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

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: FEB 23 2012 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is an investment management company. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined the petitioner had not established that the beneficiary has 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 for the alien under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the beneficiary meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3) and that the petitioner submitted comparable evidence of the beneficiary's extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The AAO acknowledges that the standard of proof is preponderance of the evidence, as noted by counsel on appeal. The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3). In this matter, the documentation submitted by the petitioner fails to demonstrate by a preponderance of the evidence that the beneficiary has achieved sustained national or international acclaim and that he is one of the small percentage who has risen to the very top of the field of endeavor.

For the reasons discussed below, 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.

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[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).

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).

## II. Analysis

### *A. Evidentiary Criteria*

This petition, filed on June 23, 2010, seeks to classify the beneficiary as an alien with extraordinary ability in international corporate finance and strategic business development. At the time of filing, counsel stated: "Since 2008, [the beneficiary] has been [redacted] In response to the director's notice of intent to deny (NOID), the petitioner submitted an independent opinion letter from [redacted] stating: "Since June, 2008, [the beneficiary] has been [redacted] The petitioner's response also included an independent opinion letter from [redacted] stating that the beneficiary works for the petitioning company "as the Chief Financial Officer and Chief Risk Officer." 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner submitted a May 28, 1987 Certificate of Merit from the [redacted] stating: "Awarded to [the beneficiary] of [redacted] for Superior Achievement in the High School Mathematics League." The preceding certificate reflects a regional honor for high school mathematics students rather than a nationally or internationally recognized prize or award for excellence in the beneficiary's field of endeavor.

The petitioner submitted a March 25, 1994 certificate from the [redacted] Alumni Association issued to the beneficiary in recognition of "his brilliant academic performance, after having obtained honorific mention in his studies at the [redacted]" There is no documentary evidence showing that this award from the alumni association of the beneficiary's alma mater is a nationally or internationally recognized prize or award for excellence in finance or business rather than an institutional honor limited to graduates of his school.

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

The petitioner submitted documentation from [redacted] indicating that the beneficiary was among hundreds of college graduates who were honored by the newspaper in November 1994 as "The Best Students in Mexico." According to the documentary evidence submitted by the petitioner, [redacted] selected the beneficiary for the [redacted] honor "as the student with the highest grade point average among those who obtained their professional degree within the institution." There is no documentary evidence showing that this student honor is a nationally or internationally recognized prize or award for excellence in finance or business. 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. 215, 219, n.6 (Comm'r 1998). 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.

The petitioner submitted two letters from the [redacted] indicating that the beneficiary received an academic scholarship for tuition, fees, and medical insurance "to carry out his Ph.D. studies at University of California, Berkeley" from January 1995 to June 1998. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships do not constitute prizes or awards for excellence in the beneficiary's field of endeavor. Moreover, competition for graduate scholarships is limited to other students. Experienced business executives who have already completed their educational training do not seek such scholarships. Further, the petitioner did not submit evidence of the national or international *recognition* of the beneficiary's [redacted] scholarship, such as national or widespread local coverage of his award in professional or general media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the beneficiary's awards be nationally or internationally *recognized* in the field of endeavor and it is the petitioner's burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the beneficiary's [redacted] scholarship equates to a nationally or internationally recognized prize or award for excellence in finance or business.

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

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

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. 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]

The petitioner submitted excerpts from three articles in which the authors briefly acknowledge the beneficiary and numerous other individuals for their "valuable comments," "advice and comments," and "comments and suggestions." The first article was published in *The Review of Financial Studies*, but there is no evidence indicating that the remaining two articles were published or their dates of publication. The AAO further notes that all three articles are about the authors' own work, and are not about the beneficiary or even his work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." Moreover, there is no circulation evidence showing that the articles were in professional or major trade publications or other major media.

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

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

The petitioner submitted documentation indicating that in September 2004 the beneficiary created a "Credit Training Module" for [redacted] incoming professionals training program. The petitioner also submitted a letter from [redacted] stating that he was formerly a [redacted] where the beneficiary worked in 2004. [redacted] further states:

> [The beneficiary] was invited at [redacted] to join the leadership group . . . in charge of developing the funds training program for recently joined traders and analysts. In his role of program development leader, [the beneficiary] held a series of weekly meetings aimed at structuring the program, and coordinating and reviewing the work of other traders also involved in developing and teaching the training material.

