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

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U.S. Citizenship  
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 02 2009  
SRC 07 800 22794

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

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. The director also questioned the petitioner’s intent to continue working in his area of expertise.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, counsel’s characterization of the evidence of record is not persuasive. For example, counsel attempts to rely on the same evidence to meet multiple criteria, including criteria to which the evidence has little relevance. In addition, as will be discussed in detail below, counsel inaccurately characterized search results as pertaining to the petitioner’s book. Moreover, counsel’s reference to the large amount of documentation submitted does not take into account that duplicates of the same documents were submitted as part of multiple exhibits and some evidence submitted has questionable relevance to the petitioner’s purported personal acclaim.<sup>1</sup> We cannot conclude that the statutory requirement for “extensive documentation” is satisfied by mere quantity of paper. Ultimately, while we conclude that the petitioner has demonstrated his leading or critical role for a distinguished organization pursuant to 8 C.F.R. § 204.5(h)(3)(viii), we uphold the director’s conclusion that the petitioner has not demonstrated the necessary sustained national or international acclaim, especially as of 2007 when the petition was filed. Finally, while the requirements regarding future employment plans at 8 C.F.R. § 204.5(h)(5) are minimal, the petitioner’s explanation of his work plans are questionable given the lack of evidence that there is a market in the United States for experts in Colombian accounting practices.

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,

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<sup>1</sup> Our conclusion that some of the evidence, such as multiple documents generated by the petitioner’s accounting firm in the normal course of business, has little relevance to the petitioner’s claim to enjoy national or international acclaim is not meant to suggest that such evidence was not reviewed and considered. All evidence of record has been duly considered.

(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.

On appeal, counsel asserts that *Gülen v. Chertoff*, 2008 WL 2779001 (E.D. Pa. 2008) "sets forth a new analytical framework" for the evaluation of petitions under section 203(b)(1)(A) of the Act. 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.

Regardless, the court's decision in *Gülen* is extremely limited and in no way "sets forth a new analytical framework." Moreover, the limited findings in that decision have little relevance to the issues before us. First, the *Gülen* court addressed whether the alien's occupation in that case fell under one of the fields covered in section 203(b)(1)(A) of the Act.<sup>2</sup> 2008 WL 2779001 at \* 3. In the matter before us, the director did not contest that the alien's occupation falls under "business." The court in *Gülen* also concluded that the reaction of scholars is more indicative of whether an article is scholarly than the nature of the audience at which the article is aimed. *Id.* The director's decision in the matter before us, however, did not contest that the content of the petitioner's articles was

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<sup>2</sup> This holding ultimately decided the case in *Gülen* as the court presumed that the AAO would have found that the alien met the necessary third criterion and would continue in his area of expertise if the AAO had considered the petitioner's occupation to fall within one of the statutory fields of endeavor. 2008 WL 2779001 at \*3-4.

“scholarly.” Counsel’s specific assertions relating to the regulatory criterion at 8 C.F.R. § 204.5(h)(3) will be addressed below.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an accounting educator and consultant. 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. The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>3</sup>

*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 the following certificates:

1. National Recognition of the Profession from the Tenth Colombian Congress of Public Accountants for contribution to the development and enhancement of public accounting in Colombia, dated August 16, 1991;
2. In recognition of “fabulous developments as the president of the Colombia School of Public Accountants, due to his effort on maintaining the peace, union, independency and strength and enhancement of the public accountant in Colombia and Hispanoamerica” from the Venezuelan Federation School of Accountants, dated August 14, 1991;
3. In recognition of the petitioner’s “excellent human, moral, ethical qualities, professional achievements and for his enormously support [sic] to the ex-alumni association of the university from the Ex-Alumni Association of Central University, dated May 1992;
4. In recognition of the petitioner as an “Excellent director of the Iberoamerican Public Accountant Recognizing His outstanding Continental Activity” from the Venezuelan Federation School of Accountants dated July 25, 1990;
5. The Public Accountant Medal recognizing “outstanding professional activity and service given for the Public Accountants Association” from the Federal District School of Public Accountants in Caracas, dated July 25, 1990; and

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<sup>3</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

6. In appreciation for the petitioner's "collaboration during the year 1986" from the Colombia School of Public Accountants, Cundinamarca Section.

