strives to improve on her work and knowledge.

There is no evidence showing that DSP Electronics, Inc. has a distinguished reputation. Further, while the letter from [redacted] states that the petitioner assumed a leadership role in running the Industrial Design department, the petitioner has not submitted an organizational chart or other similar evidence showing the petitioner's position in relation to that of the other managers employed by DSP Electronics, Inc. The documentation submitted by the petitioner is not sufficient to demonstrate that her role is leading or critical to the company as a whole.

The petitioner also submitted letters of support from Bloomsbury Publishing, Qoop, Bio-Rad Laboratories, ForteBio, Embarcadero Systems Corporation, Home Automation Inc., El Al Airlines, and Ebril & Ebril discussing the petitioner's work for them on various design projects. The record adequately demonstrates that El Al Airlines and Bloomsbury Publishing have a distinguished reputation. With regard to the remaining companies, aside from their own self-serving marketing material, the record lacks evidence demonstrating that they have distinguished reputations. While the letters of support indicate that the petitioner performed admirably in providing design services to the preceding companies, there is no evidence demonstrating that her role was leading or critical to their overall operations, particularly since she was not a direct employee and her work for them was only temporary or contractual. There is no evidence demonstrating how the petitioner's role differentiated her from the companies' internal engineering and marketing staff, let alone the original inventors of their products and the companies' top management. In this case, the documentation submitted by the petitioner does not establish that she was responsible for the success or standing of the preceding companies to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

The petitioner also submitted company and product information for Vernier Networks and Fabric 7 Systems, but there are no letters of support from these companies discussing the nature of the petitioner's role for them. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the petitioner submits a July 21, 2009 letter from [redacted] stating that the petitioner began teaching courses at Academy of Art University in 2009. The petitioner's appointment as an instructor at Academy of Art University post-dates the filing of the petition. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of*

Katigbak, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's role as an instructor in this proceeding.

In light of the above, the petitioner has not established that she 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 submitted letters of support and other information from Bio-Rad Laboratories, ForteBio, Bar Ilan University, and Home Automation Inc. discussing the marketability and potential of products for which the petitioner provided design services. The petitioner's field, however, is not "in the performing arts." Nevertheless, the petitioner has not submitted documentation showing specific sales figures for her products or that their commercial success was primarily attributable to her design work. Accordingly, the petitioner has not established that she meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

On appeal, previous counsel states that the September 11, 2008 letter from [redacted] and a September 10, 2008 letter from [redacted] should be considered as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). [redacted] states that he "had the opportunity to review [the petitioner's] work and portfolio" and that she "is a uniquely accomplished, highly skilled and very talented professional in Industrial Design." [redacted] states: "What separates [the petitioner] from her peers is that almost all of her designs have been implemented, and either successfully produced and marketed, or are currently in production." The petitioner has not established that her ability to secure employment and to successfully perform the duties assigned by her clients are comparable to achievements and recognition consistent with sustained national or international acclaim at the very top of her field. Nevertheless, the regulatory language at 8 C.F.R. § 204.5(h)(4) precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). For instance, the petitioner does not specifically address why the "high salary" criterion at 8 C.F.R. § 204.5(h)(3)(ix) does not readily apply to her occupation.

In evaluating the reference letters, we note that letters from independent references who were previously aware of the petitioner through her reputation in the field of industrial design are far more persuasive than letters from her local colleagues (such as her current supervisor at the Academy of Art University in San Francisco and the Chair of the San Francisco Chapter of IDSA) responding to a solicitation to review her design portfolio and to provide an opinion based solely on this review.

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 v. USCIS*, 2009 WL 2836453, *5 (9th Cir. 2009). While reference letters may provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim and recognized achievements in the field. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions expressed by one's professional acquaintances.

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

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

ORDER: The appeal is dismissed.