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



U.S. Citizenship
and Immigration
Services

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DATE: NOV 03 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

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

On appeal, counsel argues that the petitioner has submitted comparable evidence of his extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). For the reasons discussed below, the AAO will uphold the director's decision.

I. Law

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

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

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

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

- (i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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

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

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

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 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).

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. Analysis

A. Evidentiary Criteria

This petition, filed on June 5, 2009, seeks to classify the petitioner as an alien with extraordinary ability in business as an entrepreneur in the hotel and motel industry. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

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

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

The petitioner submitted letters stating that he is a member of the [REDACTED] Chamber of Commerce; the [REDACTED] Hotel and Lodging Association; the [REDACTED] Association of [REDACTED] and [REDACTED]. The record, however, does not include evidence of the membership requirements (such as bylaws or rules of admission) for these organizations showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he 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.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner 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.³

In response to the director's request for evidence, the petitioner submitted an article entitled [REDACTED] in the June 2009 issue of the [REDACTED] *Wrangler*, "A publication of the [REDACTED]. The author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also submitted a June 28, 2009 article in the *Kingsville Journal* entitled [REDACTED] unveil refurbished [REDACTED]," but the article post-dates the petition's June 5, 2009 filing date. 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 (Reg'l 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 we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the AAO will not consider the June 28, 2009 article in this proceeding. Nevertheless, there is no documentation (such as circulation evidence) showing that the *Wrangler* and the *Kingsville Journal* qualify as major trade publications or other major media.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted his academic records; evidence of financial transactions; documentation pertaining to his incorporation of [REDACTED] including financial statements, corporate income tax returns for 2004 through 2008, brochures for his [REDACTED] photographs of the motel, a commercial lease agreement, and other miscellaneous tax documents; a franchise agreement between [REDACTED] and [REDACTED]; financial statements for [REDACTED] and a 2008 corporate income tax return for [REDACTED]. The petitioner also submitted certificates of filing, articles of organization, regulations, corporate income tax returns, financial statements, bank

³ 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 [REDACTED] [REDACTED], for instance, cannot serve to spread an individual's reputation outside of that county.

statements, and project photographs for [REDACTED] and [REDACTED] and documentation relating to other local hotel and motel projects in which he is involved. There is no evidence showing that the preceding documentation constitutes original business-related contributions of major significance in the hotel or motel industry.

The petitioner's evidence also included letters of support from the Executive Director of the [REDACTED] Chamber of Commerce, the Executive Director of the [REDACTED] in [REDACTED] the Project Co-Chair for the [REDACTED] International Young Performers Competitions of the Music Club of [REDACTED] the Mayor of [REDACTED] and the Director of Operations and Support for the [REDACTED]. The preceding letters praise the petitioner's entrepreneurial talents and discuss his local projects in [REDACTED]. It is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. Vague, solicited letters from local colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).⁴ The preceding references do not explain how the petitioner's contributions were original in the hotel and motel industry, nor do they provide specific examples of how his contributions rise to a level consistent with major significance in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of "major significance" in the field. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). While the petitioner has earned the admiration of his references, there is no evidence demonstrating that he has made original business-related contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on trends in the hotel and motel industry beyond the local area, nor does it show that the field has significantly changed as a result of his original work.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this criterion.

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

⁴ In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

The petitioner submitted his resume; an autobiographical statement; a business card identifying him as [REDACTED] Inc.; an employment verification letter stating that the petitioner worked at [REDACTED] as a Group Leader of [REDACTED] from 1981 to 2002, a business card identifying him as [REDACTED] (franchisee); and letters of support from [REDACTED] Chamber of Commerce, the Executive Director of the [REDACTED] Convention & Visitors Bureau, the President & Chief Executive Officer of [REDACTED] the Project Co-Chair for the [REDACTED] International Young Performers Competitions of the Music Club of [REDACTED] the Mayor of [REDACTED] and the Director of Operations and [REDACTED] Inc. franchise.

The AAO notes that Part 5, item 3 of the Form I-140, Immigrant Petition for Alien Worker, lists the petitioner's occupation as "Entrepreneur." Further, Part 6, "Basic Information About the Proposed Employment," identifies the petitioner's job title as "Renowned Entrepreneur . . . in the hotel and motel industry." The statute and regulations require that the petitioner seeks to continue to work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). There is no evidence showing that the petitioner intends to continue to work in the aviation industry in the United States. Accordingly, the petitioner's role as a Group Leader of [REDACTED] does not constitute evidence of his extraordinary ability in the field for which classification is sought, the hotel and motel industry.

