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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**



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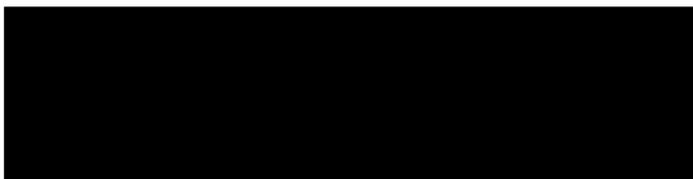
DATE: **JUL 20 2011** OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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, on January 21, 2010, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of the beneficiary's 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 beneficiary's "sustained national or international acclaim" and present "extensive documentation" of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

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

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 the petitioner demonstrate the beneficiary's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under 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.*

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.

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); *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).

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).

II. Translations

While not addressed by the director in his decision, the record of proceeding reflects that the petitioner submitted numerous foreign language documents without any English language translations, as well as some non-certified English language translations. The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

(3) Translations. Any 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.

As cited above, the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires that any foreign language document that is submitted to USCIS must be accompanied by a full and certified English language translation. Because the petitioner failed to comply with the regulation at 8 C.F.R. § 103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

III. Analysis

A. Evidentiary Criteria

This petition, filed on December 4, 2009, seeks to classify the beneficiary as an alien with extraordinary ability as a vice president in marketing and advertising. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

The director found that the petitioner failed to establish the beneficiary's eligibility for this criterion. At the time of the original filing of the petition, counsel argued the beneficiary's eligibility based on a "[c]ertificate for [the beneficiary's] participation as [redacted], which was the Gold Winner of the 2002 [redacted] [emphasis added]." A review of the record of proceeding reflects that the petitioner submitted a certificate from Plan B* reflecting:

Grants this acknowledgement to [the beneficiary] – For her *participation* as [redacted] in the production of the Advertising Campaign: [redacted] – March 2002 [emphasis added].

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor [emphasis added].” According to the beneficiary’s submitted curriculum vitae, the beneficiary was employed by [REDACTED] from 2000 – 2004. The petitioner failed to submit any documentary evidence demonstrating that a certificate from Plan B* acknowledging the beneficiary’s participation equates to a nationally or internationally recognized prize or award for excellence in the field. In fact, the certificate appears to be an inter-company acknowledgment rather than a nationally or internationally recognized prize or award for excellence.

Furthermore, while the certificate indicates that the advertising campaign of [REDACTED] Awards in March 2002, the petitioner failed to submit any documentary evidence reflecting that the beneficiary won a Producto Award. As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt” of prizes or awards, the submission of a certificate from the beneficiary’s previous employer acknowledging her participation on a campaign that won an award is insufficient to demonstrate that the beneficiary received a nationally or internationally recognized award for excellence in the field. Further, the AAO cannot conclude that an award that was not specifically presented to the beneficiary is tantamount to her receipt of a nationally or internationally recognized award. It cannot suffice that the beneficiary was one member of a large group that earned collective recognition. Moreover, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. 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. In this case, the petitioner submitted a certificate from [REDACTED] indicating that an advertising campaign won a [REDACTED] Award in 2002. The petitioner failed to submit primary evidence of the 2002 [REDACTED] Award, or evidence that primary evidence does not exist or cannot be obtained. As such, the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(2), and the AAO will not consider the petitioner’s secondary evidence.

In addition, the petitioner failed to demonstrate that a [REDACTED] is a nationally or internationally recognized prize or award for excellence in the field. On appeal, counsel argues that “this award is presented by and in [REDACTED] the leading economic and business magazine in Venezuela.” The AAO is not persuaded that awards or prizes from leading magazines in the field automatically equates to nationally or internationally recognized prizes or awards for excellence in the field. In fact, counsel failed to establish that [REDACTED] is the leading economic and business magazine in Venezuela. 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).

Although the record of proceeding reflects that the petitioner submitted an article, as well as several articles that were not translated pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), from [REDACTED] reflecting some history of the magazine, the article fails to reflect any evidence that an award from [REDACTED] is considered a nationally or internationally recognized award for excellence in the field of endeavor, and the petitioner failed to submit any independent, objective evidence beyond [REDACTED] own website demonstrating that [REDACTED] a leading economic and business magazine in Venezuela, as claimed by counsel.

Similarly, on appeal, counsel argues that the beneficiary “was the Planning and Strategy Director for four advertising campaigns that were *finalists* for the ANDA [Asociacion Nacional de Anunciantes] Excellence Awards. . . . Although, *she did not win*, the fact that she was *nominated* four times in four years reveals that she reached national recognition at the very top level in Venezuelan advertising [emphasis added].” A review of the record of proceeding reflects that the petitioner submitted four certificates from Plan B* acknowledging the beneficiary’s participation in campaigns that were finalists for the ANDA Awards. The petitioner failed to submit any documentary evidence demonstrating that the certificates from Plan B* acknowledging the beneficiary’s participation equate to nationally or internationally recognized prizes or awards for excellence in the field. Again, the certificates appear to be inter-company acknowledgment rather than nationally or internationally recognized prizes or awards for excellence.

Moreover, the petitioner submitted a letter from [REDACTED] indicating that [REDACTED] obtained “recognitions as a finalist in the ANDA Awards” four times, the letter fails to establish that the beneficiary received any ANDA Awards. Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt” of prizes or awards. As the documentary evidence fails to reflect that any of the ANDA Awards were presented to the beneficiary, it cannot suffice that the beneficiary was one member of a large group that earned collective recognition. Even if the petitioner demonstrated that the beneficiary received any of the ANDA Awards, which it clearly has not, the letter from [REDACTED] only reflects that Plan B* was a finalist four times. The petitioner failed to establish that being a finalist or being nominated equates to receiving a nationally or internationally recognized award or prize for excellence in the field. In fact, [REDACTED] indicated in another letter that ANDA Awards are Golden, Silver, or Bronze. As the petitioner failed to establish that the beneficiary has ever received a Golden, Silver, or Bronze ANDA Award, the petitioner failed to demonstrate that Plan B*’s nominations and finalist results meet the plain language of this regulatory criterion. Notwithstanding, although the petitioner submitted documentary evidence about the history of the ANDA Awards from ANDA’s website and yearbooks for the ANDA Awards for 1996-1997, 1997-1998, and 1999-2000, as well as an article from *Producto* regarding the coverage of the ANDA Awards in November 1999, the petitioner failed to submit sufficient independent, objective evidence reflecting that the ANDA Awards are nationally or internationally *recognized* for excellence in the field. The AAO notes that the petitioner submitted several foreign language documents without any English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3).

Furthermore, at the initial filing of the petition, counsel claimed the beneficiary's eligibility based on the submission of one share of [REDACTED]

[REDACTED] A review of the stock certificate reflects that it was awarded to the petitioner rather than the beneficiary. In addition, the petitioner submitted a letter from [REDACTED] who stated:

In recognition of her work and that of her firm, [REDACTED] presented [the beneficiary] and her firm with a certificate of stock in the Greater Miami, a symbolic recognition awarded by [REDACTED] to a select number of individuals/organizations which have done exemplary work to make Miami a better place to live, work and play.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt" of prizes or awards. As the stock certificate reflects that the petitioner is the owner of one significant share of stock, the record fails to reflect that the beneficiary received an award or prize from GMCC. Regardless, the petitioner failed to submit any documentary evidence demonstrating that a stock certificate from GMCC is a nationally or internationally recognized prize or award for excellence in the field. In fact, as [REDACTED] indicates, the stock certificate is symbolic in recognizing the petitioner's contributions to the Miami area; it is not reflective of a nationally or internationally recognized prize or award for excellence in the field.

