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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

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FILE: [REDACTED]
SRC 08 225 50421

Office: TEXAS SERVICE CENTER Date:

JAN 22 2010

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on April 21, 2009, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined that the petitioner did not demonstrate 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 receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 July 15, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a financial researcher.

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

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

At the time of the original filing of this petition, counsel claimed the petitioner's eligibility for this criterion stating:

[The petitioner] was the recipient of Financial Management Association Conference Special Doctoral Travel Award. This is a prestigious international award conferred to only a few finest Ph.D students around the world, which helps to prove that [the petitioner] stands at the top among her peers.

However, counsel failed to submit any documentary evidence establishing that the petitioner received this award. 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). In addition, counsel failed to submit any documentary evidence demonstrating that the Financial Management Association Conference Special Doctoral Travel Award is a lesser nationally or internationally recognized prize or award for excellence in the field of endeavor. *See* 8 C.F.R. § 204.5(h)(3)(i). Regardless, academic study is not a field of endeavor, but training for a future field of endeavor. As such, postdoctoral scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for postdoctoral travel awards is limited to other postdoctoral students. Experienced experts in the field are not seeking postdoctoral travel awards. Similarly, experienced experts do not compete for fellowships and competitive postdoctoral appointments. Thus, they cannot establish that a petitioner is one of the very few at the top of her field. The petitioner has not established that she competed for this travel award with the most experienced and renowned members of her field rather than simply with other recent graduates who might have difficulty affording the travel costs.

The petitioner did not contest the decision of the director in this criterion on appeal. We agree with the finding of the director.

Accordingly, the petitioner has not established that she meets this criterion.

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

At the time of the original filing of this petition, counsel claimed the petitioner's eligibility for this criterion stating:

[The petitioner's] articles have been cited by researchers at other research groups including some academic institutes such as Yale University, University of Maryland, University of California, Federal Reserve Board, as well as financial firms like Morgan Stanley. The multicitations [sic] indicate [the petitioner's] work has been widely implemented by others in the field. This also means that [the petitioner's] impact is not limited to her small circles of colleagues. Rather, she has impacted the whole field.

* * *

Review articles are authored by experts who review and highlight most important recent advances in a specific field. Therefore, only most noteworthy research findings are being discussed in review articles. [The petitioner's] work has been widely regarded as a major advance in the field.

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. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act. Articles authored by the petitioner, or articles which cite the petitioner's work, are not articles about the petitioner relating to her work. Thus, while her publications and citations therein are not relevant to this criterion, they will be considered below as they relate to the significance of the petitioner's contributions and scholarly articles.

The petitioner did not contest the decision of the director in this criterion on appeal. We agree with the finding of the director.

Accordingly, the petitioner has not established that she meets this criterion.

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

At the time of the original filing of this petition, counsel claimed the petitioner's eligibility for this criterion stating:

As a result of international recognition of [the petitioner's] leading expertise, many well-known international literatures have relied upon [the petitioner's] expertise, inviting her to review articles submitted for publications by other researchers.

Counsel also submitted a letter, dated February 12, 2007, from [REDACTED] of Review of Quantitative Finance and Accounting (RQFA), Advances in Financial Planning and Forecasting (AFPF), and Review of Pacific Basin Financial Markets and Policies (RPBFMP). [REDACTED] stated that the petitioner served as referee for two papers – “Modeling Value-at-Risk of Oil Prices Using a Bootstrapping Approach” and “Liquidity-Adjusted Benchmark Yield Curves: A Look at Trading Concentration and Information.” In addition, counsel claimed that an “email from [REDACTED] [REDACTED] at Iowa State University, who also serves as editor of The Financial Journal demonstrates [the petitioner's] service as reviewer for The Financial Review.” We note that in the director's decision, he indicated that this email was not submitted with the petition. A review of the record confirms the finding of the director that the email was never submitted at the time of the original filing.

On appeal, counsel claims:

Service has failed to give the fair value and downplayed the significance of evidence submitted in support of the instant petition. Service has been looking for evidence that is not customary in the academic/industry. Rather it is asking for evidence particularly for the benefit of immigrant petition. In its denial letter of April 21, 2009, for instance, Service states in pertinent part, “you submit a letter from the Review Quantitative Finance and Accounting stating that you have been a reviewer and that they only select leading experts. This letter fails to indicate that you are extraordinary in the field and that you were chosen due to your national or international acclaim.” As a matter of fact, documents previously submitted include languages such as “leading experts” “outstanding international reputation” which are similar to an interchangeable with “extraordinary” “national to international acclaim.” To deny that the self-petitioner ([the petitioner]) meets this criterion because of the minor discrepancy in wording is arbitrary.