Nevertheless, there is no evidence demonstrating that the petitioner's role was leading or critical for [REDACTED]. Not every employee or franchise general manager who performs competently for a corporation meets this criterion. The letter of support from [REDACTED], Director of Operations and Support for [REDACTED] Inc., states that the petitioner "is a valued member of the [REDACTED] and a highly successful franchisee," but [REDACTED] does not provide evidence such as specific financial data demonstrating the profitability of petitioner's [REDACTED] franchise locations in relation to that of the company's other franchisees throughout the country. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The petitioner's evidence does not demonstrate how his positions as [REDACTED] and as a franchise General Manager at [REDACTED] differentiated him from the other managers working for those corporations, let alone their top executives. For example, there is no organizational chart or other evidence documenting how the petitioner's positions fell within the preceding companies' general hierarchy. The evidence submitted by the petitioner does not establish that he was responsible for their success or standing of the preceding companies to a degree consistent with the meaning of "leading or critical role." Further, there is no documentary evidence showing that [REDACTED] Inc. and [REDACTED] have earned a distinguished reputation in their respective industries. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner also asserts that he has performed in a leading and critical role as Director, President, and owner of [REDACTED] but there is no documentary evidence showing that the company has earned a distinguished reputation in the hotel or motel industry since its incorporation in 2002. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted his and his spouse's unsigned U.S. Individual Income Tax Returns for 2007 and 2008 reflecting total income of [REDACTED]. Aside from being unsigned and not identifying an Employer Identification Number in Schedule C, the tax returns did not include a copy of the petitioner's Form W-2, Wage and Tax Statements, documenting his wages. Moreover, the submitted documentation does not indicate the income amounts attributable to the petitioner versus that of his spouse. In response to the director's request for evidence, the petitioner submitted Foreign Labor Certification Data Center "Online Wage Library" wage information for "Chief Executives" indicating that the Level 4 (fully competent) "prevailing wage" in the [REDACTED] metropolitan area is [REDACTED]. The petitioner has not established that these wage results are relevant to those who perform similar work in the hotel and motel industry. Moreover, the petitioner's reliance on wage data limited to local "prevailing" wages is not an appropriate basis for comparison in demonstrating that his earnings constitute a "high salary or other significantly high remuneration for services, in relation to others in the field." [Emphasis added.] The record is void of reliable earnings data showing that the petitioner has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In the present case, the evidence submitted by the petitioner does not establish his actual salary much less that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401

F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this criterion.

Summary

The AAO concurs with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

On appeal, counsel argues that the regulations include "a catch-all provision for comparable evidence where the ten criteria do not readily apply." Counsel further states:

We have provided a considerable body of comparable evidence to show that [the petitioner] is truly an extraordinary entrepreneur at the top of his field of endeavor who has contributed considerably to areas of the national interest that while not as highly visible as some of the more widely known fields is of very high value to the national economy and job creation. This evidence includes expert testimony letters from people in a position to fully understand and opine on [the petitioner's] extraordinary talent as a micro-entrepreneur for the hospitality industry in a small town setting . . . ; an investment summary showing the investment [the petitioner] has made here and the 25% growth which is far and away above the average of the hotel industry which has shown negligible to negative growth . . . ; and detailed evidence about the jobs created and salvaged by his efforts, as well as background about the ailing towns in which he has invested.

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as the petitioner has failed to submit any documentary evidence demonstrating that the categories of evidence at 8 C.F.R. § 204.5(h)(3) do not readily apply to his occupation. Where an alien is simply unable to meet three of the regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3), the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Moreover, the AAO notes that the statute and regulations provide a separate immigrant visa classification for employment creation aliens. *See* section 203(b)(5) of the Act and 8 C.F.R. § 204.6.

Regarding the reference letters submitted by the petitioner, the AAO notes that they have already been considered under the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii). Nevertheless, in the interest of thoroughness, the AAO will address these letters again even though there is no evidence that the categories of evidence at 8 C.F.R. § 204.5(h)(3) do not readily apply to the petitioner's occupation.

states:

[The petitioner] represents a rare and vital breed of entrepreneur who is able to go into small, ailing communities and strategically infuse capital and highly honed business acumen to transform hotel properties into thriving businesses, involving and enhancing the communities in which he has invested. This kind of skill should not be undervalued. I have seen many franchisees try and fail in similar circumstances, particularly in these difficult economic times. Entrepreneurs who succeed and rise to the top of their field such as [the petitioner], must have an extraordinarily high level of skill, resourcefulness, and vision to bring projects to fruition in the small town context. The challenges are immense. As an example of [the petitioner's] innovative solutions to the problems of investing in risky small towns, the [redacted] concept which allows a number of investors to pool funds and avoid the stagnant loan market as much as possible stands out. This micro-investment strategy is particularly well-suited for the distressed small town environment and has met with considerable success. Without these alternative micro-investment strategies, growth and development in these small towns would fail with the credit market.