Similarly, the petitioner submitted a letter addressed to the beneficiary from [REDACTED], Chairman of the GMCC Top 100 Minority Award, indicating that the petitioner "has been selected by the [GMCC] as one of South Florida's Top 100 Minority Businesses." The petitioner also submitted a certificate indicating that the petitioner was awarded a Top 100 Minority Business Award on March 18, 2008. The AAO notes that the petitioner submitted an article from *América Sin Mordaza* without an English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Again, the record reflects that the petitioner received the award rather than the beneficiary. Moreover, the award appears to be for businesses in the South Florida area rather than a nationally or internationally recognized award for excellence in the field.

Moreover, at the time of the original filing of the petition, the petitioner submitted an email from [REDACTED], indicating that the beneficiary was "nominated for the coveted 'Noche de Honor' award which is reserved for a Hispanic leader in the community who has made a positive impact in the South Florida community." The petitioner failed to establish that the beneficiary's nomination resulted in any prizes or awards, let alone nationally or internationally recognized prizes or awards for excellence. In fact, as the Noche de Honor award is restricted to the South Florida community, it appears that it is a regional award rather than a nationally or internationally recognized award for excellence in the field of endeavor.

In addition, at the initial filing of the petition, the petitioner submitted a letter from [REDACTED], [REDACTED] indicating that the beneficiary won [REDACTED] 2009 [REDACTED]. The petitioner also submitted some articles

from websites regarding the Latinbiz Awards indicating that they honor “outstanding women in South Florida’s community.” Again, the documentary evidence submitted by the petitioner reflects that [REDACTED] are limited to the South Florida community and are not reflective of nationally or internationally recognized prizes or awards for excellence in the field. There is no evidence demonstrating that the Latinbiz Awards are recognized beyond the South Florida community.

Further, at the time of the original filing of the petition, counsel argued the beneficiary’s eligibility for this criterion based on the Proctor and Gamble award and stated:

September 28, 1993 Proctor and Gamble Certificate awarded to [the beneficiary] for achieving the “Excellency Challenge” awarded for her remarkable performance as a student . . . and information on the award. The “Excellency Challenge” award is presented each year to the top 40 students from the most prestigious Venezuelan Universities.

The petitioner submitted a certificate reflecting that the beneficiary was awarded the Excellency Challenge and screenshots from <http://pg.newswire.net> indicating that the program “recognizes students with excellent academic performance, initiative [sic], and leadership skills.” The AAO notes that the petitioner submitted several screenshots in a foreign language without any English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Notwithstanding, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, postdoctoral fellowships, and financial aid awards cannot be considered nationally or internationally recognized prizes or awards in the beneficiary’s field of endeavor. The documentary evidence submitted by the petitioner fails to establish that the beneficiary’s academic award is a nationally or internationally recognized prize or award for excellence in the field. Moreover, the petitioner failed to submit any documentary evidence beyond [REDACTED] to demonstrate that the academic award is recognized nationally or internationally for excellence in the field of endeavor. Academic awards and honors received while preparing for a vocation fall substantially short of constituting a national or international prize or award for recognition in the field.

Finally, on appeal, counsel argued that the beneficiary’s “marketing campaign [REDACTED] award for best prepaid program marketing.” However, counsel submitted a screenshot from <http://paybefore.com> reflecting that the 2010 [REDACTED] Awards winners would be announced on February 22, 2010. The petition was filed on December 4, 2009. 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. Comm’r. 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 USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Moreover, the documentary evidence reflects that [REDACTED] were nominated for [REDACTED] for the 2010 [REDACTED] rather than the beneficiary. Regardless, counsel failed to submit any documentary evidence establishing that

Bonus Alimentacion won an award, let alone a nationally or internationally recognized award for excellence in the field. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984).

The AAO notes here that on appeal counsel indicated in a footnote:

[The beneficiary's] marketing/advertising campaign [REDACTED] was nominated for the [REDACTED] (Unfortunately, the evidence reflecting this distinction has been lost.) The Promax awards is the highest accolade for promotion and marketing professionals for any given year, and the BDA award is the ultimate accolade for outstanding design in media.

Again, counsel failed to support her assertions regarding the beneficiary's nominations for the Promax and BDA awards with documentary evidence. Nevertheless, even if the beneficiary was nominated for a Promax and BDA award, counsel failed to demonstrate that such nominations equate to nationally or internationally recognized prizes or awards for excellence in the field.

As discussed, the plain language of this regulatory criterion specifically requires that the beneficiary receive prizes or awards and that they be nationally or internationally recognized for excellence in her field. The burden is on the petitioner to meet every element of this criterion. In this case, the petitioner failed to demonstrate that the beneficiary has received any nationally or internationally recognized prizes or awards for excellence in her field of endeavor consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Accordingly, the petitioner failed to establish 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 the director's decision, he found that the petitioner failed to establish the beneficiary's eligibility for this criterion. At the time of the original filing of the petition, counsel claimed the beneficiary's eligibility based on membership with The ComVort Group, the eMarketing Association, and the Public Relations Society of America (PRSA). Although on appeal counsel only addressed membership with The ComVort Group, the AAO will also address the beneficiary's membership with the eMarketing Association and the PRSA.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is 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.

Regarding [REDACTED], the petitioner submitted a letter from [REDACTED], Former [REDACTED] who stated:

The [REDACTED] aims to add in middle sized, independent and owner-operated companies that are considered to be the top agencies in their countries. To qualify, these companies must be specialized advertising and marketing firms that can bring to the table up to the minute information of the specific characteristics of their market, competition situations and detailed knowledge of the mindset of the sophisticated target groups. Additionally, as the focus of The [REDACTED] is on owner-managed companies, the previous experience, reputation and outstanding skills of the managing partners are the key issues for selecting current and potential prospects all around the globe.

While at [REDACTED] one of my main tasks was to research the Venezuelan market in order to present the prospects to our Board of Directors. My research lead me to [the petitioner] as the leading independent agency in that market.

The petitioner also submitted screenshots from [REDACTED] establishing that the petitioner is part of [REDACTED]. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the *alien’s membership* in associations [emphasis added].” The beneficiary’s relationship as a partner with the petitioner is insufficient to demonstrate the beneficiary’s membership in associations in the field. In fact, membership with [REDACTED] is comprised of “independently owned agencies” and “companies” rather than individual membership. While the petitioner, as a business, is a member of The [REDACTED], the beneficiary’s affiliation to the petitioner who is a member is insufficient to demonstrate that she is a member of [REDACTED].

Notwithstanding the above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) provides that membership requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. A review of the screenshots reflects that “[t]o become a member of [REDACTED] an agency must pass a rigorous screening process, to ensure that the quality of its work meets [REDACTED] high standards.” However, the petitioner failed to submit any documentary evidence reflecting the “rigorous screening process,” so as to establish that it requires outstanding achievements of its members. Furthermore, while [REDACTED] indicated that the petitioner’s membership was presented to the “Board of Directors,” the petitioner failed to demonstrate that [REDACTED]

of directors is comprised of “recognized national or international experts in their disciplines or fields,” so as to establish that they judge outstanding achievements.

Regarding the [REDACTED], the petitioner submitted a certificate reflecting that the beneficiary “[h]as demonstrated competency in [REDACTED]” and the board of directors certified the beneficiary as an [REDACTED] in 2009 based on her “completion of all certification requirements.” The petitioner submitted screenshots from www.emarketingassociation.com reflecting that membership is based on successfully completing online courses and paying fees. As there is no evidence indicating that membership with eMarketing Association requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields, the petitioner’s membership with the eMarketing Association fails to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Regarding the PRSA, the petitioner submitted a certificate reflecting that the beneficiary was elected [REDACTED] in July 2009. The petitioner also submitted background information regarding PRSA, including integrity and ethics requirements for PRSA. However, the petitioner failed to submit any documentary evidence regarding membership requirements, so as to establish that membership with PRSA requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. According to PRSA’s website, which was obtained from documentary evidence provided by the petitioner, membership is based on the length of professional experience and the payment of membership fees.³ For example, as a member like the beneficiary, an individual must have two or more years of experience in public relations and pay \$225 in annual fees. Clearly, membership with PRSA does not require outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

In sum, the petitioner failed to establish that the beneficiary is a member of The ComVort Group, and the petitioner failed to demonstrate that membership with The ComVort Group, the eMarketing Association, and the PRSA require outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Accordingly, the petitioner failed to establish 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.

