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



**U.S. Citizenship
and Immigration
Services**

B2



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 12 2010
SRC 08 098 54445

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
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

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

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

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry 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 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on February 1, 2008 seeks to classify the beneficiary as an alien with extraordinary ability as a professor in yoga, ayurveda and naturopathy.

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 the beneficiary 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).

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

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

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

As aforementioned, each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply. Thus, the beneficiary's eligibility will be evaluated under the regulatory criteria relating to the immigrant classification as claimed by the petitioner. With regard to these regulatory criteria, counsel for the petitioner specifically noted in his appeal brief that:

“the ten criteria are [do] not readily apply to [REDACTED] as the fields of yoga, ayurveda and naturopathy are not widely known in the United States. These disciplines are widely known in India, and it is readily apparent that [REDACTED] is extremely acclaimed in India based on his outstanding expertise in these fields.”

Counsel's contention is not persuasive and his claims are unsupported by documentary evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 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). While counsel attempts to limit the beneficiary's field to “yoga, ayurveda and naturopathy, we note that the occupation claimed on the Form I-140 is “professor and director.” As counsel has provided no persuasive argument as to why the criteria are not applicable to beneficiary's stated occupation, we will review his eligibility as it pertains to the relevant regulatory criteria set forth in 8 C.F.R. § 204.5(h)(3).

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

To fulfill this criterion, the petitioner submitted the beneficiary's credentials including his academic diplomas and his attendance at various trainings. The petitioner also provided certificates of appreciation such as one for the beneficiary's services as a yoga instructor, which was dated December 2, 1986, and one for his participation as a speaker at a conference called “How to Solve Chronic Diseases” on December 9-10, 2000. The petitioner also submitted a schedule indicating that the beneficiary was a speaker at another conference in September of 1994, “Arogya Health Mela.” An appointment letter, dated March 20, 1997, from the [REDACTED] which offered the beneficiary the post of “Yoga Teacher-cum-Performer” at the [REDACTED] in Jakarta was provided as well. Additional evidence confirming the beneficiary's participation at various conferences was also submitted.

In his decision, the director found that the petitioner did not fulfill this criterion because there was no evidence presented “other than academic and conference participation certificates.” Additionally, the director held that “awards based on educational achievement or other traits deemed praiseworthy by the awarding organization do not constitute nationally or internationally recognized ‘awards for excellence in the field of endeavor.’” On appeal, no new evidence was provided for this criterion. We concur with the director's finding that there is no evidence showing that the beneficiary has received any nationally or internationally recognized prizes for excellence in his field.

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the beneficiary's awards be nationally or internationally *recognized* in the field of endeavor and it is the petitioner's burden to establish every element of this criterion. The record lacks general information indicating that the beneficiary received any awards or prizes. In addition, even if we were to consider the educational achievements and certificates of appreciation as awards or prizes, such evidence was not supported with any documentation illustrating the overall stature and prestige

associated with receiving the awards or some other evidence consistent with national or international acclaim at the very top of the field. Moreover, recognition for participation and/or speaking at conferences does not constitute prizes or awards that are nationally or internationally recognized. Further, the evidence provided did not establish that the beneficiary's accomplishments were "indicative of national or international acclaim."

Moreover, most of the evidence submitted for this criterion was dated over a decade prior to the filing of this application. As such, the sustained acclaim required under 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) by this highly restrictive classification cannot be demonstrated.

In light of the above, the petitioner has not established that the beneficiary 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 criteria, the petitioner must show that the association requires outstanding achievement as an essential condition for the beneficiary's 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 provided a certificate indicating that the beneficiary had a life membership in [REDACTED] which was dated October 13, 2000. The petitioner also submitted minutes from two meetings of the [REDACTED] which indicated that the beneficiary was a member in attendance at these meetings in 2006. A biography of the beneficiary written in a PIYAS newsletter was also included as evidence, which described the beneficiary as a chief mentor for the organization.

In his decision, the director found that the petitioner did not meet this criterion because he failed to establish the beneficiary's membership in any of these organizations. On appeal, no new evidence regarding this criterion was submitted. We agree that the petitioner failed to prove the beneficiary fulfilled this criterion, finding that the record lacks evidence (such as membership bylaws or official admission requirements) showing that any of the groups require outstanding achievements of its members, as judged by recognized national or international experts in the beneficiary's field or an allied one. None of the evidence provided states the requirements of membership or states what types of outstanding achievements are necessary for membership in these organizations. Moreover, no evidence has been submitted which demonstrated that membership in these organizations was judged by recognized national or international experts in the field.