While [redacted] indicates that the petitioner is a successful [redacted] franchisee in a "small town context," there is no evidence showing that the petitioner has earned national or internal acclaim in the hotel or motel industry for his investment strategies. The AAO notes that numerous entrepreneurs operate successful franchise businesses in local communities throughout the United States. Nothing in the record sets the petitioner apart from these other successful small business owners at national or international level. [redacted] also asserts that the petitioner has risen to the top of his field, but merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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.).

[redacted] Executive Director of the [redacted] Chamber of Commerce, states:

[The petitioner's] proven record in our community has demonstrated beyond a doubt to me that he is one of the extraordinary few entrepreneurs in his field. These projects include the purchase and re-making of two hotels in [redacted] into real showpieces. He has provided needed jobs in both the construction and hospitality industries. Recently [the petitioner] bought and renovated an empty building on [redacted] Bypass next to one of his hotels. He has created a conference and meeting center for this community to use at a nominal fee. This building was a real eyesore as you enter [redacted] and his redesign has greatly added to the appeal of one of the main entry points to the city.

[The petitioner] also innovated a program that allows micro-investors to be able to invest in property at low-risk and in small amounts as an alternative to mortgages. Particularly in this climate where mortgages are harder and harder to come by, this has been a work of ingenuity, perfectly crafted to fit circumstances and the obstacles facing investors and business and an example of how [the petitioner], operating at the micro-level, is able to

move with pinpoint accuracy to address business issues that larger institutions would not be able to address.

While the petitioner's work is recognized and admired in [REDACTED] there is no evidence showing that his investment strategies are nationally or internationally acclaimed in the hotel industry.

[REDACTED] Executive Director of the [REDACTED] Convention & Visitors Bureau, states:

We first met when [the petitioner] purchased a large accommodation/hotel in [REDACTED] [REDACTED]. The property [the petitioner] purchased was badly in need of being upgraded. He immediately began researching the needs of his property and has successfully brought it up to date and recaptured the positive image it had once enjoyed.

[The petitioner's] financial investments in this endeavor over a three year period totaled over \$1,250,000. A variety of laborers were hired to complete the much needed renovations, thus creating ten or more new jobs in our community.

* * *

This new business and increase of his revenue has had a profound impact on our city in the way of taxes from his business as well as expenditures and taxes from the visitors.

* * *

[The petitioner] is known by our organization as outstanding and well above average in the hotel industry. He is a person with extraordinary ability, capability, aggressiveness, and we are proud to have him in [REDACTED]. [The petitioner] is considered at the top of his field at the [REDACTED] Convention and Visitors Bureau and in the City of [REDACTED].

Although the petitioner's work has had an impact in [REDACTED] there is no evidence showing that his business strategies are nationally or internationally acclaimed in the hotel or motel industry. Moreover, there is no documentary evidence distinguishing the petitioner's achievements from other successful hotel operators and franchisees.

[REDACTED] President & Chief Executive Officer of [REDACTED] states:

[The petitioner] is a principal of the [REDACTED] [REDACTED] the [REDACTED]

The motels are well located and one has recently been remodeled. We know of no derogatory information regarding the motels, or [the petitioner's] business practices, and believe him to be a good, sound and responsible owner and operator. In addition to his professionalism, [the petitioner's] business accomplishments include, but are not limited

to a role in the development of the [REDACTED] and the [REDACTED] and the [REDACTED]

[The petitioner's] financial reports indicate that he is in an elite group that has risen to the top of his field of business: he invested [REDACTED] over three years in improving the poor condition of the [REDACTED]. Ten new jobs were created during the construction phase and revenue increased from [REDACTED] in 2002 to \$1,200,000 in 2008.

There is no evidence showing that the petitioner's projects have significantly impacted the hotel or motel industry in the United States or attracted any attention (such as coverage in major trade publications) beyond the [REDACTED] localities where they were undertaken.