The director found that the petitioner failed to establish the beneficiary’s eligibility for this criterion. On appeal, counsel argued:

³ See http://www.prsa.org/JoinUs/Membership_Types/. Accessed on July 5, 2011, and incorporated into the record of proceeding.

The officer found that [the beneficiary] did not meet the printed press and media criteria, as the articles submitted were not primarily about the beneficiary. Rather, they were about her advertising/marketing campaigns and provided quotes from [the beneficiary] describing her basis for same. As such, these articles reveal [the beneficiary's] extraordinary ability in marketing/advertising.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” 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. 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.⁴ Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. An article entitled, [REDACTED], June 1998, unidentified author, *Producto*;
2. An article entitled, [REDACTED] unidentified date, unidentified author, *Producto*;
3. A screenshot entitled, [REDACTED] unidentified date, unidentified author, www.producto.com;
4. A screenshot entitled, [REDACTED] September 2001, unidentified author, www.producto.com;
5. An article entitled, [REDACTED] November 22, 1999, unidentified [REDACTED];
6. An article entitled, [REDACTED] [REDACTED] March 2002, unidentified author, *Publicidad & Mercadeo*;

⁴ 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. An article entitled, [REDACTED] October 2009, unidentified author, *Publicidad & Mercadeo*;
8. A screenshot entitled, [REDACTED] October 18, 2009, [REDACTED]
[REDACTED]
9. A snippet entitled, [REDACTED] unidentified date, unidentified author, unidentified source; and
10. Several articles from Creativity in June 2009.

Regarding items 1 and 2, the petitioner failed to include the date and/or author of the material pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, a review of the articles fails to reflect that they are published material about the beneficiary relating to her work. In fact, regarding item 1, the article is about numerous advertisements in soccer. Although the beneficiary was quoted one time in the article, it is clearly not about the beneficiary relating to her work. Regarding item 2, the article is about [REDACTED] and the beneficiary is never mentioned in the article. As such, the article is not about the beneficiary relating to her work. Further, the petitioner failed to submit any documentary evidence establishing that [REDACTED] is a professional or major trade publication or other major media.

Regarding items 3 and 4, the petitioner failed to include the date and/or author of the material pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Regarding item 3, the screenshot is about the history of [REDACTED] rather than the beneficiary relating to her work. In fact, the beneficiary is not even mentioned in the screenshot. Likewise, regarding item 4, the screenshot is about companies advertising in sports. There is no mention of the beneficiary in the screenshot. Regardless, the petitioner failed to submit any documentary evidence demonstrating that [REDACTED] is a professional or major trade publication or other major media. The AAO is not persuaded that articles posted on the Internet from a printed publication are automatically considered major media. In today's world, many newspapers and media outlets, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. However, the AAO is not persuaded that international accessibility by itself is a realistic indicator of whether a given website is "major media."

Regarding item 5, the petitioner failed to include the author of the article pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, although the beneficiary is mentioned one time as one of the moderators of the London Festival, the article is not about the beneficiary relating to her work. In addition, the petitioner submitted screenshots from *Wikipedia* regarding *El Nacional*. However, as there are no assurances about the reliability of the content from this open, user-edited Internet site, the AAO will not assign weight to information from *Wikipedia*.

See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).⁵ The petitioner failed to submit any other documentary evidence regarding *El Nacional*, so as to establish that it is a professional or major trade publication or other major media.

Regarding items 6 and 7, the petitioner failed to include the authors of the material pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, regarding item 6, the article is about the new campaign image of *El Nacional*. While the beneficiary is quoted one time in the article, the article is not about the beneficiary relating to her work. Regarding item 7, the article is about the Electronic Benefits Transfer Card rather than the beneficiary relating to her work. In fact, the beneficiary is not even mentioned in the article. Articles that are not about the beneficiary do not meet this regulatory criterion. 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). In addition, while the petitioner submitted a screenshot from *Publicidad & Mercadeo's* website, the petitioner failed to submit any independent, objective evidence regarding *Publicidad & Mercadeo*. Furthermore, while the petitioner highlighted that *Publicidad & Mercadeo* has a “[m]onthly circulation and is present at on national scale,” the AAO is not persuaded that such claims are consistent with a professional or major trade publication or other major media.

Regarding item 8, the blog is about various issues and announcements including the posting that the beneficiary was awarded [REDACTED]. However, the blog is not about the beneficiary relating to her work. In addition, the petitioner submitted screenshots from *Wikipedia* regarding *El Universal*. However, the petitioner failed to submit any documentary evidence demonstrating that <http://blogs.eluniversal.com> is a professional or major trade publication or other major media.

Regarding item 9, the petitioner failed to include the date and author of the material pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, while the snippet indicates that the advertisement campaign was developed by Plan B*, there is no mention of the beneficiary. As such, the snippet is not published material about the beneficiary relating to her work. Also, the petitioner failed to indicate where the snippet was published, so as to demonstrate that it was published in a professional or major trade publication or other major media.

⁵ See also the online content from http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on July 5, 2011, and copy incorporated into the record of proceeding is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

Regarding item 10, as indicated above, the petitioner submitted several articles from *Creativity*. Notwithstanding that the petitioner failed to indicate the publication date of *Creativity* and the authors of the articles, a review of the article fails to mention the beneficiary and are not published material about the beneficiary relating to her work. In addition, the petitioner failed to submit any documentary evidence establishing that *Creativity* is a professional or major trade publication or other major media.

With the exception of item 8, the petitioner failed to include the date and/or author for any of the submitted documentation pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the petitioner failed to demonstrate that any of the documentary evidence reflected published material about the beneficiary relating to her work. Finally, the petitioner failed to establish that the material was published in professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish 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.

In the director's decision, he found that the petitioner failed to establish the beneficiary's eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted a letter addressed to the beneficiary from [REDACTED]

[REDACTED] who stated:

In name of the IESA Entrepreneurs Centre and the academic team of the Program for Entrepreneurs of the IESA, we want to once more thank to [the petitioner] and, specially, you for your valuable contribution to the 2006 and 2007 editions of this Program.

Your habitual presence as a jury in the selection of the best business plans elaborated by the participants of this program, as well as the prize that your ad agency has given to some of the future entrepreneurs by giving them a free consulting of marketing and image for six months, are invaluable contributions to the stimulation of successful entrepreneurial activity in Venezuela.

As you know, the Entrepreneurs Centre of the IESA organizes this program with the objective of offering tools to create business plans and to impulse the success of new Venezuelan businesses.

In addition, the petitioner submitted a screenshot from IESA's website indicating that "IESA trains managers in social responsibility, entrepreneurship, and community leadership on an equal footing to quality standards applied by top management schools." The AAO notes that the

petitioner also submitted foreign language documents without any English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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* [emphasis added].” Although the letter from [REDACTED] indicated that the beneficiary served as a jury member, the petitioner failed to demonstrate that the beneficiary’s service “in the selection of the best business plans elaborated by the participants of this program” is in the same or an allied field of specification for which classification is sought. The petitioner’s field of expertise is in advertising and marketing. However, the letter from [REDACTED] fails to indicate that the beneficiary served as a judge of the work of others in her field. There is insufficient information demonstrating that selecting business plans is in the same or an allied field of specification in the beneficiary’s field of advertising and marketing.

The petitioner submitted a letter from [REDACTED], Executive Director of the Venezuelan Federation of Advertising Agencies (FEVAP) who stated:

[The beneficiary] . . . participated as a ponent [sic] in the event [REDACTED] [REDACTED] in 1999 edition.” She participated in the event [REDACTED] [REDACTED], a yearly advertising event of the [FEVAP], with the only objective of contributing to the professional development of the new generations.