The director requested evidence of the significance and scope of the petitioner's awards and the criteria for selection. In response, counsel focuses on the regulatory requirement that a qualifying award be "for excellence" and reiterates the language on the above certificates. The director concluded that the record lacked evidence of the significance of the awards such as media coverage of the awards or announcements of the awardees.

On appeal, counsel no longer asserts that the petitioner meets this criterion. While the above certificates of recognition and appreciation may have been issued in recognition of the petitioner's "excellence," at issue is whether the certificates themselves are nationally or internationally *recognized* awards or prizes as required under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). The language used by the institutions issuing the certificates is not determinative regarding the perception of these certificates in the field at large. We concur with the director that the record lacks evidence that these certificates are recognized within the accounting field in Colombia, Venezuela or internationally as significant awards or prizes for excellence, such as evidence of media coverage in the general or trade media of the award selections.

In light of the above, the petitioner has not demonstrated 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.*

Initially, counsel asserted that the petitioner is or was a member of numerous entities. Several of the "memberships" identified by counsel appear to be positions for an association rather than a membership in that association. Such positions are best considered under the leading or critical criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii), discussed below. Regardless, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

The documents within the exhibit labeled as relevant to this criterion include (1) a "personal reference" from [REDACTED] (2) a self-serving list of "experience" and "other experience," (3) a "certification" of the petitioner's position with a confederation and participation at events from [REDACTED] (4) a certificate for participation at the 1979 Congress of the Confederation of Public Accountants of the Andean Countries and Brazil (CPAACB) in Peru listing the petitioner as an active member, (5) a June 12, 2007 letter confirming the petitioner's membership in the Inter-American Accounting Association (AIC) from the Executive Director of AIC, (6) a self-serving letter from the petitioner purporting to accept the position of "supplement member" on the Board of the Colombia Gastronomic Industry Association (ACODRE), (7) a letter from the Executive Director of ACODRE confirming that the petitioner offered a seminar to ACODRE members, and (8) a

letter from [REDACTED] an accountant in Florida and former Dean of the School of Accounting at the Universidad Externado de Colombia affirming that the petitioner taught at the university, served as president of the Colombian School of Public Accountants, offered “support” to other organizations and was a member of the AIC.

ACODRE does not appear to be an association in the petitioner’s field of accounting. Regardless, the petitioner’s claim to be a member of ACODRE is self-serving. 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 Executive Director of ACODRE merely confirms that the petitioner made a presentation to ACODRE members. In addition, a position on a board of directors is not a “membership” in an association as contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Rather, a board position is best considered as a potential leading or critical role pursuant to 8 C.F.R. § 204.5(h)(3)(viii), discussed below. Thus, of the above eight documents, the only *memberships* in an association in the petitioner’s field documented are the petitioner’s membership in AIC and CPAACB. The director requested evidence of the membership criteria for any association of which the petitioner was a member. In response, counsel asserts: “Assuming a membership role in the organizations mentioned herein requires outstanding achievements as evidenced by the very nature of the authority the organizations have over accounting practice throughout the country and the respective position assumed by” the petitioner. The petitioner submitted materials about the mission and objectives of AIC, but not its membership criteria.

The director concluded that the record contains no evidence of AIC’s membership criteria, such as the association’s bylaws, or evidence that membership is judged by national or international experts in the field. On appeal, counsel does not address this criterion. We concur with the director’s conclusion and analysis. We reiterate that we will consider the petitioner’s position with various organizations below pursuant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii). At issue for this criterion are the membership criteria of the association of which the petitioner is a member. We will not presume the membership criteria from an association’s mission or authority. It is the petitioner’s burden to demonstrate exactly what the association’s membership criteria are. Without evidence, such as AIC’s constitution or bylaws, setting forth the official membership criteria for AIC, we cannot conclude that the petitioner’s membership in AIC is qualifying. The record also lacks such documentation relating to CPAACB.

