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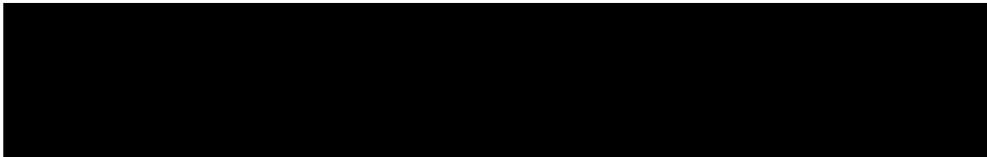
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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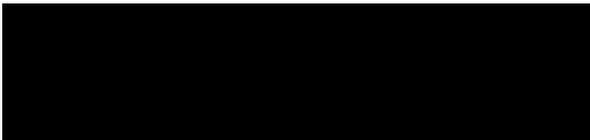
Petitioner:



Beneficiary:

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, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a wholly owned subsidiary of the Raytheon Company, provides scientific and professional services for defense and commercial customers worldwide. It seeks to classify the beneficiary 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 business. The director determined the petitioner had not established that the beneficiary has earned 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 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). The director also found that the petitioner had not demonstrated the beneficiary's eligibility through the submission of comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

On appeal, counsel argues that the petitioner submitted comparable evidence of the beneficiary's extraordinary ability in the form of reference letters 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 in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3):

Initial evidence: 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. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The regulation at 8 C.F.R. § 204.5(h)(4) provides: “If the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.”

This petition, filed on October 17, 2007, seeks to classify the beneficiary as an alien with “extraordinary ability in business as it relates to the S1000D standard as part of military logistic support as a *Senior Technical Support Engineer II*.” [REDACTED] Technical Development, Raytheon Technical Service Company (RTSC), LLC, states:

As part of logistics support of major Raytheon programs, RTSC produces, markets and supports a number of software tools that store and process information relating to the design and through life support of military and commercial hardware. This overarching processes [sic] is termed *Integrated Logistic Support*. The software tools support international business processes that are published as either national or international standards. The use of standards to define the business processes allows common data to be processed by many different companies around the globe. This allows reuse of data reducing costs to the manufacturers and the military or commercial end-users.

\* \* \*

Published standards used by *Integrated Logistics Support* communities include the Aerospace and Defense Industries (ASD) S1000D specification.

\* \* \*

ASD S1000D is a comprehensive technical publications specification covering all aspects of creating, maintaining and publishing a technical information dataset or manual. Web technology and graphics standards are included as well as a capability to integrate with other standards based processes used in project procurement . . . .

\* \* \*

The S1000D specification for technical publications utilizes a common source database, and has been produced to establish standards for the documentation of any civil or military vehicle or equipment. It is based on international standards such as SGML/XML and COM for production and use of electronic documentation.

\* \* \*

The S1000D specification describes how technical manual data is coded in eXtensible Markup Language (XML) format and held in a database. The data can be linked and exchanged with other databases such as the military Logistics Support Analysis Record (LSAR). Raytheon has developed an LSAR from which technical documentation data can be

automatically populated with maintenance instructions, parts, tools, manpower requirements, etc., as they are identified by maintenance task analysis.

describes the beneficiary's job duties as follows:

As *Senior Technical Support Engineer II*, the Beneficiary will perform the following job duties: He will provide training both locally and on user premises on the various Raytheon software products including *iLog (Eagle, Aspect and Acquired)* and MMIS (Performance Based Logistics management tool). Training will include the *iLog* process of generating Data Modules from a Logistics Support Analysis (*LSA*) database and the management of the Data Module Requirements Lists (*DMRLs*). He will further provide Management Consultancy and training services to contractors on the implementation of ASD [Aerospace and Dense Industries] S1000D to meet their contractual requirements. This will include advice on contracting for S1000D deliverables, generation of program specific business rules, guidance on S1000D implementation and the generation of the *DMRLs*. The Beneficiary will also conduct in house training to Raytheon on the contracting for ASD S1000D and the implementation of the specification in response to customers placing requests for proposals or contracts with Raytheon or its partners and sub-contractors. He now represents Raytheon on the ASD S1000D Implementation Guidance and Business Rules Working Group, the S1000D Electronic Publications Working Group (*EPWG*) and the United States S1000D Specification Implementation Group (*USSIG*) in support of the ongoing development of the specification by the Technical Publications Specification Management Group (*TPSMG*). He will assist with marketing activities for Raytheon Technical Services products and services at national and international events. He will further produce user documentation for the Raytheon software products generated to the requirements of ASD S1000D and provide other assistance on the use of the Raytheon products and S1000D implementation to existing and future customers.