The petitioner also submitted documentary evidence regarding background information about “Creative Storm 99,” including foreign language documents without any English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). While the letter from FEVAP indicates that the beneficiary participated [REDACTED]” and “Advertising in the New Millennium,” there is no indication that the beneficiary participated as a judge of the work of others. In fact, it appears from the foreign language documentation that the beneficiary was a speaker at [REDACTED]” Moreover, the record fails to reflect that a “ponent” equates to a judge. As such, the petitioner failed to demonstrate that the beneficiary’s participation at [REDACTED] and “Advertising in the New Millennium” meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

The petitioner submitted a letter addressed to the beneficiary from [REDACTED], Partner at Brand Blaze, who stated:

[REDACTED] Awards 2009 Committee is seeking an official logo to use in the Marketing Visionary Awards (MVA) as part of its activities celebrating this highly publicized first time event, which is scheduled to take place on April 28th, 2010. As you are aware, the Chamber has very strict policies regarding who

can serve as a judge or part of a panel, leading us to only have the top representatives of industries as our judges.

Due to your extraordinary skills in marketing, the Committee is delighted to invite you to be one of the judges of the MVA Logo Contest. . . . In addition to judging the Logo Contest, we hope that we can count on you to be one of the five panelists who will select winners for the MVAs.

The petitioner submitted a letter from [REDACTED] dated November 6, 2009, who stated:

As the Marketing Chair, [the beneficiary] has demonstrated a great ability to manage an extended group of top professionals (from C-Level to Managers and Business Owners) that work under her directions to accomplish the objectives that [the beneficiary] presented and established at the GMCC 2009 Goals Conference. Two of the key goals are to create and produce a marketing awards event that will recognize individuals and institutions of the South Florida marketing, advertising and public relations community, and second is to develop a series of workshops that will educate members of the latest marketing tools.

With [the beneficiary's] leadership and energy both of these goals are already bearing fruit. With assistance from the team she has already developed the rules and regulations as well as the nominations forms for the Marketing Visionary Awards which will be presented on April 28th 2010. Because of her extensive experience the group also appointed her President of the Jury for the awards logo contest, and se [sic] will also be responsible for selecting the panel of jurors that will have the responsibility to select the finalists and winners for the Marketing Visionary Awards.

As the plain language of this regulatory criterion specifically requires "the alien's participation . . . as the judge of the work of others," the mere request to serve as a judge without evidence of actually judging the work of others is insufficient to meet the plain language of the regulation. In fact, there is no evidence establishing that the beneficiary actually served as a judge for the Marketing Visionary Awards. Although the beneficiary developed the rules and regulations for the contest, as well as appointed president of the jury, the record fails to reflect that she served as a judge of the work of others for GMCC prior to the filing of the petition on December 4, 2009. 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. 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. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Similarly, the petitioner submitted a letter addressed to the beneficiary from [REDACTED] [REDACTED] inviting the beneficiary to be a guest speaker for

an E-Marketing Master Class during the first quarter of 2010. The petitioner failed to demonstrate that a request to be a guest speaker equates to judging the work of others pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Further, while the class was scheduled to take place after the filing of the petition, there is no evidence that the beneficiary actually spoke to the class.

For the reasons discussed above, the petitioner failed to demonstrate that the beneficiary served as a judge of the work of others in the same or an allied field of specification for which classification is sought at the time of the filing of the petition consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner failed to establish 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.

In the director's decision, he concluded that the petitioner failed to establish the beneficiary's eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original business-related contributions "of major significance in the field."

A review of the record of proceeding reflects that at the time of the original filing of the petition, the petitioner claimed the beneficiary's eligibility based on several advertising projects by beneficiary. The petitioner submitted copies of presentations for "Bonus Alimentacion," "Plata ServiTebca," "Banco Venezolano de Credito," "Provis Alimentacion," "Nike Venezuela," "El Nacional," and "CMT." While the covers of the presentations reflect that they were prepared by the beneficiary, the petitioner failed to submit English translations as required by the regulation at 8 C.F.R. § 103.2(b)(3).

Regarding "Bonus Alimentacion," the petitioner submitted two screenshots from NovoPayment's website describing the Bonus Alimentacion card, as well as the purpose, attributes, and success factors of the card. The petitioner also submitted numerous documents without any English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). However, the petitioner did submit a single translation for a snippet from *Producto Online 253* that announced the launching of the Bonus card. Finally, the petitioner submitted a letter from [REDACTED], President and CEO of NovoPayment, who stated:

I have worked in collaboration with [the beneficiary] since 2004, in several projects and for different industries which include Banking, Corporate Social Responsibilities and more recently in Cads & Payments. Her enthusiasm, outstanding professional skills and brightest ideas has been a constant

characteristic of her work and has created a strong link with [the beneficiary's] firm, which provides us services in the area of brand building, advertising, communication and marketing for an important portfolio of brands (Bonus, Plata, Provis). These brands hold today an important position in the prepaid cards space in Latin America and the Caribbean and have been awarded with several recognitions.

Although [REDACTED] praised the beneficiary for her professional skills, she failed to indicate the significance of the beneficiary's work with Bonus Alimentacion. For example, [REDACTED] failed to demonstrate that the success of Bonus Alimentacion was based on the beneficiary's marketing and advertising of the card. The documentary evidence submitted by the petitioner fails to establish that the beneficiary's work on the Bonus card has been of major significance in the field as a whole rather than limited to NovoPayment. The petitioner failed to demonstrate how the beneficiary's contributions to Bonus Alimentacion affected the field beyond NovoPayment.

Regarding [REDACTED] the petitioner again submitted numerous foreign language documents without any English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner also submitted a document [REDACTED] reflecting that [REDACTED] won [REDACTED] and provided background information about the Plata card. In addition, the petitioner submitted two translated articles entitled, "With Anticipated Plata" and "In a Direct, Electronic Way" that discussed the card. In addition, the petitioner submitted a screenshot from NovoPayment's website describing [REDACTED]. Finally, the petitioner submitted numerous emails between the beneficiary and [REDACTED] evidencing the beneficiary's work on the advertising project.

While the documentary evidence demonstrates that the beneficiary worked on the advertising campaign [REDACTED] the documentary evidence fails to reflect the impact or influence of the beneficiary's contributions to the field as a whole. Although [REDACTED] won [REDACTED] [REDACTED] for the card, there is no evidence establishing that [REDACTED] won an award based on the beneficiary's contributions to the advertising aspect of the product. Moreover, the petitioner failed to establish that the beneficiary's contributions went beyond [REDACTED] and were of major significance to the field.

Regarding "Banco Venezolano de Credito," the petitioner submitted two screenshots from Banco Venezolano de Credito's website reflecting the history of the bank, and a screenshot from *Wikipedia*. The petitioner also submitted numerous emails from [REDACTED] evidencing the beneficiary's work on the advertising project for the bank.

Again, while the petitioner demonstrated that the beneficiary worked on a project for Banco Venezolano de Credito, there is no evidence establishing that the beneficiary has made original contributions of major significance in the field. It appears that the scope of the beneficiary's contributions were limited to Banco Venezolano de Credito and are not reflective of original

contributions of major significance in the field pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Regarding “Provis Alimentacion,” the petitioner submitted a press release from [REDACTED] announcing a new joint venture with [REDACTED] called, [REDACTED] to develop a new prepaid card. Although the petitioner submitted a foreign language document indicating that it the press release was prepared by the beneficiary, the petitioner failed to submit an English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). The documentary evidence submitted by the petitioner fails to demonstrate that the beneficiary has made any original contributions, let alone original contributions of major significance in the field. The record fails to demonstrate the beneficiary’s contributions to the Provis Alimentacion project and how they can be considered of major significance in the field beyond [REDACTED]

Regarding “Nike Venezuela,” the petitioner submitted a posting on www.producto.com and a snippet from an unidentified source indicating that the local communication of Nike will be the responsibility of [REDACTED]. Moreover, the petitioner submitted a letter from [REDACTED] Former Product Line Manager Inversiones Venathletic, who stated:

In 2001, Nike, Inc. decided to create its own advertising campaign in Venezuela. As such, we requested proposals from some of Venezuela’s top advertising agencies, including Plan B*. The most creative and business proposal from Plan B*, created by [the beneficiary], was the most simplistic, but stylistic proposal that we received. The idea behind the campaign was “Yo soy” or “I am.” It featured photographs of a Venezuelan woman athlete performing a physical activity with the slogan “I am pure energy/invincible, I am.”

