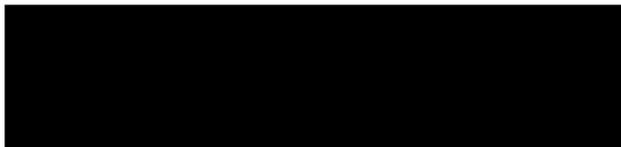


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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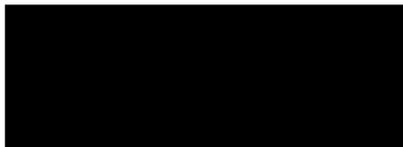
FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:

FEB 17 2011

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a wholly-owned U.S. subsidiary of [REDACTED]. It seeks classification of 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 that the petitioner had not established the beneficiary's requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence for the alien under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the beneficiary meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). We acknowledge that the standard of proof is preponderance of the evidence, as noted by counsel on appeal. The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. *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)(2) and (3). In this case, the documentation submitted by the petitioner failed to demonstrate by a preponderance of the evidence that the beneficiary has achieved sustained national or international acclaim and that he is one of the small percentage who has risen to the very top of the field of endeavor.

For the reasons discussed below, we uphold the director's decision.

I. Law

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence:

(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 specialization 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.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has 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). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003);

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

see also Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

This petition, filed on July 23, 2009, seeks to classify the beneficiary as an alien with extraordinary ability as a "newspaper publishing executive." At the time of filing, the beneficiary was the [REDACTED]. The petitioner seeks to employ the beneficiary as Chief Executive Officer and Director of Planning and Operations, a position he has held with [REDACTED] since November 2006.

A. Major, internationally recognized award

On appeal, counsel argues that [REDACTED] selection for membership in the International Newspaper Color Quality Club (INCQC) constitutes the beneficiary's receipt of a major, internationally recognized award. The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

The petitioner submitted five certificates from the IFRA (INCA-FIEJ Research Association; whereby "INCA" stands for "International Newspaper Colour Association" and "FIEJ" stands for "Fédération Internationale des Editeurs de Journaux") identifying [REDACTED] as a "Member" of the "International Newspaper Color Quality Club." The certificates are for the periods 2000-2002, 2002-2004, 2004-2006, 2006-2008, and 2008-2010. Four of the certificates state:

Member of the Club

In honor and recognition of outstanding newspaper quality reproduction and printing practices, we hereby present [REDACTED] with this certificate of membership in the . . . International Newspaper Color Quality Club.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3) requires the alien's receipt of a major, internationally recognized "award." The petitioner has not established that [REDACTED] "certificate of *membership* in the . . . International Newspaper Color Quality Club" [emphasis added] equates to the *beneficiary's* receipt of a major, internationally recognized "award."

The petitioner also submitted a letter from [REDACTED] to the beneficiary stating:

Herewith we want to certify that the newspaper [REDACTED] by your guidance and management as Operation Director successfully participated and won multiple times the exclusive membership in the International Newspaper Color Quality Club.

Gaining membership in the INCQC winners group requires a lot of knowledge and competence in selection and handling of PrePress, Press and Mailroom equipment, but also in manpower and motivation.

[REDACTED] was able to succeed [REDACTED] which demonstrates impressively that this newspapers [sic] belongs print quality related to the top 50 newspapers in the world.

Aim of the INCQC is to promote high quality color printing, to ensure the competition ability of newspapers to other media, to extend the amount of enthusiastic readers and to prove to worldwide and locally working advertisement agencies the competence in printing by conformity with the rigorous standards of ISO [International Organization for Standardization] 12647-3, which makes sure that reliable results are printed, always.

The International Newspaper Color Quality Club is the only worldwide print quality competition for newspapers. It has been organized every two-years since 1994 by IFRA with the support of NAA Newspaper Association of North America (USA), PANPA (Australia) and ZMG Zeitungs Marketing Gesellschaft (Germany).

IFRA is the worldwide research and service organization for the news publishing industry. With headquarter in Darmstadt, Germany; it has acted since 1961 as worldwide platform for decision-makers.

We cannot conclude that gaining "membership" in the INCQC through "competence in printing" by conformity with the "standards of ISO 12647-3" is tantamount to receipt of a major, internationally recognized award.² Rather, this designation simply reflects a newspaper's capacity to produce printing content in accordance with specific ISO industry standards.