In a declaration accompanying the petition, the beneficiary states: "My 27 years service with the UK [United Kingdom] military as an avionics engineer and logistician gives me a tremendous insight into the requirements of the end user, maintainers and operators as it relates to the S1000D standard."

In response to the director's request for evidence and again on appeal, the petitioner argues that the regulatory criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the beneficiary's occupation. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, and the description of the beneficiary's duties provided by the petitioner, the beneficiary's occupation is a technical support *engineer*. Further, the declaration from the beneficiary cites his past experience as an avionics *engineer* and logistician. Moreover, according to [REDACTED] and the other witnesses of record, S1000D is a "specification for technical publications" rather than a distinct occupation or field of endeavor. While the beneficiary possesses knowledge of the S1000D standard as part of integrated or military logistic support, the evidence of record clearly identifies his present occupation as a technical support engineer.

In a declaration submitted in response to the director's request for evidence, [REDACTED] states:

The field of the Beneficiary's extraordinary ability in business relates to the S1000D standard as part of integrated logistic support. In this field, there are no national or international awards, nor are there published materials in scholarly publications about the Beneficiary or any top level military-related person in the field for that matter, nor is there participation in judging the work of others in the field, nor is there original scientific, or scholarly published contributions, nor is there display of the alien's work at artistic exhibitions or showcases, nor is there a high salary, nor evidence of the Beneficiary's commercial success to show. The United States Department of Defense, the Ministry of Defence of the United Kingdom, and United States military contractors would prefer to keep what specific information that may relate to any of the foregoing categories - even if they could apply - at the very least, proprietary.

We at Raytheon are a United States military defense contractor. Our job is to supply equipment and systems to assist the United States Department of Defense protect and defend the United States of America. As such, we assert that the 10 criteria do not readily apply to the Beneficiary's occupation in his work with the S1000D standard, and we urge USCIS to accept the submitted, additional comparable evidence to establish the Beneficiary's eligibility.

[REDACTED] attempts to narrowly define the beneficiary's field as "the S1000D standard as part of integrated logistic support." While engineering or integrated logistics support may constitute fields of endeavor in science or business, the record does not establish that the S1000D standard constitutes a distinct field or an occupation. Rather, S1000D is a standard "specification for technical publications" pertaining to documentation for vehicles and equipment. The self-serving nature of [REDACTED] comments is not sufficient to establish that the ten criteria at 8 C.F.R. § 204.5(h)(3) "do not readily apply to the beneficiary's occupation." 8 C.F.R. § 204.5(h)(4). [REDACTED] does not cite to any evidence or independent source upon which his opinions are based. Further, [REDACTED] comments do not specifically address why the "high salary" criterion at 8 C.F.R. § 204.5(h)(3)(ix) or the "leading or critical role" criterion at 8 C.F.R. § 204.5(h)(3)(viii) do not apply to the beneficiary's work in the aerospace and defense industries. For instance, [REDACTED] contention that a high salary is not applicable to engineers or management consultants employed by a corporation such as Raytheon is not persuasive.

[REDACTED] then raises the issue of the proprietary nature of the defense contracting business. We note, however, 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). [REDACTED] letter does not explain how the beneficiary was purportedly able to achieve sustained national or international acclaim if the documentation regarding his achievements consisted of closely held proprietary and confidential material. We note that the burden of proof is on the petitioner to submit evidence to support its claims (rather than relying solely on the submission of reference letters from individuals selected by the petitioner and the beneficiary). Section 291 of the Act provides:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant; immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be.

The law goes on to assert that the evidence must establish eligibility "to the satisfaction" of the adjudicating officer. This burden is confirmed in *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965) and *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner cannot avoid this burden simply by asserting that certain evidence of achievements may exist, but cannot be obtained or submitted "because military contractors would prefer to keep what specific information that may relate to any of the foregoing categories - even if they could apply - at the very least, proprietary." If knowledge of the beneficiary's achievements is deliberately restricted, then by definition sustained national or international acclaim is virtually impossible.