* * *

The advertising campaign created by [the beneficiary] for Nike was a success, as it helped us to significantly increase our market share in the Venezuelan market. In fact, it was the most successful marketing campaigns Nike launched in Latin America.

Based on [REDACTED] letter, the beneficiary contributed to the success of Nike’s marketing campaigns in Latin America. However, [REDACTED] failed to indicate that the beneficiary has made original contributions of major significance to the field as a whole. [REDACTED] failed to demonstrate how the beneficiary’s contributions for Nike have been of major significance to the field.

Regarding “El Nacional,” the petitioner submitted an article entitled, “With a New Image Campaign, El Nacional Counters the Attacks,” from *Publicidad & Mercadeo* reflecting that Plan B* was the agency responsible for the advertisement campaign in changing the image of *El Nacional*. The petitioner also submitted an article that was not accompanied by an English

translation as required by the regulation at 8 C.F.R. § 103.2(b)(3), as well as screenshots from *Wikipedia* regarding *El Nacional*.

The documentary evidence submitted by the petitioner fails to reflect the impact of the beneficiary's work in the field beyond working on an advertising campaign for *El Nacional*. Merely submitting documentary evidence demonstrating that the beneficiary worked on a project is insufficient to establish eligibility for this criterion without documentary evidence reflecting that the beneficiary has made original contributions of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Regarding CMT, the petitioner submitted an article entitled, [REDACTED] indicating that the new image of CMT would be supported by [REDACTED]. The petitioner also submitted a document without any English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner failed to establish that the beneficiary's contributions to the advertising campaign of CMT have been of major significance to the field, let alone to CMT. Again, simply submitting evidence that the beneficiary has worked on an advertising campaign fails to demonstrate eligibility for this criterion unless the documentation reflects that the beneficiary has made original contributions of major significance in the field.

Finally, the petitioner submitted documentary evidence reflecting that she worked on the GMCC new brand design program. Further, the petitioner submitted the September 2008 *World City Magazine* reflecting that GMCC chose her design. The documentary evidence submitted by the petitioner fails to demonstrate that the beneficiary's contributions in the design of the new GMCC logo have been of major significance in the field. Once again, while the beneficiary contributed to the GMCC new design, there is no evidence of the significance of this contribution in the field beyond GMCC.

On appeal, counsel also argues the beneficiary's eligibility based on recommendation letters that were initially submitted as evidence of the beneficiary's eligibility as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). While the recommendation letters praise the beneficiary for her work in advertising and marketing for specific advertising campaigns, they fail to indicate that her contributions are of *major significance in the field*. The letters provide only general statements without offering any specific information to establish how the beneficiary's work has been of major significance in the field. For instance:

[REDACTED] stated:

My business [REDACTED] starts out with one product, i.e., a disposable urination funnel for girls and women called [REDACTED]. Six months have past working hand in hand with Aristides and [the beneficiary]. At all times I have found [the petitioner] to be dependable, reliable, enthusiastic and hard working. . . . I am proud to acknowledge we now have a commercial image and a solid communication strategy for the company, a document supporting the brand strategy, and first steps towards BTL advertisement. But of foremost importance,

we have launched [REDACTED] into the local markets (pharmacies and drug stores) and women are buying it. . . . Result of this invaluable assessment, I have decided to become a client of [the petitioner]. I can confirm that [the petitioner] has provided my business with excellent support in the areas of branding, marketing and communications. Their work has been a major factor in our transformation from idea to business.

Although [REDACTED] indicated that her product, [REDACTED] was launched in local markets and she decided to become a client of the petitioner, she failed to indicate any original contributions of major significance in the field made the beneficiary. In fact, [REDACTED] discusses the impact of the petitioner on her product and business rather than the beneficiary's original contributions of major significance in the field. The letter fails to establish, for example, that the beneficiary's contributions regarding [REDACTED] have influenced the field as a whole rather than being limited to [REDACTED] product or business.

[REDACTED], stated:

When in 2008 I created and produced [REDACTED] [REDACTED] I selected [the beneficiary] – without any doubt – for developing the [REDACTED] for the project. . . . And [the beneficiary] developed (and donated) an exceptional promotional campaign that made this effort a very successful initiative for the foundation and for the artists that participated in the Auction. She demonstrated the superior talent and the unique creative thinking capability for helping me to promote and market the event that was presented in the exceptional frame of the Art Basel Miami Beach, the most important art show in the United States, a cultural and social highlight for the Americas.

I am launching a new product line of utilitarian art that I expect to sell worldwide. Due to her exceptional and proven abilities as a marketing expert, an exceptional strategic content developer and a proven unique e-Marketer, I have selected [the beneficiary] for creating, developing and implementing the social media campaign for my one-of-a-kind products. Her exceptional capability to transform any brand into a successful trademark makes her the perfect and unique professional choice for helping me achieve my new challenge, to transform my recognized brand name into a digital trademark that can reach neo-pop lovers around the world.

Similarly, [REDACTED] discussed the beneficiary's assistance in a fundraising campaign for his business without establishing that such assistance has influenced the field, so as to demonstrate the beneficiary's original contributions of major significance in the field. Moreover, [REDACTED] indicated that the beneficiary's "superior talent and the unique creative thinking capability" helped him in promoting an event at Art Basel Miami Beach. However, [REDACTED] failed to indicate how the beneficiary's talent and thinking can be considered original contributions of major significance in the field. Moreover, assuming the beneficiary's talent is unique, the

classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998). Finally, while [REDACTED] discussed his selection of the beneficiary in launching a new product line, the record fails to reflect that the beneficiary has contributed to [REDACTED]'s advertising campaign, let alone that the beneficiary has made original contributions of major significance in the field.

[REDACTED] stated:

With [the beneficiary's] Advertising Agencies she had managed several of the top accounts of the Venezuelan Market, without being part of the multinational's advertising groups and have reach the top of recognition and success. I have no doubt to define [the beneficiary] as an a [sic] extraordinary social communications specialist with an unique ability in business that makes her an exceptional professional of the marketing, communications and advertising arena.

[REDACTED] failed to explain how managing top accounts in Venezuela without being part of the multinational advertising groups can be considered an original contribution of major significance in the field. In addition, [REDACTED] described the beneficiary's business skills and talents without establishing that such traits are original contributions of major significance in the field. The lack of specific information is not reflective of the beneficiary's original contributions and provides the AAO without any basis to gauge the significance of those contributions on the field.

[REDACTED], stated:

[The beneficiary] and her advertising and marketing firm, [REDACTED] developed the first e-mail marketing campaign for a TV station in Venezuela (CMT Preventa 2001). This campaign was a huge success, and the first of its type in the Venezuelan market. This marketing initiative showed how [the beneficiary] views her job with any product. She truly understands who her audience is and who she is targeting.

[REDACTED] indicated that the beneficiary developed the first email marketing campaign for CMT; however he failed to discuss the significance of this contribution in the field. While [REDACTED] indicated that it was a "huge success," he provided no further information to establish that the beneficiary's advertising campaign, for example, has been widely implement throughout the field rather than limited to a single television station in Venezuela.