² Information about achieving INCQC membership available at the IFRA's website (accessed at www.ifra.com on February 7, 2011 and incorporated into the record of proceedings) states:

WAN-IFRA is happy to announce that 109 different titles achieved INCQC 2010-2012 club membership. The successful newspaper titles can be proud. They give an impressive demonstration of their capacity to produce in accordance with the exacting ISO standards and are therefore in a position to reliably reproduce

In response to the director's request for evidence, the petitioner submitted a second letter from [REDACTED] stating:

The World Association of Newspapers and IFRA, the leading international associations for print and digital news publishing, have merged into a new organisation, the World Association of Newspapers and News Publishers (WAN-IFRA). . . . WAN-IFRA is dedicated "to be the indispensable partner of newspapers and the entire news publishing industry worldwide, particularly our members, in the defense and promotion of press freedom, quality journalism and editorial integrity, and the development of prosperous businesses and technology."

* * *

The IFRA International Newspaper Color Quality Club (INCQC) sets the standards for newspaper printing quality worldwide. Participants awarded membership in the Color Quality Club earn the equivalent worldwide recognition and prestige in the printing industry as performing artists do with awards like the Oscar, Emmy or Grammy. IFRA established the biennial competition for membership in the International Newspaper Color Quality Club in 1994 with the objective of improving the day-to-day quality in reproduction and printing at newspapers worldwide. This quality benchmark is based on proven international process standards. Successful newspapers are awarded membership for a two-year period in the exclusive club of top-quality titles.

With over 3000 publishing groups represented by IFRA, we had a record 198 newspapers (that had competition-worthy quality) participating in the INCQC 2008-2010. The 50 winners of this edition have truly staked their claim to being the best printed papers in the entire world. Last year's class is indeed impressive, especially when you consider the competition: The participants represented 43 countries and all five continents. Of these, 50 percent are first-time members in this exclusive community, and managed to reach this status under very difficult conditions. In other words, only one quarter of all INCQC participants could gain the coveted membership.

color images and advertisement contents consistently, worldwide, and with the intended color effect. This provides impressive confirmation of the successful efforts aimed at achieving international standardisation as supported by WAN-IFRA, but especially the successful motivation of the personnel working in every printing plant, the successful choice of materials, the well-founded knowledge of the setting parameters for the entire workflow and the skillful use of measuring and control techniques. The INCQC quality initiative helps ensure that the reader receives an attractive, high-quality product and the advertiser an outstanding advertising carrier. Participants appreciated the support for a better understanding and implementation of the ISO 12647 print standard in their daily production in order to improve the printing process.

See http://www.ifra.com/website/website.nsf/html/CONT_INCQC_HOME?OpenDocument&INCQC&E&, accessed on February 7, 2011, copy incorporated into the record of proceeding.

With respect to the successful participation of [REDACTED] newspaper headed by [the beneficiary], it is simply, solely and primarily due his hands-on innovative technical skills, knowledge and leadership that his publication has successfully earned this coveted award [REDACTED]. In fact, often times, [REDACTED] which speaks volumes regarding the methods and systems that have been implemented directly under [the beneficiary's] guidance.

[REDACTED] states that 50 out of 198 participating newspapers earned membership in the INCQC in 2008-2010 alone. Further, according to the IFRA's website, "109 different titles achieved INCQC 2010-2012 club membership" in the latest biennial period.³ Moreover, the five certificates submitted from the IFRA specifically mention only [REDACTED] rather than the beneficiary. As such, it has not been established how [REDACTED] selection for INCQC membership demonstrates the beneficiary's national or international recognition in the newspaper publishing industry. It cannot suffice that the beneficiary was a part of a large newspaper staff that earned collective recognition. [REDACTED] asserts that "[p]articipants awarded membership in the Color Quality Club earn the equivalent worldwide recognition and prestige in the printing industry as performing artists do with awards like the Oscar, Emmy or Grammy." The record, however, does not include supporting documentary evidence of the "worldwide recognition and prestige" in the industry which [REDACTED] claims is the result of earning INCQC membership. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). All of the submitted documentation pertaining to INCQC membership originates from its organizer the IFRA. Accordingly, there is no documentary evidence demonstrating that earning INCQC membership is recognized beyond the organizing body and therefore commensurate with a major, internationally recognized prize or award in the field.

In light of the above, the petitioner has failed to demonstrate evidence of a qualifying one-time achievement by the beneficiary.

B. Evidentiary Criteria

The petitioner has submitted documentation pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).⁴

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

³ See http://www.ifra.com/website/website.nsf/html/CONT_INCQC_HOME?OpenDocument&INCQC&E&, accessed on February 7, 2011, copy incorporated into the record of proceeding.