On appeal, the petitioner submits a May 5, 2009 letter from [REDACTED] U.S. Department of the Navy, and Department of Defense Chair, U.S. S1000D Specification Management Group, stating:

S1000D is a complex and extensive international specification for producing and managing technical publications utilizing eXtensible Markup Language (XML) databases. It was originally developed in Europe and was accepted by the Governments of many countries in western Europe. Since 2007 the specification is jointly owned by the U.S. Aerospace Industries Association and the Aerospace and Defense Industries Association of Europe. [The beneficiary] spent a 7 year assignment with a U.S. defense contractor representing the United Kingdom Ministry of Defense. He provided expert advice and assistance with the development of an S1000D solution to produce the operations and maintenance manuals for a new airborne surveillance and recognizance system now with the UK armed forces.

\* \* \*

The Department of Defense does not offer awards to those at the very top of the S1000D specification. [The beneficiary's] involvement with its advancement and maintenance is reflected in changes to the published specification through the activities of the working groups on which he sits, and not published in scholarly journals. Nor does the field involve original research; rather S1000D is the implementation of an engineering specification to produce highly complex technical data. It is the nature of the field that it does not lend itself to these categorical types of evidence.

The letter from [REDACTED] also attempts to narrow the beneficiary's occupation and only addresses the inapplicability of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (vi). His letter does not address the inapplicability of any of the remaining criteria such as "high salary" or "leading or

critical role.” Further, [REDACTED] does not cite to any evidence or independent source upon which his opinions are based. In fact, the information contained in his letter only provides further support for the director’s finding that other regulatory criteria are applicable to the beneficiary’s occupation. For example, [REDACTED] states that S1000D was originally developed in Europe and was accepted for widespread use by various governments. Thus, the conception and original development of the S1000D specification by others is a solid example of an original business-related contribution of major significance in the beneficiary’s field as required by the criterion at 8 C.F.R. § 204.5(h)(3)(v).

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 indication that eligibility for visa preference in the beneficiary’s occupation (whether it be technical support engineer, logistician, or management consultant) 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.

Nevertheless, we will evaluate the reference letters submitted by the petitioner attesting to the beneficiary’s expertise and accomplishments. However, even if the petitioner were to have submitted evidence demonstrating that the regulatory criteria did not readily apply to the beneficiary’s occupation, which it has not, we cannot conclude that reference letters are “comparable evidence” to the types of achievements and recognition specified in the ten criteria at 8 C.F.R. § 204.5(h)(3). 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.

A June 9, 2006 letter from [REDACTED], and member of the Airborne Stand-Off Radar (ASTOR) Integrated Project Team (ITP), Defence Procurement Agency (DPA), United Kingdom Ministry of Defence (UK MOD), states:

[The beneficiary] is a serving Chief Technician with the RAF. During much of his 27 year career he has worked in the field of Logistics analysis including electronic documentation and has gained an extremely high level of expertise in the business of military equipment development, acquisition and through life support.

\* \* \*

UK MOD recognises [the beneficiary] as an expert in the international standard for the production of interactive electronic publications using a common source database (S1000D).

A September 6, 2006 letter from [redacted] identifies him as a "Subject Matter Expert in the field of Electronic Technical Documentation" employed by Technical Enabling Services, Technical Information Group, UK MOD. [redacted] letter states:

I met [the beneficiary] about 5 years ago when he was a member of Her Majesty's Royal Air Force working on a major UK project at L3 Comms in Greenville, Texas, as the UK IPT's (Integrated Project Team) technical documentation and data (TD & D) specialist. This involved [the beneficiary] liaising with the company's TD & D and LSA [Logistic Support Analysis] departments on an almost daily basis. He rapidly became an expert in all matters regarding the S1000D specification, its interaction with the LSA and other ILS disciplines.

While the beneficiary possesses expertise in the S1000D standard as noted by his professional contacts, there is no evidence showing that he has sustained national or international acclaim for achievements in logistics or engineering.