As such, the petitioner has not established that the beneficiary 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 beneficiary 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 or broadcast, or from a publication printed in a language that the vast majority of the country's population cannot comprehend. 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.¹

The petitioner provided two biographies of the beneficiary, both published by the petitioner, [REDACTED] on its website and published on [REDACTED]. However, neither of these biographies lists an author. The petitioner also submitted an article entitled, "Top investigative agency personnel learning yoga for mental relief," dated September 17, without a year and published by [REDACTED]. This article quoted the beneficiary as stating that yoga helps relieve stress. In addition, the petitioner provided citations to an article the beneficiary co-authored in 1992 entitled, [REDACTED] and published by the [REDACTED]. Such publication appears to be a newsletter but it is not clear. An article published in a newsletter called *Tattva* entitled, "Pancha is five in Samskritam, Amritam is nectar," was also submitted and only briefly quoted the beneficiary.

The director, in his decision, found that the petitioner failed to satisfy this criterion for several reasons. First, this criterion specifically requires the evidence to include a title, date and author. The biographies provided by the petitioner failed to include an author. Likewise, the article submitted entitled "Top investigative agency personnel learning yoga for mental relief" contained an incomplete date. Additionally, the plain language of this regulatory criterion requires that the published material be "about the alien." However, the following articles: "Top investigative agency personnel learning yoga for mental relief," "[REDACTED] is five in Samskritam, Amritam is nectar," and "Philosophy of yoga for the modern age," were not written primarily about the beneficiary. If mentioned at all, the articles only briefly quoted him. Moreover, two of the articles are mainly just citations to the beneficiary. Citations do not qualify as published materials about an alien.

The record also lacks evidence (such as circulation statistics) showing that any of the preceding articles submitted by the petitioner were printed in professional or major trade publications or some

¹ 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.

other form of major media. Many of the articles appear in newsletters or regional papers rather than nationally or internationally circulated publications. Regional coverage or coverage in a publication read by only a small ethnic segment of a country's total population is not evidence of national or international acclaim. In his decision, the director indicated this deficiency in the evidence provided. Nonetheless, no further evidence on appeal was submitted to support that any of these articles were published in a professional or major trade publication or any other major media.

On appeal, the petitioner provided two additional articles published in [REDACTED] both written by the beneficiary. One article was entitled, [REDACTED] – its origins and journey to America,” dated May 16-22, 2008 and the other article was called, “Philosophy of yoga for the modern age,” dated May 23, 2008. The first article is about the beneficiary and his life, while the second article is about yoga generally. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about” the petitioner relating to her work. The regulations contain a separate criterion for articles written by the petitioner and as such, these additional articles will be discussed under that criterion.

In light of the above, the petitioner has not established that the beneficiary 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.” Evidence of the beneficiary's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). For example, judging a national competition for yoga professionals is of far greater probative value than judging a local competition for youth or novices.

The petitioner provided a letter, dated February 4, 1991, from the [REDACTED] [REDACTED] which indicated that the beneficiary would be acting as a judge in a yoga competition on May 2, 1991. No information regarding the competition or evidence that he actually did act as a judge was provided. A letter, dated January 31, 1986, from [REDACTED] was also submitted and indicated that the beneficiary would be acting as a judge for a yoga competition for the [REDACTED] [REDACTED] on February 4, 1986. The petitioner submitted another letter, dated November 18, 1992, from the [REDACTED] [REDACTED] which indicated that the beneficiary would be judging a competition on November 19, 1992 at the government girls senior secondary school in New Delhi.

The director's decision held that the petitioner failed to satisfy this requirement. The director found that the record includes only proof that the beneficiary judged some low level yoga competitions, which is insufficient to fulfill this criterion. We concur with this determination. Of the three competitions the beneficiary was requested to act as judge, two appear to be regional youth competitions, and not national competitions. No details regarding the competition judged by the beneficiary on May 2, 1991 were provided. Additionally, the evidence provided failed to demonstrate the actual competitive event judged by the petitioner or the nature of the competitions.

Moreover, the record lacks evidence establishing the level of prestige associated with judging the competitions in the record, the requirements necessary to become a judge in those competitions, and the names of the competitors he evaluated and/or their levels of expertise or other evidence of his judging that is indicative of this highly restrictive classification.

Lastly, the competitions purportedly judged by the beneficiary all occurred in the late 1980's and early 1990's, which is well over a decade prior to the filing of this application. As such, the sustained acclaim required under 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) by this highly restrictive classification cannot be demonstrated.

In light of the above, the petitioner has not established that the beneficiary 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 provided a list of the courses the beneficiary teaches, his resume and biography. The petitioner also submitted a list of the beneficiary's written works. In addition, the petitioner provided invitations to be and/or proof of participation as a speaker at various conferences. However, no information regarding the conferences was provided. On appeal, the petitioner submitted several letters of recommendation.

In his decision, the director found that the petitioner failed to meet this criterion. Specifically, he explained that the beneficiary's published articles reflect some useful contribution to "the general pool of knowledge," but that they do not constitute a major contribution to his field. We agree that the publications submitted by the petitioner are not sufficient to fulfill this category. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for articles about the beneficiary and articles published by the beneficiary, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. *See also Kazarian v. USCIS*, 580 F.3d 1030 (9th Cir. 2009). (publications and presentations are insufficient absent evidence that they constitute contributions of major significance).