⁴ The petitioner does not claim to meet or submit documentation relating to the categories of evidence not discussed in this decision.

As previously discussed, the petitioner submitted [REDACTED] as a "Member" of the INCQC. The five certificates were presented to [REDACTED] rather than the beneficiary. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires documentation of "the alien's receipt" of nationally or internationally recognized prizes or awards, not his employer's receipt of the awards. Moreover, the petitioner has not established that [REDACTED] biennial *membership* certificates in the INCQC (based on the ability to produce printing content in accordance with specific ISO industry standards) constitute nationally or internationally recognizes "prizes or awards for excellence in the field." Finally, all of the submitted documentation pertaining to INCQC membership originates from its organizer the IFRA. There is no documentary evidence demonstrating that that receiving INCQC membership is recognized beyond the IFRA's selection process and therefore commensurate with a "nationally or internationally recognized" prize or award for excellence in the field.

The petitioner submitted documentation of additional honors received by [REDACTED] including:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
competition for the newspaper edition of September 9, 1995;
5. [REDACTED]
6. [REDACTED]
category (1996);
7. [REDACTED]
competition (1996);
8. [REDACTED]
(1997);
9. [REDACTED]
competition in the "daily newspapers" category (1997);
10. [REDACTED]
products competition in the "daily newspapers" category (1999);
11. [REDACTED]
12. Printing Industries of America Certificate of merit in the [REDACTED]
[REDACTED]
13. [REDACTED]
graphic products competition for the newspaper edition of August 27, 2000;
14. [REDACTED] for service as a member of the Board
of Directors during the period 1999-2001;
15. [REDACTED] competition for offset
printing on rolls (2001);

16. [REDACTED] competition for the newspaper edition of September 21, 2001;
17. [REDACTED] graphic products competition for offset printing on rolls (daily newspapers) (2001);
18. [REDACTED] graphic products competition (2001);
19. [REDACTED] graphic products competition for the newspaper edition of July 22, 2002;
20. [REDACTED] products competition for the newspaper edition of July 21, 2002;
21. [REDACTED] products competition for the newspaper edition of July 13, 2002;
22. [REDACTED] products competition for the newspaper edition of July 21, 2002;
23. [REDACTED] "newspapers" category;
24. [REDACTED] graphic products competition for the newspaper edition of January 10, 2003;
25. [REDACTED] products competition for the newspaper edition of June 23, 2003;
26. [REDACTED] products competition for the newspaper edition of June 23, 2003;
27. [REDACTED] products competition for the newspaper edition of January 10, 2003;
28. [REDACTED] in the "daily newspapers" category (2003);
29. [REDACTED]
30. [REDACTED] category America for the newspaper edition of June 23, 2003;
31. [REDACTED] products competition for offset printing of rolls (daily newspapers) (2004);
32. [REDACTED] competition for offset printing on rolls (2004);
33. [REDACTED] products competition for newspaper edition of August 15, 2005;
34. [REDACTED] products competition for newspaper edition of August 13, 2005;
35. [REDACTED] competition for the newspaper edition of August 13, 2005;
36. [REDACTED] competition for the newspaper edition of August 15, 2005;
37. [REDACTED] graphic products competition for the newspaper edition of July 17, 2006;
38. [REDACTED] graphic products competition for the newspaper edition of June 26, 2006;

39. [REDACTED] graphic products competition for the newspaper edition of July 16, 2006;
40. [REDACTED] graphic products competition for the newspaper edition of July 18, 2006;
41. [REDACTED] products competition for the newspaper edition of February 5, 2007;
42. [REDACTED] products competition for the newspaper edition of June 23, 2007; and
43. [REDACTED] products competition for the newspaper edition of February 19, 2007.

In response to the director's request for evidence, the petitioner submitted an August 5, 2009 letter from [REDACTED] stating: "FIGE certifies that the newspaper [REDACTED] has participated in Graphic Quality competitions held both internationally and locally, obtaining great recognition and major prizes from 1990 to date." [REDACTED] does not provide specific explanations about the "major prizes" to which he refers. Moreover, his letter does not identify any awards specifically received by the beneficiary. With regard to items 1 through 43 above, these awards were presented to [REDACTED] rather than the beneficiary. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires documentation of "the alien's receipt" of nationally or internationally recognized prizes or awards, not his employer's receipt of the awards. It cannot suffice that the beneficiary was a part of a large newspaper staff that earned collective recognition. Further, the record does not include information from the presenting organizations explaining the significance of the preceding awards or their evaluation criteria. The plain language of this criterion specifically requires that the alien's awards be nationally or internationally *recognized* in the field of endeavor and it is the petitioner's burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the beneficiary received the preceding awards and that they are recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In response to the director's request for evidence, the petitioner submitted a certificate from [REDACTED] stating that the beneficiary "was decorated with the Medal of Honor on January 28, 2005, in recognition of his years of work in charge of [REDACTED] a pioneering company in the forging of great trade achievements as between France and Ecuador." According to the beneficiary's submitted curriculum vitae, he worked as [REDACTED] from September 2003 to May 2006. The beneficiary's curriculum vitae states that he improved [REDACTED] market share in Ecuador "from 0.01% to 5.7% in less than three years." In this case, the "field of endeavor" in which the beneficiary intends to work in the United States is the newspaper publishing industry, not the automotive industry.⁵ The statute and regulations require that the beneficiary seeks to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Accordingly, the beneficiary's