We are not persuaded by counsel's arguments. Although a review of the director's decision reveals that the director may have overreached regarding the letter in stating the petitioner failed to establish that he was “chosen” due to his national or international acclaim, we agree with the director's ultimate conclusion that the petitioner failed to provide sufficient information establishing that the petitioner's role as a reviewer qualified her eligibility for this criterion. The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international

acclaim.¹ 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).

Counsel also submitted a letter, dated May 8, 2009, from [REDACTED] stating that the petitioner reviewed the article, “Noise and Equity Prices Evidence from the Stock Index Future Markets” for *The Financial Review* in December 2006. In addition, counsel submitted another letter, dated May 2, 2009, from [REDACTED] stating that the petitioner served as a referee for two articles for RQFA and AFPF. We note that both letters indicate that the petitioner is an expert of outstanding international reputation and acclaim in finance.

In this case, the record includes evidence demonstrating the petitioner’s participation in reviewing three articles. We note here that peer review is a routine element of the process by which articles or papers are selected for publication in financial journals. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of her field. Reviewing articles is recognized as a professional obligation of researchers who publish themselves in financial journals. Normally a journal’s editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review an article or paper and to offer comments. The publication’s editorial staff may accept or reject any reviewer’s comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in her field, such as evidence that she has reviewed an unusually large number of articles, received and completed independent requests for review from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that she meets this criterion.

Accordingly, the petitioner has not established that she meets this criterion.

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

At the time of the original filing of this petition, counsel claimed the petitioner’s eligibility for this criterion stating:

According to [DefaultRisk.com], [the petitioner’s] article [REDACTED] was ranked Second Most Frequently Viewed Papers on worldwide scale, which unequivocally speaks volume for the excellence and international impact of [the petitioner’s] efforts.

¹ We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

In support of this claim, counsel submitted an abstract from [REDACTED]. As indicated in the director's decision, the website reflected that the petitioner's article was ranked number 2 for 2 months, and the all-time rank was 992. Further, the director indicated that the ranking of the article did not demonstrate that others in the petitioner's field used her work or applied it in research and that it had major significance in the field. On appeal, regarding the all-time ranking, counsel argues that the petitioner's article was not uploaded until after November 2006, and "[t]he fact that [the petitioner's] article became the second most frequently viewed article for 2 months is an indication of her contribution and impact."

Contrary to counsel's claims, the current ranking or all-time ranking of articles on a website does not establish original business-related contributions of major significance. Evidence of downloaded articles does not demonstrate that the theories or practices in those articles were ever applied, influenced the work of other researchers, or even if the articles were ever read. We find that evidence, such as an individual's research and work cited extensively by other researchers, is far more probative than evidence reflecting the number of times an article was downloaded from a website.

Counsel also submitted recommendation letters from [REDACTED]. We cite representative examples here:

[REDACTED] states:

[The petitioner] has made a breakthrough in this field. She proposed a novel model to solve this problem, which significantly reduced the computing time without sacrificing the accuracy of the calculations. [The petitioner] further applied the model to the pricing of Treasury Inflation Protected Securities (TIPS) and estimated the term structure of interest rate, and most importantly, the inflation risk premium. Her research not only solves a complicated problem in academia, but also provides useful guidance for the government and policy makers.

[REDACTED] states:

[The petitioner] has successfully developed a new credit default swap (CDS) pricing model, which considers the correlation between interest rate and default rate.

* * *

[The petitioner] proposed innovative techniques for estimating inflation risk premium. The current works most focus on the spread between nominal bond and treasury inflation protected securities (TIPS) to proxy the expected inflation rate, but can not give a good estimation of how much inflation risk premium should be. [The petitioner] extend[s] her model to TIPS market and propose one way to estimate inflation risk premium from bond market.

* * *

[The petitioner] investigated the most important factors for deciding CDS spread. This is very important because CDS is a novel financial product, and information of this market is very small and limited. Using the first hand market data, [the petitioner] conducted a pioneer empirical research with cross-sectional and time series analysis for the CDS market, which gave a comprehensive overview for this market.

* * *

[The petitioner's] research also covers the comparison between traditional bond market and CDS market. One of her paper "The Term Structure of Credit Spread: Theory and Evidence on Credit Default Swap" performs a joint analysis of the term structure of interest rate, credit spread and liquidity premium. This paper was the first one to explain the difference of credit default swap based on liquidity.

states:

Using two-factor model with correlated interest rate and inflation rate, [the petitioner] developed an analytic solution for nominal bond. Most importantly, this paper developed one model to estimate the term structure of inflation risk premium, which is quite useful for both academic and practical field, especially in the current period with high inflation risk. This paper can also provide very instrumental information for the policy makers to deal with high inflation risk, which is a major concern for most governments.

states:

[The petitioner] has been working to quantify these credit risks, in specific, to pricing credit default swaps. [The petitioner] has successfully developed a new model with an analytical solution for CDSs without pursuing a numerical solution, and significantly reduced the computing time with improved accuracy.