[REDACTED] Journalist, stated:

[The beneficiary] is the owner and writer of the awarded [REDACTED] a personal blog that has

been selected as one of the 12 best blogs in Venezuela and is part of a PhD thesis on in the Communications School of the University of Miami. [REDACTED] [REDACTED]” is the story of a Venezuelan immigrant family that came to South Florida to pursue their dream of liberty, progress and safe life. Her posts and articles are read by thousands people all over the world. I am one of them. She has built a numerous virtual community that stimulates her to keep on writing. More than five hundred posts and ten thousand plus comments make her blog one of the most respected Spanish written blogs on the Internet.

[REDACTED] indicated that the beneficiary’s blog “has been selected as one of the 12 best blogs in Venezuela.” A review of the record of proceeding reflects that the petitioner submitted a partial translation of a document stating:

All the men and women that conforms the Blog’s community in Venezuela and were willing to participate in the project.

Men and women whom wrote, one or more blogs, Venezuelans, residents or not residents in the Country, foreign aliens that reside in Venezuela, which blogs are referred to Venezuela: 298 participants.

Bloggers that resulted as the best Bloggers “Venezuelan Style”: 12.

Notwithstanding that the petitioner failed to submit a full translation as required by the regulation at 8 C.F.R. § 103.2(b)(3), there is no indication from the partial translation that supports [REDACTED] [REDACTED] claim that the beneficiary’s blog was “selected as one of the 12 best blogs in Venezuela.” The AAO notes here that the petitioner submitted screenshots from [REDACTED] reflecting that there were approximately 480 visitors to the beneficiary’s blog. Moreover, the petitioner submitted screenshots from an unidentified website reflecting that the beneficiary’s website had 5,120 comments. The petitioner also submitted screenshots from another website reflecting that the beneficiary’s blog was linked 4,086 times to other blogs. It appears that [REDACTED] exaggerated the number of comments that were posted on the beneficiary’s blog as the documentary evidence reflects that the beneficiary had 5,120 comments compared to the “ten thousand plus” as claimed by [REDACTED]. Regardless, the AAO is not persuaded that a thesis program at a single institution and a blog that has a minimal following is demonstrative of an original contribution of major significance in the field. In today’s world, it is common for bloggers, such as the beneficiary, to link other bloggers’ websites to their own. The petitioner failed to submit any documentary evidence demonstrating the significance of the linkage of the beneficiary’s website 4,086 times by others. The fact that the beneficiary has a personal blog and is accessible through the Internet does not establish that it has been of major significance in the field. The petitioner failed to distinguish the beneficiary’s personal blog from the thousands, even hundreds of thousands, of other blogs posted on the Internet, so as to reflect an original contribution of major significance in the field. It is noted that the petitioner submitted samples of screenshots from other websites without any English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). While the beneficiary’s blog does reflect

an original contribution made by the beneficiary and that some people read her postings, the documentary evidence submitted by the petitioner falls far short in establishing that the beneficiary's blog has been of major significance in the field. It appears that the beneficiary's blog is her personal political commentary rather than her field of advertising and marketing.

While those familiar with the beneficiary generally describe her as "extraordinary," "exceptional," and "professional," there is insufficient documentary evidence demonstrating that the beneficiary's work is of major significance. This regulatory criterion not only requires the beneficiary to make original contributions, the regulatory criterion also requires those contributions to be significant. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the beneficiary's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁶ The lack of supporting evidence gives the AAO no basis to gauge the significance of the beneficiary's contributions in the field as a whole rather than limited to businesses with whom the beneficiary has worked.

Further, USCIS may, in its discretion, use as advisory opinion 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 of support from the beneficiary's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' 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 of original contributions of major significance.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field [emphasis added]." The AAO must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Without additional, specific evidence showing that the beneficiary's work has been unusually influential, widely implemented, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that she meets this criterion.

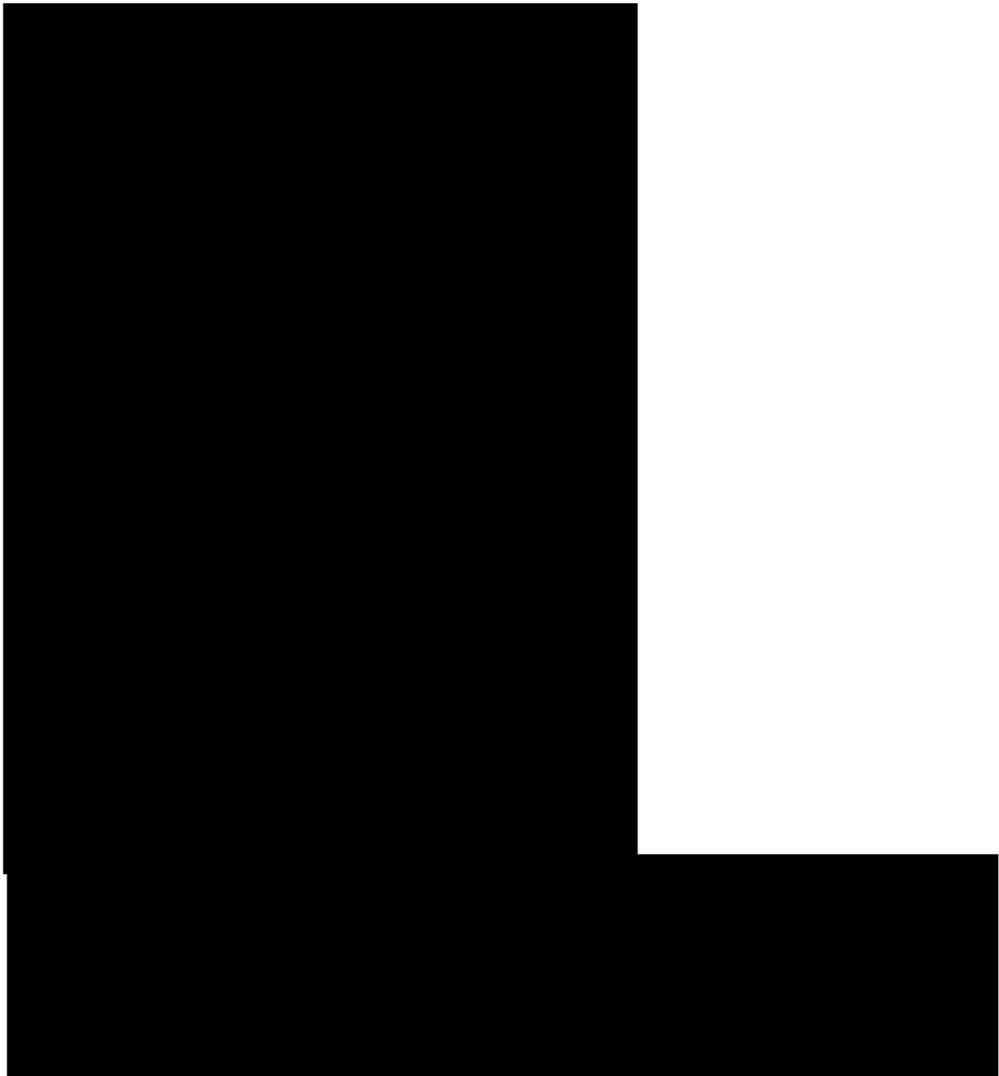
Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

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

⁶ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The director found that the petitioner failed to establish the beneficiary's eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed the beneficiary's eligibility for this criterion based on the beneficiary's [REDACTED] and the petitioner submitted the following blogs entitled:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.



The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of *scholarly articles* in the field, in professional or major trade publications or other major media [emphasis added].” In this case, the petitioner failed to submit any English language translations for any of the items above as required by the regulation at 8 C.F.R. § 103.2(b)(3). As such, the petitioner failed to establish that any of the items meet the plain language of this regulatory criterion requiring *scholarly articles*. Furthermore, the petitioner submitted numerous screenshots [REDACTED] but again failed to submit any English language translations. The petitioner also submitted a document from [REDACTED] [REDACTED] indicating that [REDACTED] is

registered at [REDACTED]” In addition to the AAO’s discussion of the beneficiary’s blog under the original contributions criterion, the certificate only reflects that the blog is a registered website and does not reflect that it is a professional or major trade publication or other major media. Again, the AAO is not persuaded that international accessibility by itself is a realistic indicator of whether a given website is “major media.”