⁵ Pages 3 – 5 of the appellate brief from counsel emphasize that the beneficiary works in the "newspaper publishing field."

Medal of Honor for his work fostering "trade between France and Ecuador" in the form of automobile sales for the [REDACTED] is not in the field of endeavor in which the beneficiary seeks to continue to work. Further, the record does not include supporting evidence documenting the significance of the Medal of Honor or its evaluation criteria. There is no evidence demonstrating that the award equates to a nationally or internationally recognized prize or award for excellence in the field. Moreover, even if the petitioner were to establish that the beneficiary's Medal of Honor meets all the elements of the regulation at 8 C.F.R. § 204.5(h)(3)(i), which it has not, the statute requires the submission of "extensive documentation." Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires the alien's receipt of "nationally or internationally recognized prizes or awards" in the plural. [Emphasis added.] One such qualifying award does not meet the plain language requirements of this criterion.

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

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

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

The petitioner submitted an April 28, 2009 letter from [REDACTED] stating: [REDACTED] has been honored with the acceptance of [the beneficiary] as an active member of our Advisory Board." At issue are the requirements for membership on the Advisory Board and whether the [REDACTED] is an association in the field for which classification is sought. In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED], stating:

In its continuous effort to excellence, the [REDACTED] administration called for an Advisory Board which should be formed by confirmed outstanding and successful personages in the entrepreneurial and management fields whose contribution would guarantee the best professionals-graduates.

The Advisory Board should in brief:

- a) complement the vision the [REDACTED] top management.
- b) act as sentries and scouts of opportunities and threats to the [REDACTED]

- c) be a source of new ideas related to new programs
- d) act as access providers to relevant networks with a local and global scope
- e) provide expert advise and counseling in strategic decision making
- f) represent the [REDACTED] in the local and global community.
- g) be part of the requirements of the Commission for Independent Education of the Florida Department of Education, the advisory board shall review periodically the educational programs of the [REDACTED]

To become part of this Advisory Board a member should provide (selection criteria):

- a) Depth of knowledge of a particular sector with local and global scope. Of particular relevance are the finance, global trading, government, and high tech sectors.
- b) Diversity in terms of background, nationality, and expertise.
- c) An extensive network of resources, markets and key people specially in Miami, Mexico, and Peru
- d) Diverse points of view and alternatives in order to achieve the [REDACTED] goals.

We cannot conclude that possessing a depth of knowledge in business, having a diverse background in terms of nationality and expertise, demonstrating an extensive network of resources and contacts, and presenting diverse points of view and alternative ideas equate to "outstanding achievements." The submitted evidence does not establish that the [REDACTED] advisory board requires outstanding achievements of its members, as judged by recognized national or international experts in the beneficiary's field. Further, the petitioner has not established that the [REDACTED] advisory board is an association in "the field for which classification is sought" as mandated by the unambiguous language in the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Pages 3 – 5 of the appellate brief from counsel specifically emphasize that the beneficiary works in the "newspaper publishing field." The petitioner does not explain how a general school of management advisory board equates to an association in the newspaper publishing field. Thus, the beneficiary's advisory board membership does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

The petitioner's response to the director's request for evidence also included a July 29, 2009 letter from [REDACTED] stating:

I have the satisfaction to certify that [the beneficiary] has been for over a decade an important member our commercial and business community.

* * *

His support to the community development he [*sic*] has been honored several times, and during 2003-2005 he was designated delegate of the Graphic Industrial Sector of our institution.