A September 8, 2006 letter from [redacted], RAF, and Integrated Logistics Support Manager for the [redacted] states:

I first met [the beneficiary] in July 2004 when I became his Commanding Officer at the L-3 Com facility in Greenville, Texas. Our team was responsible for the delivery of the ILS [Integrated Logistics Support] package for a major UK Defence Programme. He was my technical lead for the application of S1000D in the Technical Documentation Suite for the programme, and other team members and Contractors (both L-3 and Raytheon) regularly sought his advice.

\* \* \*

[The beneficiary] is an expert in the S1000D standard and would be a great asset to any defence contractor. He has already been a valuable source of information for a U.S. defence contractor working on a major UK military project and I can see why Raytheon would want to recruit him to advise them on the S1000D.

An unsigned August 24, 2006 letter from [redacted] states:

I feel that [the beneficiary] would provide invaluable expertise to U.S. Defense contractors in implementing the S1000D specification as part of the military integrated logistical support. He has over 26 years service in the UK Royal Air Force and extensive experience with Integrated Logistics Support producing whole life support solutions. As an extra bonus to

[redacted] [the beneficiary] has experience with Logistic Support Analysis techniques and in particular our EAGLE and iLog software tools.

[The beneficiary] has over ten years experience and expert knowledge in producing Interactive Electronic Technical Manuals to the S1000D Specification. He has also advised and assisted U.S. contractors in the implementation of S1000D. . . . [The beneficiary] has experience being a consultant on Def Stan 00-60, S1000D, and S2000M. He has also managed the acceptance of S1000D Interactive Electronic Technical Publications so he can help U.S. contractors identify problem areas up front. Since 1998, [the beneficiary] has implemented S1000D with several U.S. customers. This experience provides Raytheon Technical Services Company, LLC, and their customers who use the iLog software tool a consultant having an excellent knowledge base. These achievements are evidence of [the beneficiary's] extraordinary ability in the field of business as it relates to the S1000D in the context of military integrated logistical support to U.S. defense contractors.

While the beneficiary's expertise is acknowledged by his coworkers, there is no evidence demonstrating that his work has significantly impacted the industry beyond his immediate projects in a manner consistent with sustained national or international acclaim.

An October 9, 2006 letter from [redacted], states:

I met [the beneficiary] during my latter years in the Royal Air Force when he was embarking on a project that was implementing S1000D. I am familiar with the Airborne Stand-off Radar (ASTOR) project that he has been working on, here in the U.S., whilst a serving member of the Royal Air Force. [The beneficiary] provided advice and assistance to the U.S. defense contractors for the ASTOR program, L-3 Communications and Raytheon.

His efforts and extraordinary ability in the business of producing technical documentation to the S1000D specification enabled the contractors to meet the requirements of the contract to deliver S1000D compliant Interactive Electronic Technical Publications which are now being used by the front line war fighter. This was an extraordinary achievement because L-3 Communications had not previously produced electronic publications in any format.

A September 18, 2006 letter from [redacted] for L-3 Communications Integrated Systems, states:

[The beneficiary] has demonstrated an exception [sic] ability in implementing the ASD S1000D specification to produce electronic technical manuals for a new and complex military system. Working with the technical publication departments of L-3 Communications Systems and Raytheon Electronic Systems here in the U.S. and Raytheon Systems Limited in the UK his guidance was critical to the program in assisting personnel who had no previous knowledge of the specification.

A December 14, 2006 letter from [REDACTED] for the UK ASTOR Program at L-3 Communications Integrated Systems, states:

[The beneficiary] brought expert knowledge and expertise in the implementation of Integrated Logistics Support to the requirements of UK Defense Standard 00-60 to the ASTOR program. During the past seven years he has demonstrated an extraordinary ability in the business of producing Interactive Electronic Technical Manuals (IETMs) through the implementation of the S1000D international specification. His expert advice, guidance and assistance facilitated, indeed enabled L-3 Communications to produce and deliver the IETM's for the ASTOR program.

While the preceding individuals credit the beneficiary with providing guidance to staff from L-3 Communications Systems and Raytheon in the production of S1000D compliant documentation for the ASTOR project, there is no evidence showing that this work was indicative of recognition and achievements consistent with sustained national or international acclaim at the very top of his field.