[The petitioner] has rendered invaluable financial aid and assistance to the [REDACTED] in [REDACTED]

As developer and co-director . . . of the Young Performer's project it has been my pleasure to work with [the petitioner]. [The petitioner] has provided free accommodations in his motel for our contest judges . . . and our staff accompanists, and has offered very reasonably priced accommodations for the talented young musicians accepted into the [REDACTED]. I would estimate that [the petitioner's] assistance has provided the [REDACTED] with over \$1000 financial aid each year

While the AAO acknowledges the petitioner's generosity in providing local financial aid and assistance to the Kingsville competition, there is no documentary evidence demonstrating that his work as "manager of the [REDACTED]" is indicative of sustained national or international acclaim at the very top of his field.

[The petitioner's] projects have met with considerable success in a time when the economic climate is decidedly grim. This incontrovertible fact alone sets [the petitioner] apart; however, [the petitioner] ranks as an entrepreneur of extraordinary ability for his particular faculty for identifying the business opportunities inherent in properties that have lost their value and that others would pass by. He is able to bring his considerable talents to bear in a small town environment to rehabilitate these and add value and economic growth while navigating tricky and contrary national trends and the particular needs of the small town investment environment. He has done this repeatedly over the course of his career, and in doing so brought business, growth, and employment to our

community. Only very few entrepreneurs have this ability to create this kind of growth in a difficult climate. [The petitioner] is one of these few.

[The petitioner] is without a doubt a valuable asset as a member of our community as well as the surrounding areas in which he conducts business.

Once again, although the petitioner's work has had an impact in [redacted] there is no evidence showing that his business strategies are nationally or internationally acclaimed in the hotel or motel industry. Moreover, there is no documentary evidence distinguishing the petitioner's achievements from other successful hotel operators and franchisees.

Regarding the reference letters submitted by the petitioner, the AAO notes that they are limited to members of the petitioner's local community in [redacted] and an employee of the company with which he has a franchise agreement. While such letters are important in providing details about the petitioner's role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that the petitioner demonstrate "sustained national or international acclaim" necessitates evidence of recognition beyond his [redacted] locality and his direct business acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Moreover, reference letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from references selected by the petitioner.

Moreover, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from references supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an entrepreneur who has sustained national or international acclaim at the very top of the field.

With regard to the “Investment Summary” document identified by counsel, the AAO notes that this document was prepared by the petitioner. USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media). There is no evidence indicating that the data shown in this report is based on audited financial statements or independent property appraisals. Moreover, the Investment Summary specifically states that the “Number of Employees is estimated only.” While the AAO acknowledges [REDACTED] comments that the petitioner’s work created ten new jobs in their local community, there is no documentary evidence showing that the petitioner’s local job creation numbers and investment growth constitute achievements consistent with sustained national or international acclaim at the very top of his field. A final merits determination that considers all of the evidence follows.

C. Final Merits Determination

The AAO will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO’s discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(ii), (iii), (v), (viii), and (ix).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, there is no evidence showing that the petitioner’s associations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field. The petitioner has not established that his memberships are indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), the AAO notes that only one of the articles had been published as of the petitioner’s filing date. Further, the petitioner failed to submit evidence demonstrating that the material about him was published in major trade publications or other major media. The local coverage of the petitioner in the *Kingsville Journal* and in a publication of the [REDACTED] is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), the AAO acknowledges the letters of support the Executive Director of the [REDACTED] Chamber of

Commerce, the Executive Director of the [REDACTED] Convention & Visitors Bureau, the [REDACTED] the Project Co-Chair for the [REDACTED]

the Mayor of [REDACTED] and the Director of Operations and Support for the [REDACTED] Inc. franchise. These letters and the documentation pertaining to the petitioner's investment projects fail to establish that he has made original business-related contributions of major significance in the field. Merely demonstrating that the petitioner is a successful Super 8 franchisee, local investor, and hotel operator is not useful in setting the petitioner apart from other entrepreneurs through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..." In this case, the record does not establish that the petitioner's work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner has not established that he has performed in a leading or critical role for organizations that have a distinguished reputation. The documentation submitted by the petitioner is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix), there is no reliable evidence demonstrating that petitioner's remuneration is "significantly high" in relation to others performing similar work or that his level of compensation places him among that small percentage who have risen to the very top of the field. The documentation submitted by the petitioner is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In this case, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as an entrepreneur in the hotel and motel industry, or being among that small percentage at the very top of the field of endeavor. The conclusion we reach 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 petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is above the level he has attained.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.