The record, however, does not include evidence of the membership requirements (such as bylaws or rules of admission) for the Quito Chamber of Commerce showing that it requires outstanding achievements of its members, as judged by recognized national or international experts in the

beneficiary's field. Further, the petitioner has not established that the Quito Chamber of Commerce is an association in "the field for which classification is sought" as mandated by the unambiguous language in the regulation at 8 C.F.R. § 204.5(h)(3)(ii). The petitioner does not explain how a local chamber of commerce equates to an association in the newspaper publishing field.

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

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

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁶

The petitioner submitted articles appearing in [REDACTED] a newspaper operated by the beneficiary's family. A September 26, 1994 article in [REDACTED] entitled [REDACTED] is about the newspaper in general rather than the beneficiary. The article only mentions the beneficiary's name once along with several others at the conclusion of the article. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be "about the alien."⁷ Further, the author of the material was not identified as required by the plain language of 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner submitted a September 26, 1994 article in [REDACTED] entitled "Good Business." The beneficiary is not mentioned in the article, but he appears in an accompanying photograph along with five other individuals. The caption under the photograph does not even identify the beneficiary. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the submission of "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The accompanying photograph does not meet these requirements.

The petitioner submitted a March 21, 2006 article in [REDACTED] entitled [REDACTED]. The beneficiary is not mentioned in the article, [REDACTED]. The caption under the photograph [REDACTED]

⁶ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

⁷ See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

states: [REDACTED] shared the evening with their guests." As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the submission of "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The accompanying photograph [REDACTED] does not meet these requirements.

The petitioner submitted a [REDACTED] article in the Opinion section of [REDACTED] entitled [REDACTED]. The eight-paragraph article includes only four sentences mentioning the beneficiary. As previously discussed, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." Further, the author of the material was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner submitted another [REDACTED] article in the Opinion section of [REDACTED] entitled [REDACTED]. The beneficiary is not specifically mentioned in the article and the author of the material was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner submitted a [REDACTED] article in the Opinion section of [REDACTED] entitled "100 years of history." The article includes only two sentences mentioning the beneficiary and is about the history of the [REDACTED] newspaper in general rather than the beneficiary and his work.

Finally, we note that all of the preceding material appeared in a single publication operated by the beneficiary's family. Section 203(b)(1)(A)(i) of the Act, however, requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires material about the beneficiary in more than one major publication. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. Thus, we can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.

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

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

The petitioner initially submitted a certificate from [REDACTED] [REDACTED] stating: "This is to certify that [the beneficiary] served on the jury for the [REDACTED] at the [REDACTED]. The record, however, does not include any information about the [REDACTED]. The preceding certificate does not specify the nature of the beneficiary's activities as a judge or the names and fields of specification of those he evaluated. Merely submitting documentary evidence reflecting that the beneficiary served on a jury without evidence demonstrating who he judged is insufficient to establish eligibility for this

criterion. Moreover, the petitioner failed to establish that the beneficiary judged the work of others in the same or allied field of specification.

In response to the director's request for evidence, the petitioner submitted three notices bearing the heading [REDACTED]. The first notice from 2005 states:

The Organizing Committee under the chairmanship of [the beneficiary] invites journalists and photographers to participate in the [REDACTED]

* * *

One hundred and six works were submitted for this competition. After rigorous scrutiny, the following journalists were declared the winners

The second notice from 2007 states:

The Organizing Committee under the chairmanship of [the beneficiary] invites journalists and photographers to participate in the [REDACTED].

* * *

One hundred and seven works were submitted for this competition. After rigorous scrutiny, the following journalists were declared the winners

The third notice from 2008 states:

The Organizing Committee under the chairmanship of [the beneficiary] invites journalists and photographers to participate in the [REDACTED]

* * *

One hundred and fifty-three works were submitted for this competition. After rigorous scrutiny, the following journalists were declared the winners

The three preceding notices bearing the address of [REDACTED] state that the beneficiary has chaired the [REDACTED] but there is no evidence of his participation as a judge of the work of the contestants. As previously discussed, 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 165. The petitioner's response also included photographs of the beneficiary at the preceding award ceremonies. The petitioner also submitted a document entitled [REDACTED] which states:

[REDACTED] was instituted by the newspapers [REDACTED] in 1990 in memory of [REDACTED].

* * *

Maintaining this tradition for the past 15 years, [REDACTED] the person who proclaims and organizes the most important and unique journalism competition in Ecuador, as head of the Organizing Committee. From this position it is his weighty responsibility to define the profile for the selection of judges, both Ecuadorean and international, determine the basic terms of the competition, establish the prizes in each category, receive the verdict of the judges and preside over the awards ceremony.