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.*

The petitioner submitted a 1987 business brief in the “Economica” section of *El Universal* reporting the petitioner’s recent “conversation with the news” as the new president of the National School of Public

Accountants. No author is listed for this business brief, suggesting that it is a press release. The petitioner also submitted evidence that *El Universal* covers Bolivar, Sucre, Cordoba and the San Andrés Islands, maintaining a higher circulation “far above any other newspaper of the coast or national in these zones.” The petitioner also submitted a 1984 news bulletin issued by the Colegio Colombiano de Contadores Publicos. The petitioner provided an uncertified translation of page 3, paragraph 9, reporting that the petitioner and a colleague formed a committee to promote the candidacy of Cartagena to be the main branch of the Third Congress of the Colombian Confederation of Public Accountants.

In response to the director’s request for evidence as to the significance of the above materials, counsel reiterates the information provided about *El Universal*. The petitioner also submits a copy of a 2008 article in *El Tiempo* that is about his firm, Y&Y Business Consultants. No author is listed and the article concludes with contact information for the firm, suggesting the piece is a press release from Y&Y Business Consultants. While the petitioner submitted evidence that the newspaper enjoys a national distribution in six regional editions, the petitioner did not establish that the press release appeared in a nationally circulated portion of the paper. Regardless, this article postdates the filing of the petition and cannot be considered evidence of the petitioner’s eligibility at that time. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l. Comm’r. 1971). The director’s final decision does not address this criterion. On appeal, counsel no longer asserts that the petitioner meets this criterion.

The record contains no evidence that the college news bulletin submitted initially is a professional or major trade journal or other major media. Moreover, the translated paragraph is not about the petitioner. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) specifically requires that evidence submitted to meet this criterion include the author of the material, revealing that the author is relevant information. A business press release reproduced among other business announcements carries less weight than independent journalistic coverage of the petitioner, relating to his work. Moreover, the 1987 business brief in *El Universal* is not evidence of *sustained* acclaim 20 years later in 2007 when the petition was filed. Counsel’s assertion in response to the director’s request for additional evidence that the published materials “range from the years 1987 – 2008” is disingenuous as it implies a consistent stream of media coverage. The record contains a single business brief from 1987 and a single press release from 2008. As stated above, the 2008 press release in *El Tiempo* postdates the filing of the petition and cannot be considered. Consistent with the reasoning in *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Reg’l. Comm’r. 1977); *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg’l. Comm’r. 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm’r. 1998), the petitioner cannot secure a priority date based on evidence that predates the petition by 20 years in the hopes that new material will surface during the proceeding.

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

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

Initially, counsel asserted that the petitioner's "most lasting contribution has been in the codification of Accounting Law in Colombia," specifically, Accounting Law 43. Counsel further asserted that the petitioner's published articles and lectures serve to meet this criterion. Finally, counsel asserted that the petitioner's formation of an accounting firm that has "over one hundred (100) business clients in Colombia" and is one of the "leading accounting firms" serves to meet this criterion. 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.

The petitioner submitted a letter from \_\_\_\_\_ currently marketing vice president of Coris USA and former general manager of Viajes Media S.A. Mr. \_\_\_\_\_ affirms that the petitioner "contributed immensely [sic] to the accounting field, and by collaborating with me, has also contributed to the economic and financial development of the tourism industry." Specifically, \_\_\_\_\_ asserts that from 1990 to 1997, the petitioner provided professional services including fiscal auditing to Viajes Media, a tourism firm.

The petitioner also submitted a letter from \_\_\_\_\_ Global Business Director for Nestle, asserting that, based on the petitioner's skills, talent and creativity, he holds "a very important and superior position within the Accounting Community in Colombia." \_\_\_\_\_ further asserts that the petitioner "contributes to shape up younger Accountants with his knowledge by teaching and offering lectures, both in national and international forums." \_\_\_\_\_ concludes that he admires the petitioner based on the petitioner's contributions to \_\_\_\_\_' own business and affirms "the joy of having him as a friend."