A December 16, 2006 letter from [REDACTED], L-3 Communications Integrated Systems, states:

Based on my observation from having worked on a daily basis with [the beneficiary] in the development of the program for ASTOR, it is my opinion that he is expert in the very esoteric requirements and implementations of the S1000D Specification. I have seen no published figures on the number of experts on S1000D. My most educated estimate for experts on S1000D in the U. S. would be approximately 200. Of those, 50 are members of the U.S. DOD, and 100 are members of various trade organizations. The remaining 50 are scattered throughout industry available to actually do the work of creating S1000D technical publication products. This will prove to be inadequate and I cannot over-emphasize the need in this country for those, such as [the beneficiary], with extraordinary ability in this technical field.

While [REDACTED] and others' comments regarding the shortage of U.S. workers with the S1000D expertise address the beneficiary's prospective benefit to the United States as required by section 203(b)(1)(A)(iii) of the Act, they do not demonstrate evidence of his sustained national or international acclaim and recognized achievements in the field. We note that the classification sought in the instant proceeding is not designed merely to alleviate skill shortages in a given field. In fact, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor through the alien employment certification process. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Commr. 1998).

In response to the director's request for evidence, the petitioner submitted a February 12, 2009 letter from [REDACTED] Astronautics Corporation of America, stating:

Of the two or three vendors in the U.S. that could provide the requisite S1000D content management software, service, and training associated with producing S1000D XML content for Airbus, we selected the Raytheon Technical Services Company. This selection was based primarily on the strength of their service and support record, and most importantly – experience in training and consulting services in S1000D.

\* \* \*

[The beneficiary] has been working with Astronautics for about 4 months on our Airbus A400M S1000D Content Management Implementation Project, our difficulty in finding S1000D expertise had caused the program to fall behind schedule. He provided insight and advice to move the program forward. In December 2008 he delivered two weeks of on-site training and consulting to my team and I. This has given us a basic understanding of the requirements and allowed us to begin producing XML data and to recover the schedule slip.

[The beneficiary] has proven extremely valuable in Astronautics' goal to implement S1000D XML content. His unique and hard-to-find skill sets as our trainer and mentor helped us understand how to do business in the S1000D arena with Airbus military.

The beneficiary's work with Astronautics Corporation of America post-dates the filing of the petition. A petitioner, however, must establish the beneficiary's 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 the beneficiary's work with Astronautics Corporation of America in this proceeding.

On appeal, the petitioner submits a May 12, 2009 letter from [REDACTED] Advisor for Supportability of the Close In Weapons System MK15 for Life Cycle Engineering, Raytheon Missile Systems, stating:

[The beneficiary] served as the principle advisor and technical lead for conversion of our Interactive Electronic Technical Manuals (IETM's) from a contractor format (non-MILSTD) to a S1000D compliant MILSTD product. This conversion is to serve as the foundation for all U.S. Navy and U.S. Army weapon systems IETM's. Our program was chosen as the first because it was considered to be one of the most complex in design and production and the intend [sic] was to stress the conversion process to the maximum extend [sic] before allowing other U.S. weapons systems to use the S1000D standard.

Raytheon possessed no experts on S1000D, with exception of [the beneficiary]. His expertise, unselfish dedication in uncompensated time, patience with training a team of 12 technical writers and conversation of over 27 years of accumulated technical data in just over a year has been immeasurable to our success and has had a direct impact on an improved product for our end-users, the men and women of our armed services. This transition to S1000D will result in substantial savings to our defense budget, increase our opportunities for sales to our allies and help our service members become more proficient.

We acknowledge the preceding individuals' statements regarding the beneficiary's role in ensuring that Raytheon complies with its contractual obligations regarding the S1000D standard, but the petitioner has not established that such work demonstrates sustained national or international acclaim, or that the beneficiary's achievements have been recognized in the field through extensive documentation. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from the beneficiary's professional contacts 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 writers' statements and how they became aware of the beneficiary's reputation are important considerations. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). 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 achievements and recognition that one would expect of an individual who has sustained national or international acclaim.