* * *

The judges include personalities from Ecuadorean and international journalism invited by [REDACTED]

The above document indicates that the beneficiary defines the profile for the selection of judges, determines the basic terms of the competition, establishes the prizes in each category, receives the verdict of the judges, and presides over the awards ceremony, but there is no documentary evidence showing that the beneficiary actually participated as a judge of the work of the contestants.

The petitioner's response also included a document entitled [REDACTED]. The document includes general information about an advertising competition organized by [REDACTED] but there is no evidence of the beneficiary's actual participation, either individually or on a panel, as judge of the work of the contestants. For instance, there is no documentary evidence showing the names of the advertising contestants whose work he specifically evaluated. As previously discussed, 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 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii).

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

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

On appeal, counsel points to the awards received by [REDACTED] as evidence for this criterion. These awards have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). For instance, with regard to the [REDACTED] capacity to produce newspaper content in accordance with ISO standards shows that the newspaper meets certain industry quality standards, but there is no evidence that earning INCQC membership is based on originality or a contribution of major significance in the field. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance in the field, USCIS clearly does not view these criteria as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a beneficiary meet at least three separate criteria. Nevertheless, the submitted documentation pertaining to [REDACTED] awards does not specify how the beneficiary's contributions were "original" or provide specific examples of how his contributions have impacted the field at large.

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 newspaper publishing, it can be expected that the beneficiary's original work would be demonstrably influential beyond his employer. In other words, while providing sound direction and management for [REDACTED] operations may contribute to that particular company's success, such work is not necessarily either original or a contribution of major significance to the newspaper publishing industry at large.

The petitioner submitted several letters of support discussing the beneficiary's work.

[REDACTED] states:

[REDACTED] and over the past eighteen years, he has been the leader in developing and modernizing our 103 year-old newspaper group. [The beneficiary] is a highly skilled and distinguished executive, and he is widely recognized by his peers and industry leaders, both nationally and internationally, as one of the premier publishing executives in Latin America, as well as the innovator and pioneer in the development of both the graphic and business sections of [REDACTED] newspaper, magazine and commercial printing operations in Ecuador. [The beneficiary's] work has encompassed all areas of publishing and print media, for which he has received numerous accolades and widespread recognition for his unmatched skills and abilities. [The beneficiary] is an invaluable asset to the publishing industry

[REDACTED] does not specifically identify the original printing innovations specifically developed by the beneficiary or their impact on the publishing industry. The plain language of

the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the beneficiary's contributions be "of major significance in the field" rather than limited to a single company or employer such as the petitioner. While the beneficiary has helped to improve the operations of his family's company, there is no evidence showing that his work equates to original business-related contributions of major significance in the newspaper publishing industry.

states:

I have known [the beneficiary] since the late 1980's, when he began being involved with [redacted] [The beneficiary] has always showed an ability to auto educate himself, particularly in the graphics arts area and the application of emerging technologies. Before finishing his undergraduate education in Business, he worked as an apprentice at [redacted] during holidays.

After obtaining his degree in Drew University, and not having had any formal training in graphics arts, he implemented in [redacted] a common personal computer network – software and hardware – originally not designed to be used in a newspaper, into a prepress workflow. Such integration in his daily local newspaper, was an early version of desktop publishing which is now the standard of the industry.

Though he may not have pioneered this implementation, he was one of the few in the region that was successful in the early migration of traditional graphic arts into the digital era, working at the time with very limited resources. In the later years [the beneficiary] was able to use the technology to push the limits of color reproduction in [redacted] rotary letterpress. The inking system on letterpress equipment is less precise than on offset presses, which can pose problems with some full color graphics and images. By overcoming this challenge, he achieved a quality comparable or superior to offset presses in that time. With these techniques he was able to broaden the revenue of the company by luring advertisers to test full color advertisement, and the industry recognized this achievement with awards in quality, given in his category through graphic arts associations and manufacturer promoted contests.

Years later he was able to build a compelling case to why [redacted] needed to upgrade to offset by changing its press of 23 years of use. He designed a unique layout of the new offset press maximizing color capabilities, page volume, while minimizing the investment. Once the new press was operational in early 1995, the challenge continued to push him in applying his skills, so that the available tools would produce exceptional results, while maximizing workflow, and broaden the portfolio of products that could be marketed to the readers and advertisers.

* * *

In the early years of his offset implementation, his work was up to par with the quality of most newspapers. Yet, as he perfected his techniques, he obtained his greatest

achievement; [REDACTED] has consecutively won five times [REDACTED] award.