In addition, the petitioner submitted the "personal reference" from \_\_\_\_\_, a Bogota public accountant. \_\_\_\_\_ lists several memberships and positions in accounting associations, some of which are documented in the record. \_\_\_\_\_ also confirms that the petitioner started his own business, Soconta Consultores, later renamed Y&Y Business Consultants which serves over 100 clients in Colombia, Ecuador and Panama. \_\_\_\_\_ asserts that the petitioner participated in accounting events and "led seminars" in several cities in Colombia and other Latin American countries. \_\_\_\_\_ references the petitioner's books and bulletin articles. Finally, \_\_\_\_\_ states that the petitioner "was an indispensable person during the work of promotion, study and creation of the Law 43 that regulates the practice of accounting in Colombia in 1990." \_\_\_\_\_ does not explain how he has first hand knowledge of any of this information. For example, he does not provide his own role in the preparation of Law 43.

The petitioner also submitted a "Certification" from \_\_\_\_\_ of the Colombian Federation of Public Accountant Colleges, asserting that the petitioner was the president of the Cundinamarca Department of the Colombian Public Accountant College from 1985 to 1987 and National President of this college from 1987 through 1991. \_\_\_\_\_ explains that, as part of the

petitioner's duties, "he had a remarkable participation in the process of promotion, redaction, and discussion on a Law Project that became law 43 in 1990, such law reformed the standardized procedure in Public Accounting in Colombia."

Regarding Y&Y Business Consultants, the petitioner submitted the formation documents for the company listing the petitioner as a founder. The petitioner also submitted considerable foreign language documentation regarding this company. While the petitioner failed to submit translations of this documentation, certified as required under 8 C.F.R. § 103.2(b)(3) or otherwise, we do not contest that the company exists and was founded by the petitioner. Without certified translations, however, we cannot determine whether the large amount of foreign language documentation was intended to demonstrate anything further. As the petitioner has not explained the relevance of this documentation, it is not immediately apparent that certified translations, had they been submitted, would shed additional light on the petitioner's eligibility under this criterion or any other criterion. The petitioner also submitted a list of Y&Y Business Consultants' clients.

Further, the petitioner submitted an invitation to attend a 2007 conference. The schedule does not list the petitioner as a speaker. Another invitation lists the petitioner as an "exponent" of the event. In addition, the petitioner submitted uncertified summary translations of letters confirming the petitioner's presentation at a seminar in 2006. The petitioner further submitted certificates listing the petitioner as a delegate, participant or assistant to the 5<sup>th</sup> Congress of Public Accountants of Colombia in 1979, the 6<sup>th</sup> Meeting of Public Accountants in 1978 and similar events as well as certificates listing the petitioner as a participant in several seminars (some of which addressed specific tax or fiscal legislation) through 2007. The listing of credit hours on the seminar participation certificates suggests that they represent continuing professional education. The certificates do not establish that the petitioner was a speaker or instructor at the seminars where he merely participated. The record does not establish the petitioner's duties at the seminars where he is identified as having assisted the seminar. The petitioner did not serve as a delegate at any recent conference. The petitioner was an exhibitor at two "seminars" that appear to have been organized by Y&Y Business Consultants, the petitioner's own business, in 2006. The record contains no evidence regarding the attendance at or other significance of these "seminars" organized by the petitioner through his own firm.