Likewise, with regard to the beneficiary's participation at conferences, the petitioner failed to provide evidence for any of these engagements regarding the type of audience who attended these presentations, the number of attendees, or the selection criteria for the presenters. As such, the evidence does not demonstrate that the beneficiary's participation in these conferences conveyed him national or international acclaim or that his participation in such events made a contribution of major significance to his field.

The letters of recommendation discuss the beneficiary's extensive knowledge in yoga, ayurveda, and naturopathy, his training, and examples of the work he has performed. However, they fail to demonstrate that he has made original contributions of major significance in his field. The letters include no substantive discussion as to which of the beneficiary's specific achievements rise to the level of original contributions of major significance in the field. 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's talent is admired by those offering letters of support, there is no evidence demonstrating that his work has had major significance in the field. For example, the record does not indicate the extent of the beneficiary's influence on others in his field nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation and other evidence submitted by the petitioner are not sufficient to meet this criterion.

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

The petitioner submitted a chronology of the beneficiary's professional and academic pursuits, as well as a list of his research papers. Prior to filing, most of his "publications" appear to be written in conjunction with conferences and written in the early 1990s. The beneficiary's most current work on the list appears to be from 1997. The list of the beneficiary's works fails to consistently state the publisher. In addition, the petitioner provided a web printout indicating that the beneficiary authored a book entitled [REDACTED] published by [REDACTED] on an unknown date. One page of a report the beneficiary co-authored entitled [REDACTED] was also submitted. Such report also contained no date and no information regarding where it was published. The petitioner also submitted an article entitled [REDACTED] which appears to have been published by the [REDACTED]. The petitioner also failed to provide a date for this article as well.

The director found that the petitioner failed to fulfill this criterion. Among several issues the director had with the evidence submitted for this criteria, he found that the evidence did "not indicate that the petitioner's published articles have garnered national or international attention, for example by being widely cited by independent researchers." We concur with the director's decision with respect to this criterion. While we acknowledge that we must avoid requiring acclaim within a given

criterion, it is not a circular approach to require some evidence of the community's reaction to the petitioner's published articles in a field where publication is expected of those merely completing training in the field. *Kazarian* at 1030.

In addition to failing to sufficiently demonstrate that the beneficiary's articles received national or international attention consistent with this highly restrictive classification, the petitioner also failed to submit evidence which demonstrates that any of the articles were published in professional or major trade publications or other major media. The mere fact that the beneficiary's articles were published is not enough to satisfy this criterion. Moreover, in some cases as indicated above, it is not even clear where and if the beneficiary's works were published and by whom.

On appeal, the petitioner provided two additional articles dated May 16-22, 2008 and May 23, 2008, respectively. However, since these articles were published after the date the petition was filed, they will not be considered in this proceeding. Eligibility must be established 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). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts.

As such, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted a [REDACTED] newsletter, in which the beneficiary is described as the chief mentor, teacher and spiritual counselor for [REDACTED]. The newsletter discusses the beneficiary's experiences and the courses that he teaches. However the newsletter does not specifically indicate how the beneficiary has performed a leading or critical role for the organization.

In order to establish that the beneficiary performed in a leading or critical role for an organization or establishment with a distinguished reputation, he must establish the nature of the beneficiary's role within the organization or establishment and its reputation. The position should also 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 failed to show that the beneficiary's position with PIYAS or [REDACTED] with was commensurate with a leading or critical role. Without further supporting documentation, the petitioner has not sufficiently established that the beneficiary performed a leading or critical role based merely on the titles claimed.

The evidence further lacks proof that [REDACTED] has a "distinguished reputation." For example, no evidence was included regarding the organizations' background, standing in the community or world, or any other aspect of its reputations.

As such, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted a bank statement of the petitioner's savings, which in no way relates to the beneficiary's salary. In addition, the petitioner's representative described the beneficiary's salary as "not extremely high." A letter from [REDACTED] dated June 11, 2008, explained that the beneficiary "belonged to the tradition where service comes first and remuneration comes last." Another letter from [REDACTED] also mentions the beneficiary's monetary compensation. In his letter, [REDACTED] stated that the beneficiary was offered "Rs 40,000 per month for his services which he accepted." [REDACTED] indicated that the beneficiary's salary in Jakarta, Indonesia increased from "Rs 12,000 p.m. to Rs 1,000,000 per month" during his four year assignment.

The petitioner failed to provide any evidence from a reliable, independent source, such as tax returns or income statements. Moreover, the plain language of this regulatory criterion requires the petitioner to submit evidence that the beneficiary has commanded a high salary "in relation to others in the field." However, the petitioner did not provide any evidence regarding the beneficiary's colleagues in the same field. Therefore, the petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field.

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

On appeal, counsel argues that the reference letters submitted on the petitioner's behalf are comparable evidence of the beneficiary's extraordinary ability as an expert in yoga, ayurveda and naturopathy. 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." The regulatory language precludes the consideration of comparable evidence in this case, 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, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. While reference letters can 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. 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 of one's professional acquaintances.

In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.