As previously discussed, INCQC membership demonstrates the capacity to produce newspaper content in accordance with certain ISO standards, but there is no evidence that earning INCQC membership is based on originality or a contribution of major significance in the field. [REDACTED] states that the beneficiary "was one of the few in the region that was successful in the early migration of traditional graphic arts into the digital era," but acknowledges that the beneficiary "may not have pioneered this implementation." Further, there is no evidence showing that the color reproduction techniques implemented by the beneficiary were either original or influential in the newspaper publishing field.

[REDACTED] states that the beneficiary is "one of the most admired young entrepreneurs and visionary executives in newspapering and graphic arts development. [The beneficiary] has been the leader in the development and modernization of the [REDACTED] [REDACTED] does not provide specific examples of how the beneficiary's contributions were original or how they impacted the industry. Once again, a contribution to the beneficiary's employer is not necessarily an original contribution of major significance to the field at large.

[REDACTED] states:

In my years as an executive of [REDACTED] publishing company [REDACTED] I became acquainted with [the beneficiary] first as the person in charge of the Production area and then as [REDACTED] of the prestigious firm which publishes [REDACTED] In carrying out his professional duties, [the beneficiary] won recognition as a successful, serious-minded and responsible leader, attaining a position of distinction among Latin American press executives.

Along with his activities at the [REDACTED] group, [the beneficiary] developed various highly successful business initiatives in which he distinguished himself by virtue of his sense of honesty and proper behavior, as well as his great ability to innovate using new digital and communications technologies.

[REDACTED] does not specify the "original" digital and communications technologies developed by the beneficiary or explain how his work for [REDACTED] has significantly impacted the field beyond his projects for his immediate employer.

[REDACTED] states:

I have known [the beneficiary] since his childhood, because of my friendship with his [REDACTED]

I know that [the beneficiary] has made important contributions to the modernization of the [redacted] the training of its personnel and its constructive participation in discussion of the problems of Ecuador.

[redacted] does not specifically identify the beneficiary's "original" contributions to the modernization of [redacted] or explain how they constitute contributions of major significance in the field at large.

[redacted] states: "I am acquainted with [the beneficiary] as an intelligent, serious-minded, efficient and honest person who has done a distinguished job as [redacted] which has an old and rich tradition in Ecuadoran journalism." [redacted] compliments the beneficiary's distinguished service for [redacted] but there is no evidence showing that the beneficiary's original work for the company equates to original business-related contributions of major significance in the field.

On appeal, counsel argues that the director disregarded the information contained in the letters of support. The letters considered above, however, primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying "original" contributions and providing specific examples of how those contributions have influenced the beneficiary's field. The opinions of experts in the field are not without weight and have been considered above. 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 experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a publishing executive who has made original contributions of major significance. Without supporting evidence showing that the beneficiary's work equates to original contributions of major significance in his field, 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.

The aforementioned letters of support and other documentary evidence of record indicate that the beneficiary has performed in a leading or critical role as [redacted]. The record also demonstrates that the company has a distinguished reputation in the newspaper publishing industry based on its industry awards and standing in Ecuador. Aside from the beneficiary's leading role for [redacted] the record does not include evidence documenting the beneficiary's leading or critical role for any other organizations or establishments with a distinguished reputation. As previously discussed, section 203(b)(1)(A)(i)

of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) expressly requires evidence that the alien has performed in a leading or critical role for "organizations or establishments" in the plural. Therefore, documenting a leading or critical role for only a single distinguished organization, [REDACTED] does not meet the plain language of the regulation. Regarding the beneficiary's employment with other companies, the self-serving claims in his curriculum vitae are not sufficient to meet the evidentiary requirements for this criterion. 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 165. In this case, the petitioner has not submitted documentary evidence establishing that the other organizations or establishments for which the beneficiary has worked have a distinguished reputation. Further, the submitted documentation does not establish that the beneficiary was responsible for their success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not submitted qualifying evidence that meets all of the plain language requirements of 8 C.F.R. § 204.5(h)(3)(viii).

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

The petitioner submitted an April 23, 2009 letter from [REDACTED] stating: "[The beneficiary] receives a monthly fee of U.S. \$ 19413.33 (include taxes) for the being the [REDACTED] and \$7027.98 (include taxes) for the advice to the Family Council." The preceding monthly payments equate to annual earnings of \$317,295.72. In response to the director's request for evidence, the petitioner submitted an unsigned copy of the beneficiary and his spouse's 2008 U.S. Individual Income Tax Return. Line 7 of the tax return indicates "Wages, Salaries, tips, etc." of \$49,008 and line 21 lists "FOREIGN INCOME" of \$631,347. The unsigned U.S. tax return was not accompanied by a Form W-2, Wage and Tax Statement, or other official earnings statement showing the income amount attributable to the beneficiary versus his spouse. Without a signature on the form affirming that the beneficiary's 2008 U.S. income tax return is "true, correct, and complete" and an accompanying official earnings statement for the beneficiary for 2008 (such as his Form W-2), we cannot conclude that the income amount listed on the unsigned tax return is reliable.