In this case, the reference letters are not sufficient to meet this regulatory criterion. 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. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. 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). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal

contacts in 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 petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of any immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

In this case, the petitioner failed to submit preexisting, independent evidence of original contributions of major significance. While the letters highly praise the petitioner and provide examples of her research and work, they fail to establish that she has made contributions of major significance in her field. In evaluating the reference letters, they do not specifically identify how her contributions have influenced the field; rather, the letters discuss the petitioner's innovative methodologies. Letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009).

Regarding the petitioner's authorship and citations of her published articles, the petitioner's occupation is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. The record also contains evidence of 17 articles that cite to the petitioner's work. We must note that while counsel submitted articles with the petitioner's work cited, one of the articles has never been published – "Understanding the Role of Recovery in Default Risk Models: Empirical Comparisons and Implied Recovery Rates." Counsel wrote on the front of the article that publication is "forthcoming." In addition, two of the other articles were published after the filing of the petition – "Accounting-based versus market-based cross-sectional models of CDS spreads" (April, 2009) and "Does banks' size distort market prices? Evidence for too-big-to-fail in the CDS market" (June, 2009). The petition was filed on July 15, 2008. Since these articles were published after the filing of the petition, we will not consider the evidence to establish the petitioner's eligibility. 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. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Finally, another article was submitted in the Chinese language without certified English language translations – "A Pricing Model for Inflation-indexed Bonds." The regulation at 8 C.F.R. § 103.2(b)(3) requires that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English

language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

Notwithstanding, a review of these articles reflects that they do not concentrate around, discuss in-depth, or debate the petitioner's research. While these articles briefly refer to the petitioner's work in the form of citations, they do not reflect that the petitioner's work was of major significance to her 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. To be considered a contribution of major significance in the field of financial research, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. *See also Kazarian v. USCIS*, 580 F.3d at 1036 (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance). Thus, while these publications may attest to the originality of the petitioner's work, the record lacks evidence that her work has had a major impact on her field.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the business community. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole.

While the record includes numerous attestations of the potential impact of the petitioner's work, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field beyond the limited projects on which she has worked. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls short of establishing that the petitioner had already made contributions of major significance.

Accordingly, the petitioner has not established that she meets this criterion.

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

At the time of the original filing, counsel claimed the petitioner's eligibility for this criterion stating "[the petitioner] has authored quite a few research articles in top-notch literatures in the field

including *Journal of Financial and Quantitative Analysis*, and *Finance Research Letters*.” Counsel also submitted the petitioner’s curriculum vitae which listed the following publications:

- An Explicit, Multi-Factor Credit Default Swap Pricing Model With Correlated Factors – published in *Journal of Financial and Quantitative Analysis*;
- Exploring the Components of Credit Risk in Credit Default Sway – published in *Finance Research Letters*;
- The Term Structure of Credit Spreads: Theory and Evidence on Credit Default Swaps – working paper;
- Inflation, Fisher Equation and Term Structure of Inflation Risk Premia: Theory and Evidence from TIPS – working paper; and
- Pricing Large Credit Portfolio (CDO) with Fourier Inversion – working paper.

We note that in the director’s decision, he indicated that while counsel claimed that he submitted copies of the petitioner’s articles, they were never submitted with the petition. On appeal, counsel submitted the following articles:

1. Estimation and evaluation of the term structure of credit default swaps: An empirical study – published in *Insurance: Mathematics and Economics*;
2. Pricing the Term Structure of Inflation Risk Premia: Theory and Evidence from TIPS – unknown publisher;
3. Dynamic Interactions Between Interest Rate, Credit, and Liquidity Risks: Theory and Evidence from the Term Structure of Credit Default Swap Spreads – unknown publisher;
4. Exploring the components of credit risk in credit default swaps – published in *Finance Research Letters*; and
5. An Explicit, Multi-Factor Credit Default Swap Pricing Model with Correlated Factors – published in *Journal of Financial and Quantitative Analysis*;

We note that three of the articles listed on the petitioner’s curriculum vitae are working papers. Articles which have yet to be published at the time of filing are not sufficient to establish that the petitioner meets this criterion. We further note that counsel submitted three additional articles, which were not listed on the petitioner’s curriculum vitae, for the first time on appeal. Therefore, since these articles were not available for the director to review, we find no error in the director’s decision.