In evaluating the reference letters, we note that letters containing general assertions regarding the beneficiary's acclaim and expertise are less persuasive than letters that specifically identify achievements that have been recognized throughout the field. In addition, letters from independent references who were previously aware of the beneficiary through his reputation are far more persuasive than letters from those who have worked with beneficiary on past projects. 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. *See Kazarian v. USCIS*, 580 F.3d 1030 (9<sup>th</sup> Cir. 2009). We cannot ignore that almost all of the individuals offering letters of support have professional ties to the beneficiary. With regard to the opinions of individuals who have worked with the beneficiary, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the beneficiary has sustained national or international acclaim for his achievements outside of those who are close to him. The statutory and regulatory requirement for "extensive documentation" of "sustained national or international acclaim" necessitates evidence of recognition beyond direct acquaintances of the beneficiary. *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).

Finally, counsel's contention that reference letters are a comparable substitute for "extensive documentation" of achievements and recognition as required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3) is not supported by a plain reading of the statute, the regulations, or standing precedent. The regulations governing the extraordinary ability immigrant visa

classification have no requirement mandating that USCIS specifically accept the credibility of personal testimony, even if not corroborated. The regulation at 8 C.F.R. § 204.5(h)(3) provides that eligibility may be established through a one-time achievement or through documentation meeting at least three of ten criteria. The criteria require specific documentation beyond mere testimony, such as awards, published material about the alien, and a high salary. As an example of the specific nature of the documentation required, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the “title, date and author” of the published material about the alien. The only criterion for which letters are specifically relevant is the criterion relating to the alien’s leading or critical role for an organization with a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii). The first issue is the role the alien was hired to fill. According to 8 C.F.R. § 204.5(g) letters from employers are acceptable evidence of experience.<sup>1</sup> While the regulation at 8 C.F.R. § 204.5(h)(4) permits “comparable evidence” where the ten criteria do not “readily apply” to the alien’s occupation, the regulation neither states nor implies that opinion letters attesting to the alien’s expertise in the field are “comparable” to the strict documentation requirements in the regulations setting forth the ten criteria. Accordingly, we cannot conclude that the reference letters submitted by the beneficiary’s current and former colleagues are comparable to the types of achievements and recognition required by the regulation at 8 C.F.R. § 204.5(h)(3).

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 the beneficiary’s 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 beneficiary 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).<sup>2</sup>

*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

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<sup>1</sup> We note, however, that an alien would also need to submit objective evidence of the reputation of the employer to satisfy the specific requirement of 8 C.F.R. § 204.5(h)(3)(viii).

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

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 an October 11, 2006 facsimile from [REDACTED] S1000D Implementation Guide and Business Rules Task Teams (IG&BRTT), stating:

I would like to confirm the involvement of [the beneficiary] into the work of two Task Teams assigned by the uppermost body of S1000D Community, Technical Publications Specification Maintenance Group (TPSMG).

These Task Teams [IG&BRTT]. They were assigned by TPSMG to elaborate an S1000D Implementation Guide and provide guidance and essential tools for projects to produce their business rules during S1000D implementation.

We note [REDACTED] comment that the "uppermost body of S1000D Community" is the TPSMG and that the beneficiary performs work assigned to two of its Task Teams. There is no evidence showing that the beneficiary is an actual member of the TPSMG or that his task team assignments are an indication that he "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).

In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED], S1000D Electronic Publications Working Group (EPWG), stating:

My personal contact with [the beneficiary] has been in the EPWG committee meetings. I am the current chairman of the EPWG for the last 2 years and a vice-chairman for 2 years prior to that. [The beneficiary] is a contributing member of the EPWG committee and as such is at the very top of the field of S1000D implementation. He has proven in committee to possess a depth of knowledge in the practical application of and an extraordinary ability in S1000D that is matched only by non-US persons. This expertise was gained from his experience of S1000D implementation for the United Kingdom Ministry of Defence.

In this case, there is no evidence (such as bylaws, committee rules, or official admission requirements) showing that the IG&BRTT and the EPWG require outstanding achievements of their members as judged by recognized national or international experts in the beneficiary's field or an allied one. Accordingly, 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.*

As discussed, the petitioner submitted several reference letters discussing the beneficiary's S1000D expertise and his work for various defense contracts. Talent and experience in one's field, however, are not necessarily indicative of original contributions of major significance in the field. The record lacks evidence showing that the beneficiary has made original contributions that have significantly

influenced or impacted his field. With regard to the beneficiary's achievements, the reference letters do not specify exactly what his original contributions in engineering or logistics have been, nor is there an explanation indicating how any such contributions were of major significance in his 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 has performed admirably on various defense contracts involving S1000D implementation, there is no evidence demonstrating that his work is recognized beyond his employers such that it equates to original scientific or business-related contributions of major significance in the field. For example, the record does not indicate the extent of the beneficiary's influence on other engineers or logisticians nationally or internationally, nor does it show that either field has somehow changed as a result of his work. Without extensive documentation showing that the beneficiary's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

At issue for this criterion are the position the beneficiary was selected to fill and the reputation of the entity that selected him. 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.