The petitioner's response also included information from the U.S. Bureau of Labor Statistics indicating that the "mean" annual wage for Chief Executives in the newspaper publishing industry is \$168,060. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), however, requires the petitioner to submit evidence showing that the beneficiary has commanded a "high salary" in relation to others in the field. Mean wage information is not an appropriate basis for comparison in determining a "high salary" or other "significantly high remuneration." In this instance, the petitioner has not established that the beneficiary's above average compensation of \$317,295.72 equates to a "high salary" in relation to that of other publishing executives. The salary information submitted by the petitioner from the U.S. Bureau of Labor Statistics does not specify what constitutes a high salary in the beneficiary's field, only the average salary.

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

Summary

In this case, we concur with the director's determination 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 ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

C. Final Merits Determination

In accordance with the *Kazarian* opinion, we will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120. In the present matter, several of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) - (v), (viii), and (ix).

We acknowledge that the beneficiary has helped to improve the operations of [REDACTED]. We will not, however, infer the beneficiary's individual acclaim simply by virtue of his ascension to the top leadership of [REDACTED]. While [REDACTED] has earned multiple awards and honors as an Ecuadoran newspaper, the petitioner must demonstrate that the beneficiary personally has sustained national or international acclaim. Section 203(b)(1)(A)(i) of the Act.

Regarding the evidence submitted for 8 C.F.R. § 204.5(h)(3)(ii), the petitioner has not established that that the beneficiary's selection for the [REDACTED] Advisory Board (AB) in Miami and involvement with [REDACTED] is indicative of sustained national or international acclaim at the very top of the field. The letter from [REDACTED] lists business people who "have been *proposed to form* part of the AB," (emphasis added) but there is no evidence that those listed are actually active members on the board. Nevertheless, the submitted evidence does not establish that the [REDACTED] advisory board and the [REDACTED] require outstanding achievements of their members, as judged by recognized national or international experts in the beneficiary's field.

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(iii), there is no evidence showing that the beneficiary has attracted any major media attention beyond [REDACTED] the newspaper he directly controls. The non-existence of published material about the beneficiary in major publications other than [REDACTED] is not consistent with a showing of sustained national or international acclaim throughout his field.

Even if the petitioner were to submit documentary evidence showing that the beneficiary actually participated as a judge of the work of the contestants, which it has not, the national or international

reputations of the [REDACTED] [REDACTED] are undocumented. Further, the three self-serving notices from 2005, 2007 and 2008 bearing the address of [REDACTED] and the promotional material describing the [REDACTED] [REDACTED] indicate that the contest was organized by the beneficiary's company. There is no documentary evidence showing the reputation and prestige of the contest beyond [REDACTED]. USCIS need not rely on self-promotional material.⁸ With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(iv), the nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. In the present matter, the petitioner has not established that judging the [REDACTED] [REDACTED] the latter of which was organized by the beneficiary's company, is indicative of sustained national or international acclaim at the very top of the field of endeavor.

Regarding the documentation for 8 C.F.R. § 204.5(h)(3)(v), the letters from members of the beneficiary's field have been considered in detail above. For the reasons discussed above, these letters are primarily conclusory with little explanation as to how the beneficiary's work is original and no specific examples of the beneficiary's impact in the field at large. We acknowledge that the beneficiary has been an effective publishing executive while working for [REDACTED]. The record, however, lacks evidence that his work in running the company has garnered him sustained national or international acclaim.

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(ix), the petitioner submitted mean wage data from the U.S. Bureau of Labor Statistics showing that he commands an above average salary. The petitioner, however, must submit evidence showing that the beneficiary's salary places him among that small percentage at the very top of the field rather than simply above average in his field. *See* 8 C.F.R. § 204.5(h)(2). Mean wage statistics are not an appropriate basis for comparison in demonstrating that a salary is indicative of or consistent with national or international acclaim at the very top of the field.

Ultimately, the evidence in the aggregate does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. While the beneficiary has earned the respect and admiration of his references, the evidence of record falls short of demonstrating his sustained national or international acclaim.

III. Conclusion

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 and 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

⁸ *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.