Under the exhibit labeled scholarly articles, the petitioner submitted 2006 and 2007 editions of *Bamboo Empresarial*, printed on Y&Y Business Consultants letterhead. An unattributed document that provides summary translations of these bulletins asserts that the *Bamboo Empresarial* is a "publication" issued by Y&Y Business Consultants to "clients and people interested of [sic] financial and accounting topics." The same exhibit also contains a partial translation of commentary on Senate Law Project 211 authored by the petitioner in 2007 and issued by Y&Y Business Consultants. The petitioner also submitted the book *Iniciación a Las NIIF* (Introduction to the International Financial Standards). The subtitle of the book is "Fundamentos para aplicación de las Normas Internacionales de Información Financiera." The petitioner is listed as the author of one article in this publication and wrote the introduction describing Y&Y Business Consultants' objective in publishing the book. The book begins with the mission and vision of Y&Y Business Consultants. The book is identified as the 2006 first

edition with 500 copies. The petitioner failed to submit any evidence regarding how many copies were actually sold. The petitioner also submitted his editorials contained in the news bulletin of the Colombia School of Public Accountants from 1986 and 1987. While a summary translation purports to summarize two 1987 articles in this bulletin by the petitioner, the foreign language documents do not appear to credit the petitioner with these articles. Rather, they are either credited to someone else or uncredited.

In response to the director's request for additional evidence, counsel asserts that the petitioner meets this criterion based on his service as a "major contributor to the codification of Accounting Law in Colombia," his founding and restructuring of Y&Y Business Consultants, his "countless" publications that "serve as authorities in the accounting practice," his lectures "attended by hundreds of practicing professionals" and his awards, discussed above. Counsel discusses the petitioner's role in the codification of Law 43 at length, focuses on the over 100 clients of Y&Y Business Consultants and finally affirms the significance of the petitioner's books, "articles" and presentations. As stated above, however, 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. The petitioner submitted evidence of two other books authored by the petitioner and published through Y&Y Business Consultants, one of which postdates the filing of the petition. The petitioner also submitted evidence that the petitioner's book *Aggregate Value of the Fiscal Review* is available at the Icesi University Library, and the results for a search for "iniciacion a las niif" at [www.google.com](http://www.google.com). The results from this search, however, reveal the existence of a book edited by [REDACTED] ISBN [REDACTED], with the title *Dossier Iniciación a Las NIIF* and the subtitle "Normas Internacionales de Información Financiera." The petitioner's book entitled *Iniciación a Las NIIF* lists no editor and the ISBN is [REDACTED]. The petitioner's book also has a different subtitle. The petitioner has not demonstrated that any of the search results relate to his book rather than the one edited by [REDACTED].

The director concluded that the petitioner had not established that he had made contributions of major significance, noting both that the petitioner had not submitted reference letters explaining the significance of his contributions and that reference letters alone cannot support a claim of eligibility for the classification sought.

On appeal, counsel notes that *Gülen*, 2008 WL 2779001 at \* 3, found that "a work becomes scholarly by virtue of its author and its subject matter, not its intended audience." Counsel then asserts that this statement should be applied "by way of analogy" to the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), but does not clearly explain how this analogy would impact our analysis of this criterion. Unlike the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi), under consideration by the *Gülen* court, the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) specifically states that the scholarly or business contributions must be both original and 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 accounting, it can be presumed that the impact of the contribution would be demonstrable in the field. Counsel then reiterates previous

assertions about the petitioner's work on Law 43, founding of his own firm, books, "articles" and presentations.

At the outset, we note that counsel is attempting to merge separate criteria under this criterion. Specifically, awards and prizes have their own criterion at 8 C.F.R. § 204.5(h)(3)(i). While we will also consider the evidence under this criterion where appropriate, we will not presume that awards and prizes insufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(i) must meet this criterion. Similarly, we will not presume that scholarly articles and comparable evidence, such as oral presentations at major conferences and books, must meet this criterion in addition to the criterion at 8 C.F.R. § 204.5(h)(3)(vi), which explicitly addresses scholarly articles. Finally, we will not presume that evidence that the alien has performed a leading or critical role for a distinguished entity, such as founding a distinguished accounting firm, must meet this separate criterion at 8 C.F.R. § 204.5(h)(3)(v) in addition to the criterion at 8 C.F.R. § 204.5(h)(3)(viii). To hold otherwise would negate the statutory requirement for extensive evidence (that is, presumably, not duplicative) and the regulatory requirement that an alien meet at least three separate criteria.