Regarding Item 1, while the article was received and accepted for publication in May 2008, the article was published in December 2008. The petition was filed on July 15, 2008. Since the petitioner’s article was published after the filing of the petition, we will not consider the evidence to establish the petitioner’s eligibility. 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. at 49.

Regarding Items 2 and 3, the articles fail to indicate that they were published in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi). It appears that both

articles are either drafts or works-in-progress and have never been published. The petitioner failed to submit any documentary evidence establishing that these articles have been published in professional or major trade publications or other major media.

Regarding Items 4 and 5, while the articles were published, the only evidence submitted establishing that these articles were published in professional or major trade publications or other major media were the previously mentioned letters which indicate the petitioner's publications in *Finance Research Letters (FRL)* and *Journal of Financial and Quantitative Analysis (JFQA)*. For example, [REDACTED] states that "JFQA is one of the top 5 general-interest finance journals. I don't have precise numbers, but it probably accepts only 10-15% of the articles submitted to it." The petitioner failed to submit sufficient evidence demonstrating that FRL and JFQA are professional or major trade publications or other major media. Regardless, the publication of two articles is not indicative of or consistent with "sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3).

As publishing research is inherent in the job duties of a financial researcher, published research alone cannot serve to set the petitioner apart from others in her field. 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 v. USCIS*, 580 F.3d at 1036. Regarding the previously mentioned 17 articles that cite to the petitioner's work, four of which cannot be considered, the minimal number of citations is not evidence that the petitioner's work has been widely influential in her field.

Accordingly, the petitioner has not established that she 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.

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility for this criterion stating:

[The petitioner's] annual salary is \$170,000, whereas according to US Department of Labor, the salary of financial analyst for level one is \$40,976/yr and \$74,152/yr for level 4 (the highest) in New York. Obviously, [the petitioner] has commanded a high salary, more than twice the figure paid to the most advanced professionals in the field.

Counsel submitted a copy of the petitioner's pay statement. In the director's decision, he indicated that the pay statement failed to identify the petitioner's employer and could not be considered as evidence of salary. Further, the director indicated that the wages paid were for a financial analyst and not as a financial researcher.

On appeal, counsel submitted a letter from the petitioner stating that she is "currently working research as Associate in the market Risk Division at [REDACTED] with the annual

compensation of \$200,000.” In addition, counsel submitted a letter, dated September 3, 2008, from [REDACTED] extending an offer of employment for the petitioner and stating that “[the petitioner’s] position will be that of an Associate in the Market Risk Division.” Counsel also submitted a copy of the petitioner’s paystub along with Form W-2 for 2008 from [REDACTED]

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. at 49. In this case, we cannot consider the petitioner’s employment with [REDACTED]. The petition was filed on July 15, 2008. The petitioner was offered a job with [REDACTED] on September 3, 2008, and started working with [REDACTED] after the petition was filed. Accordingly, the petitioner had not “commanded” any salary from [REDACTED] at the time of filing.

On appeal, counsel states that “[p]lease be kindly advised that analysts have to conduct research to do analysis, therefore, from the employer’s viewpoint, the distinction between financial researchers and financial analysis is not clear.” Counsel failed to submit any documentary evidence supporting his assertions. 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 Obaighena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The 2008 Form W-2 from [REDACTED] indicates that the petitioner earned a salary of \$134,415.43. We note that the petitioner did not work entirely for [REDACTED] in 2008. However, the record is unclear as to the petitioner’s exact position at [REDACTED]. A review of Form I-140, Immigrant Petition for Alien Worker, signed by the petitioner on July 9, 2008, reflects that the petitioner did not list her occupation or annual income in Part 5, Question 3, and job title in Part 6, Question 1. Counsel indicated in his letter accompanying the petition that “[The petitioner] is a transcendent finance researcher whose highly acclaimed research efforts have significantly impacted the whole field.”

The record contains various claims of occupations for the petitioner. Counsel claims that the petitioner is a financial researcher. The unidentified employer on the pay stub indicates that the petitioner is an “AVP-Analyst.” Even the petitioner’s current occupation at [REDACTED] is an “Associate in the Market Risk Division.” The regulation at 8 C.F.R. § 204.5(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.” While counsel submitted evidence from www.payscale.com for median salary for both financial researchers and financial analysts, counsel failed to submit any documentary evidence, such as a job letter from [REDACTED], indicating the petitioner’s specific occupation and job duties.

Accordingly, the petitioner has not established that she meets this criterion.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate the receipt of a major, internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an

alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at the 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 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.