Notwithstanding the above, the documentary evidence reflects that items 1 – 4 were also published in [REDACTED]. The petitioner failed to submit any documentary evidence demonstrating that [REDACTED] is a professional or major trade publication or other major media. Regarding items 5 – 12, the documentary evidence reflects that the blogs were also published [REDACTED]. Although the petitioner submitted a document entitled, [REDACTED] the petitioner failed to submit an English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Therefore, the petitioner failed to establish that [REDACTED] is a professional or major trade publication or other major media. Regarding item 13, the petitioner failed to submit any documentary evidence demonstrating where the item was published, let alone that it was published in a professional or major trade publication or other major media. Finally, regarding item 14, the document reflects that it was also posted [REDACTED] however the petitioner failed to submit any documentary evidence reflecting that the website is a professional or major trade publication or other major media.

The AAO notes that the petitioner submitted a screenshot entitled, [REDACTED] from New York University regarding terminology for blogs and websites. Specifically, the screenshot defined a blog as follows:

A “blog” (short for “web log”) is defined by the free encyclopedia Wikipedia as “a user-generated web site where entries are made in journal style and displayed in a reverse chronological order. Blogs often provide commentary or news on a particular subject, such as food, politics, or local news; some function as more personal online diaries. A typical blog combines text, images, and links to other blogs, web pages, and other media related to its topic. The ability for readers to leave comments in an interactive format is an important part of many blogs. Blog can also be used as a verb, meaning to maintain or add content to a blog.”

The petitioner also submitted a screenshot from Wittenburg University regarding scholarly articles. Specifically, the screenshot reflects that scholarly articles “are usually published or sponsored by a professional society or association” and “articles are reviewed by experts before publication so the journals tend to be considered among the best in their fields.” Furthermore, scholarly articles are written for professionals, professors, graduate students and “requires reader to be in touch with other research in the field.” Finally, authors’ credentials in the field are established such as institutional affiliation or degrees, and scholarly articles are “usually based on original research or new applications of others’ research.” Based on the recommendation letters that were submitted on behalf of the beneficiary, such as the letter from [REDACTED] the beneficiary’s blog appears to be personal political commentary of the beneficiary and does

not reflect any of the characteristics of scholarly articles defined by Wittenburg University. Moreover, as evidenced by the screenshot from New York University, a blog does not generally contain the characteristics of scholarly articles but reflects more of “personal online diaries.” There is no evidence indicating that the beneficiary’s blogs are published or sponsored by professional societies or associations, that the beneficiary’s blogs are reviewed by experts before posting, that the beneficiary’s blogs are based on original research or new applications of others’ research, or are otherwise considered “scholarly.” As such, the petitioner failed to establish that the beneficiary’s blogs equate to scholarly articles consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

Finally, the petitioner submitted a letter addressed to the beneficiary from [REDACTED], Director of *Revista Summa*, who invited the beneficiary “to write a special 3-page article about [REDACTED] and a maximum 1000-word column about your e-Marketing specialization” for the December 2009 issue of *Revista Summa*. The deadline for the column was December 4, 2009, the same day that the petitioner filed the petition. The petitioner failed to submit any documentary evidence establishing that the beneficiary actually wrote the column. A request to write a column does not equate to actually authoring an article. Moreover, based on [REDACTED] letter, the requested column appears to be journalistic rather than scholarly. Finally, the petitioner failed to submit any documentary evidence demonstrating that *Revista Summa* is a professional or major trade publication or other major media.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.” The documentary evidence submitted by the petitioner fails to reflect that the beneficiary has authored scholarly articles in her field in professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

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

The director found that the petitioner failed to establish the beneficiary’s eligibility for this criterion. In counsel’s brief, she did not contest the decision of the director or offer additional arguments. The AAO, therefore, considers this issue to be abandoned and will not further discuss this criterion on appeal. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005).

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

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

In the director's decision, he found that the petitioner failed to establish the beneficiary's eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed the beneficiary's eligibility for this criterion based on her positions v [REDACTED]

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

Regarding GMCC, the petitioner submitted two letters addressed to the beneficiary from [REDACTED] who congratulated the beneficiary for being appointed "to the position of chair of the [REDACTED] 2008/2009 and 2009/2010. In addition, the petitioner submitted the GMCC Member Handbook that listed the beneficiary as the [REDACTED]. The petitioner also submitted a letter from [REDACTED] who stated that she "found [the beneficiary] to be one of the most active members of the Chamber and the Board where she displays her talents in advertising and leads the Marketing Committee as the Chairperson."

While the petitioner established that the beneficiary served as the chairperson and chief executive officer for the Marketing Committee, the petitioner failed to establish that beneficiary's roles were leading or critical to GMCC as a whole rather than a committee within GMCC. In fact, the petitioner submitted an organizational chart of the GMCC that listed five committees, including the Marketing and Member Services Committee that listed [REDACTED] as the chairman. The chart also indicates that the beneficiary, as chair of the Marketing Committee, reports to [REDACTED]. Furthermore, the petitioner submitted a document entitled, [REDACTED] that indicates that [REDACTED] is the chairman of [REDACTED] and there are 34 committee chairmen, in which the beneficiary chairs one of those 34 committees. In addition, the petitioner submitted a document entitled, [REDACTED] that indicates that [REDACTED] is the chairman of the [REDACTED] and there are 32 committee chairmen, in which the beneficiary chairs one of those 32 committees. When compared to the roles of [REDACTED] and [REDACTED], the record clearly reflects that the petitioner performed in a subordinate role and is not demonstrative of a leading or critical role. Also, the petitioner failed to distinguish the beneficiary's role from the 33 or 31 other committee chairs, so as to establish that the petitioner's role was leading or critical. Finally, the petitioner failed to submit any independent, objective evidence reflecting that GMCC has a distinguished reputation pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Regarding NAWBO, the petitioner submitted a letter addressed to the beneficiary from [REDACTED] who welcomed the beneficiary to the association and

encouraged her to participate in her local chapter. The petitioner also submitted a letter addressed to the beneficiary from [REDACTED] who stated:

We are delighted that you have accepted a leadership position in the Greater Miami Chapter of the [NAWBO], as International Affairs & Communication Chairperson. With your expertise in this arena, your participation in our local chapter and eventually at the regional and national level will be most welcomed and appreciated.

Finally, the petitioner submitted a screenshot from www.nawbomiami.org that listed the beneficiary for the International section within the Greater Miami NAWBO. Based on the submitted documentary evidence, the petitioner failed to establish that the beneficiary performed in a leading or critical role for NAWBO, let alone for the Greater Miami NAWBO. Clearly, when compared to [REDACTED], the President of NAWBO, the beneficiary's role in the International section of the Greater NAWBO is in a far less role. Even within the Greater Miami NAWBO, the petitioner is in a subordinate role when compared to that of [REDACTED], who is president. In fact, the screenshot lists 10 sections/positions. The petitioner failed to submit any documentary evidence comparing the roles of the beneficiary to the other nine sections, so as to establish that the beneficiary performed in a leading or critical role. Finally, while the petitioner submitted a screenshot from www.nawbomiami.org regarding a brief history of NAWBO, the petitioner failed to submit any independent, objective evidence establishing that NAWBO has a distinguished reputation.