#### Law 43

We do not contest that a primary role in the development of a new statutory or regulatory scheme overseeing a profession could constitute a contribution of major significance. The record, however, does not sufficiently support counsel's assertion that the petitioner played such a role or that Law 43 was a major revision of Colombian accounting law. While the petitioner has submitted certificates confirming his service as a delegate to various accounting congresses, the record does not establish that these congresses were devoted to developing Law 43. Similarly, the certificates of appreciation submitted as awards make no mention of Law 43. Some of the references who attest to the petitioner's role with this project do not explain their own first hand knowledge of this project. The petitioner did submit a "certification" from [REDACTED] affirming that the petitioner "had outstanding participation" in the promotion process, writing and discussion of the law project that became Law 43, codifying the norms in Colombian accounting law. [REDACTED] does not indicate how many others participated in this project or compare the petitioner's role with the others involved. Without more detail about the petitioner's role in this project from individuals with first hand knowledge of this project, possibly from the legislators who ultimately enacted the law, we cannot conclude that the petitioner's participation with Law 43 can serve to meet this criterion. Moreover, we cannot ignore that [REDACTED] suggests that Law 43 merely codified existing norms. If true, we must question whether Law 43 is even original. Even if we did conclude that the petitioner had established his role with Law 43 and the originality and significance of its impact on accounting in Colombia, the law was passed in 1990, 17 years before the petition was filed. Thus, this project is not evidence of the petitioner's sustained acclaim in 2007.

#### Y&Y Business Consultants

We will consider the petitioner's founding role for this company and its reputation below pursuant to 8 C.F.R. § 204.5(h)(3)(viii). At issue for this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(v), is whether the petitioner's founding and running of a large accounting firm is evidence of an original contribution of major significance to Colombian accounting. First, we are not persuaded that founding a large accounting firm is original. The record contains no evidence that the petitioner's firm is the only Colombian firm with over 100 clients. Second, we are not persuaded that merely documenting over 100 clients creates a presumption that the founder of the accounting firm has made a contribution of major significance such that a demonstrable impact on the accounting field is apparent. Thus, while we do not question that the petitioner's role with this firm is relevant evidence for this classification and will be considered below pursuant to 8 C.F.R. § 204.5(h)(3)(viii), we are not persuaded that this role can serve to meet this separate criterion, set forth at 8 C.F.R. § 204.5(h)(3)(v).

#### Book, Articles and Seminar Participation

First, as previously stated, the regulatory criteria include a separate criterion at 8 C.F.R. § 204.5(h)(3)(vi) relating to scholarly articles. Thus, such evidence cannot be considered as presumptive evidence to meet this entirely separate criterion. As also stated above, counsel attempts to apply the reasoning in *Gülen*, 2008 WL 2779001 at \* 3 to this criterion. Given the vast difference in wording between the criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (vi), we are not persuaded that *Gülen's* reasoning relating to 8 C.F.R. § 204.5(h)(3)(vi) is relevant to 8 C.F.R. § 204.5(h)(3)(v). Nevertheless, the *Gülen* court noted that the petitioner in that case had submitted evidence that should have been persuasive, such as evidence that the petitioner's writings were prominent on university course syllabi and that there were academic studies of the petitioner's philosophy. The record in this case contains no such evidence. The fact that the petitioner's book is available at a single university is not similar to appearing on the course syllabi at several universities. As stated above, the petitioner has established that the results for the phrase in his book title, which appears in another book, reflect the influence of the petitioner's own book. The number of copies printed is not as persuasive as evidence of how many books were actually sold. The record contains no evidence that the petitioner's articles appeared in widely circulated prestigious journals as opposed to the news letter issued by his own company and, well before the petition was filed, in a school newsletter. As noted above, the certificates of participation do not suggest that the petitioner was a presenter or instructor at those seminars. The record also lacks evidence that the petitioner's assistance referenced on other certificates demonstrates that he served as an instructor at those seminars. The petitioner has not demonstrated the attendance of the "seminars" organized by his own company.