[REDACTED] letter states:

I became acquainted with [the beneficiary] in the spring of 2000 when I became a member of the ASTOR Tech Publication team. By that time, [the beneficiary] had become an integral part of the team. The purpose of the team was the creation and development of an interactive electronic technical publication (IETP) used to support the service of the ASTOR aircraft. The IETP proposed some great challenges for the L-3 Communication Tech Pub team. This was the first time the Tech Pubs team had used the S1000D specification. As the Tech Pubs team began to understand the requirements of the ASTOR program it became apparent that the S1000D specification would play an integral role in the development of the IETP. Since [the beneficiary] was a key member of the team, his outstanding knowledge of the S1000D specification allowed the team to gain the necessary tools needed to develop the IETP. [The beneficiary's] continuing support allowed the Tech Pubs team to meet and exceed the major milestones through all stages of the IETP development.

A December 19, 2006 letter from [REDACTED], L-3 Communications Integrated Systems, states:

During my association with [the beneficiary], he provided invaluable assistance to L-3 Communications IS and Raytheon through his understanding of how DEFSTAN 00-60 requirements affected the implementation of S1000D. He provided input and direction during

all reviews of the IETP development process concerning the implementation of S1000D elements. He provided specific review comments during the IETP development with emphasis on DEFSTAN 00-60 requirements providing L-3 Communications IS and Raytheon with the means to quickly understand and correct problem areas thus reducing overall schedule which ultimately reduced cost. [The beneficiary] attended various workshops and user conferences broadening his knowledge of the electronic tools used in the development of the ASTOR IETPs and how they apply to the implementation of S1000D in a DEFSTAN 00-60 environment. The insight gained and his experience with the use of these tools was passed on to logistics personnel both in the RAF and in the L-3 Communications IS and Raytheon. This was invaluable in streamlining the IETP development process for the ASTOR Program.

While the preceding letters from [REDACTED] and [REDACTED] and the additional reference letters submitted by the petitioner indicate that the beneficiary performed admirably for defense projects involving the implementation of S1000D, the documentation submitted by the petitioner does not establish that the beneficiary's positions were leading or critical to RTSC, L-3 Communications Integrated Systems, the United States Department of Defense, or UK MOD as a whole. There is no evidence demonstrating how the beneficiary's roles differentiated him from the other engineers or logisticians who worked for these organizations, let alone their top leadership. For example, the petitioner has not submitted an organizational chart or other similar evidence showing the beneficiary's position in relation to that of the other engineers and logisticians employed by RTSC, L-3 Communications Integrated Systems, the United States Department of Defense, or UK MOD. In this case, the documentation submitted by the petitioner does not establish that the beneficiary was responsible for the preceding organizations' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, 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.*

[REDACTED] states that the beneficiary's base salary "will be \$80,000.00." The record, however, does not include evidence (such as payroll records or income tax returns) showing the beneficiary's actual earnings for any specific period of time. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165. Nevertheless, the plain language of this regulatory criterion requires the petitioner to submit evidence demonstrating that the beneficiary commanded a high salary "in relation to others in the field." In this case, there is no evidence showing that the beneficiary's earnings were significantly high in relation to others in his field. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

In this case, we concur with the director's finding that 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 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 beneficiary 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, counsel additionally argues that prior approval of an O-1 nonimmigrant visa petition filed on the beneficiary's behalf shows that he meets the statutory and regulatory requirements for immigrant classification as an alien of extraordinary ability. We do not find that the prior approval of a nonimmigrant visa mandates the subsequent approval of an immigrant visa. Each case must be decided on a case-by-case basis based upon the evidence of record. While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary by RTSC, 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 the beneficiary'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 has approved a nonimmigrant petition on behalf of the alien, 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).

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 the beneficiary's 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.