Regarding SSF, the petitioner submitted a business card for the beneficiary listing her as "Board Advisory." In addition, the petitioner submitted a document regarding the SSF Art Auction in which it acknowledged the beneficiary along with 41 other individuals and organizations for their contributions to the auction. Moreover, the petitioner submitted the previously discussed letter from [REDACTED] who indicated that he "selected [the beneficiary] – without any doubt – for developing the Fundraising Campaign for the project." The petitioner failed to submit any documentary evidence reflecting the roles of the beneficiary as a "Board Advisory," so as to demonstrate that she performed in a leading or critical role. Moreover, the AAO is not persuaded that developing a one-time fundraising campaign for a single project is reflective of a leading or critical as a whole to SSF. As demonstrated by the screenshot from SSF's website submitted by the petitioner, [REDACTED]. It appears that the beneficiary is in a subordinate role to that of [REDACTED] that is not reflective of a leading or critical role. Finally, the petitioner failed to submit any independent, objective evidence demonstrating that SSF has a distinguished reputation. While it appears that SSF is a charitable organization dedicated to underprivileged children, the AAO cannot presume that every non-profit organization has a distinguished reputation. The petitioner failed to submit, for example, documentary evidence distinguishing SSF for other charitable organizations, so as to establish that it has a distinguished reputation pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Regarding PNN, the petitioner submitted a letter from [REDACTED] who stated that the beneficiary was a “[f]ounder and an integral part of the main cast of the [PNN].” [REDACTED] also described the beneficiary’s roles and contributions to PNN from 1984 – 1986, including crediting the beneficiary for franchising PNN. [REDACTED] also credited the beneficiary for the growth of PNN, including the increase of clientele base. Based on [REDACTED]’s letter, the petitioner established that the petitioner performed in a leading or critical role. However, the petitioner also submitted a voluminous amount of foreign language documents without any English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Besides the letter from [REDACTED], the petitioner failed to submit through independent, objective evidence that PNN has a distinguished reputation. The burden is on the petitioner to meet every element of this criterion. In this case, while the record reflects that the petitioner performed in a leading or critical role for PNN, the petitioner failed to demonstrate that PNN has a distinguished reputation.

Regarding the beneficiary’s role with the petitioner, the petitioner submitted a letter from [REDACTED] President, and a profile of the petitioner. Based on a review of the documentary evidence, the petitioner established that the beneficiary performed in a leading or critical role for the petitioner. However, the petitioner failed to submit any independent, objective evidence demonstrating that it has a distinguished reputation. The petitioner failed to submit, for example, any documentary evidence distinguishing it from other marketing and advertising companies. There is no evidence that differentiates the petitioner from others in its field, so as to establish that it has a distinguished reputation consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a *distinguished reputation* [emphasis added].” In this case, although the petitioner demonstrated that the beneficiary has performed in a leading or critical role for PNN and for the petitioner, the petitioner failed to establish that they have a distinguished reputation.

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

B. Comparable Evidence

At the time of the original filing of the petition, counsel argued the beneficiary’s eligibility based on the submission of recommendation letters as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim “shall” include evidence of a one-time achievement or evidence of at least three of the following regulation categories. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. The AAO further acknowledges that the regulation at 8 C.F.R. § 204.5(h)(4) provides “[i]f the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to

establish the beneficiary's eligibility." It is clear from the use of the word "shall" in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to the beneficiary's occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in beneficiary's occupation as a vice president in marketing and advertising cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, counsel mentions evidence in her brief that specifically addresses eight of the ten criteria at 8 C.F.R. § 204.5(h)(3). An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the beneficiary's occupation. Moreover, although the petitioner failed to claim this additional criterion, the AAO finds that a vice president in marketing and advertising could command a high salary pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Counsel provided no documentation as to why this provision of the regulation would not be appropriate to the profession of a vice president.

Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. The AAO notes that the recommendation letters were considered under the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

C. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO must 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." 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). See also *Kazarian*, 596 F.3d at 1115. The petitioner failed to establish that the beneficiary met the plain language for any of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating the final merits determination, the AAO must look at the totality of the evidence to conclude the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner has demonstrated that the beneficiary has worked in the advertising and marketing field. However, the personal accomplishments of the beneficiary fall far short of establishing that she "is one of that small percentage who have risen to the very top of the field of endeavor" and

that she “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The 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 weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

While the AAO found that the beneficiary failed to meet the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the AAO notes that the petitioner based the beneficiary’s eligibility, in part, on awards or nominations that were received by organizations that employed the beneficiary. In fact, the petitioner submitted documentary evidence establishing that the beneficiary won two awards - the Latinbiz 2009 Women of Virtue Award and the Proctor Gamble Award. Neither award is indicative that the beneficiary “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). Regarding the Proctor Gamble Award, there is no indication that the beneficiary faced significant competition from throughout her field, rather than mostly limited to a few individuals in student status or other similarly limited competition. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r. 1994); 56 Fed. Reg. at 60899.⁷ Moreover, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, and fellowships cannot be considered prizes or awards in the petitioner’s field of endeavor. Competition for scholarships and fellowships is limited to

⁷ While the AAO acknowledges that a district court’s decision is not binding precedent, the AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

other students. Experienced experts do not compete for scholarships or fellowships. Thus, they cannot establish that a beneficiary is one of the very few at the top of her field. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6. Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification.

Similarly, the petitioner based the beneficiary's eligibility for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) on the petitioner's membership with the ComVort Group rather than the beneficiary's membership. Furthermore, the petitioner failed to demonstrate that the beneficiary's membership with the eMarketing Association and the PRSA require outstanding achievements of their members, so as to reflect that "her achievements have been recognized in the field of expertise." See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Although the AAO found that the beneficiary failed to meet the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the AAO notes that the majority of the documentary evidence submitted by the petitioner does not even mention the beneficiary, and the few documents that do mention the beneficiary only quote her and are not about her relating to her work. The lack of published material about the beneficiary relating to her work fails to reflect that the beneficiary "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

While the AAO found that the beneficiary failed to meet the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the AAO notes that the petitioner based the beneficiary's eligibility on judging local competitions and aspiring individuals. *Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). Without evidence pre-dating the filing of the petition that sets the beneficiary apart from others in her field, such as evidence that she has judged nationally or internationally acclaimed advertisers or marketers, the AAO cannot conclude that the beneficiary is among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

Although the AAO found that the beneficiary failed to meet the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the AAO notes that the petitioner failed to demonstrate any original contributions of major significance in the field made by the beneficiary. Instead, the record reflected routine accomplishments of a successful advertiser or marketer in the field. Furthermore, the petitioner submitted recommendation letters that failed to establish the significance of the beneficiary's work in the field. It must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim. Again, USCIS may, in its discretion, use as advisory

opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. 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 individuals, especially when they are colleagues of the beneficiary without any prior knowledge of the petitioner's work, 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. at 500, n.2.

While the AAO found that the beneficiary failed to meet the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the AAO notes that the petitioner demonstrated that the beneficiary performed in a leading or critical role for PNN and the petitioner without establishing that they have distinguished reputations. Evidence of the beneficiary's roles with organizations that have a distinguished reputation is far more persuasive that the beneficiary "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

Finally, the AAO cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the beneficiary's sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Although the AAO found that the beneficiary failed to meet the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the AAO notes that the petitioner failed to submit any English translations reflecting that the beneficiary's blogs were, in fact, scholarly articles. Again, the petitioner submitted numerous foreign language documents without any English language translations pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). The AAO is not persuaded that such evidence that fails to comply with the basic regulatory requirements equates to "extensive documentation" and is demonstrative of this highly restrictive classification. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r. 1989).

In this matter, the evidence of record falls short of demonstrating the beneficiary's sustained national or international acclaim as a vice president in advertising and marketing. The regulation at 8 C.F.R. § 204.5(h)(3) requires "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and this his or her achievements have been recognized in the field of expertise." While the petitioner submitted documentation demonstrating that the beneficiary is active in the advertising and marketing field, the documentary evidence is not consistent with or indicative of sustained national or international acclaim.

The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate.

Ultimately, the evidence in the aggregate does not distinguish the beneficiary as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification for the beneficiary, intended for individuals at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not established the beneficiary's achievements at the time of filing the petition were commensurate with sustained national or international acclaim, or that she was among that small percentage at the very top of the field of endeavor.

IV. Conclusion

Review of the record does not establish that the beneficiary has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and 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 a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

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.