In light of the above, the petitioner has not demonstrated that his books, "articles" and seminar presentations, if any, serve to meet this criterion.

#### Summary

The record lacks evidence supporting counsel's assessment of the significance of the petitioner's career. Without evidence that documents the petitioner's role in the development of Law 43, the law's impact or the impact of the petitioner's firm (other than the number of clients), books, "articles" or seminars, we cannot conclude that the petitioner meets this criterion.

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

The director stated at the outset that the petitioner's articles had not garnered national or international attention, ultimately concluding that the petitioner had not demonstrated that the articles authored by the petitioner were published in professional or major trade publications or other major media. On appeal, counsel focuses only on the director's initial observation rather than his concern that the articles had not appeared in professional or major trade publications or other major media.

We concur with the director that Y&Y Business Consultant's own newsletter prepared primarily for its clients does not constitute a professional or major trade *publication* or other major media. While the letterhead on which the newsletter is issued lists an ISSN number, the record lacks evidence that this number represents a true professional or major trade publication or other major media.<sup>4</sup> The record also lacks evidence that the school newsletter for which the petitioner composed editorials is a professional or major trade journal or other major media. Moreover, these editorials predate the filing of the petition by several years.

We acknowledge that the petitioner had coauthored two books as of the filing date. Once again, these books are self-published by the petitioner's own company. Thus, the petitioner must demonstrate that they are consistent with or indicative of national or international acclaim if that statutory standard is to have any meaning. As stated above, the search results for the phrase in the petitioner's book title do not appear to relate to the petitioner's own book rather than the phrase in general or a book containing the same phrase. Thus, the petitioner has not established that his authorship of this self-published book is indicative of or consistent with national or international acclaim.

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

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

Counsel does not contest the director's conclusion that this criterion relates to visual artists and we concur with the director. Thus, we will not consider the petitioner's claims to have delivered presentations at accounting seminars under this criterion.

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<sup>4</sup> We were unable to confirm the existence of the ISSN number on an Internet search cite that allows for a search of ISSN numbers. See [www.oclc.org/firstsearch/periodicals](http://www.oclc.org/firstsearch/periodicals), accessed on August 10, 2009 and incorporated into the record of proceedings.

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

The petitioner submitted the evidence discussed above under the membership criterion set forth at 8 C.F.R. § 204.5(h)(3)(ii). The director concluded that letters could not serve to meet this criterion and that the record did not establish the nature of the petitioner's role in the Law 43 project. On appeal, counsel reiterates the evidence submitted.

We have already considered the petitioner's alleged contributions and memberships above. At issue for this criterion are the nature of the role the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the nature of the role itself must be indicative of or consistent with national or international acclaim. We are persuaded that founding and running Y&Y Business Consultants is a leading or critical role for that company. While the number of clients, in and of itself, does not create a presumption of the company's distinguished reputation, we are satisfied from the record as a whole that the company does enjoy such a reputation. Moreover, the petitioner previously served as president of the Colombian School of Public Accountants, another leading role for an entity with a distinguished reputation. Thus, we are satisfied that the petitioner meets this single criterion.

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

Review of the record, however, does not establish that the petitioner has distinguished himself as an accountant 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 an accountant, 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.

Finally, the regulation at 8 C.F.R. § 204.5(h)(5) provides:

*No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

In response to the director's request for additional evidence, the petitioner submitted a statement asserting that his publications and lectures serve as an invaluable resource and listing the types of services he would be able to provide in the U.S., including counseling on international tax matters. The

director concluded that the petitioner's statement was vague. On appeal, counsel notes that *Gülen*, 2008 WL 2779001 at \* 4, stresses that no job offer is required. While we concur that the statute and regulation make clear that no job offer is required, it does not follow that USCIS may not examine the alien's statement for credibility. We cannot ignore that the record lacks evidence that accounting laws are internationally consistent. We find that the petitioner's plans in this matter would be far more credible if he had provided documentary evidence, such as job postings, establishing that there is a market in the United States for experts in Colombian accounting law.

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.