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the beneficiary has served as "a judge of the work of others." Serving as a training program coordinator for one's employer does not equate to participation as a judge of the work of others in the field. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of a supervisor reviewing the work of his subordinates. The preceding letter from Mr. Stephan does not specify the nature of the beneficiary's activities as a judge or identify the specific training material prepared by others that the beneficiary reviewed.

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[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 Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

The petitioner submitted a letter from [redacted] stating:

> Between 1999 and 2003, I worked with [the beneficiary] in a few projects and was aware of his activities in my capacity as member and leader of [redacted]
>
> * * *
>
> [The beneficiary's] decisive solutions to his clients' problems and innovative new strategies for growth – that have proven themselves again and again – are excellent evidence of his phenomenal abilities. This also demonstrates very clearly [the beneficiary's] ability to make clear-sighted judgments of the work of others.
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> * * *
>
> [The beneficiary] was a member of [redacted] final round interview team, which makes hiring decisions on new analysts and associates as well as experienced candidates. [The beneficiary] also played a critical role as a peer evaluator, as he conducted many reviews of all the consultants that worked on his teams.

In support of [redacted] statements, the petitioner submitted documentation of an employee performance review conducted by the beneficiary while working for [redacted]

The petitioner submitted a letter from [redacted], stating:

> I am acquainted with [the beneficiary] through contact as an alumnus of at [redacted] an international consulting firm. At an earlier stage in my career I was a partner of the firm.
>
> * * *
>
> In many of his client situations [the beneficiary] was asked to provide the Board of Directors, CEO, or CFO with an objective/independent view of strategies proposed senior management (e.g., head of a particular business), or by other external advisors (e.g. investment banks).

The opinion letter from [redacted] states: "[The beneficiary] worked at [redacted] in New York as an Engagement Manager in the Corporate Finance and Strategy Practice .... His ideas and judgments on corporate finance and strategy were put into practice at major U.S. businesses." Similarly, the opinion letter from [redacted] states that the beneficiary's consulting work for [redacted] 'demonstrated his ability to judge and assess the business strategies and plans of other experts in the field." Neither of the preceding opinion letters provides specific examples of the beneficiary's participation, either individually or on a panel, as a judge of the work of others in the field. The AAO is not persuaded that performing

consulting services and providing business advice to [redacted] clients constitutes the beneficiary's participation, either individually or on a panel, as a judge of the work of others in the field. Unlike a judge who has authority to make final determinations and decisions on a particular issue, a consultant or business adviser only issues recommendations that a client is not bound to follow.

While the beneficiary's business strategy consulting work for his firm's clients was simply a part of his routine duties as an Engagement Manager with [redacted] and not evidence of his formal participation as "a judge of the work of others," the documentation indicating that that the beneficiary conducted employee performance reviews and participated on the team that made the final hiring decisions on the firm's new analysts and associates does appear to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

> *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 determined that the petitioner failed to establish the beneficiary's eligibility for this regulatory 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." 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." 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). To be considered a contribution of major significance in corporate finance and strategic business development, it can be expected that the beneficiary's original work would be demonstrably influential beyond his employers and clients. In other words, providing sound business and financial advice to one's employers and clients may contribute positively to their profitability and success but is not necessarily either original or a contribution to the financial field at large.

The petitioner relies primarily on reference letters as qualifying evidence under 8 C.F.R. § 204.5(h)(3)(v).

[redacted] states:

> In evaluating [the beneficiary's] career history, I have also looked at the number and types of projects that [the beneficiary] has overseen for his prestigious employers and their clients. International corporate finance and strategic business development projects are necessarily undertaken on a confidential and / or proprietary basis. While in some fields, self-aggrandizement or publicity for one's employer may be a key goal, in the field of international corporate finance and strategic business development, the goal is for the business to perform better and grow faster than the competition. Sharing the confidential details of how this is done would be detrimental. [The beneficiary's] original work is influential in that major businesses and indeed the Mexican government have adopted it and invested in it.

[redacted] does not state that he was aware of the beneficiary's original contributions in the field prior to being asked to review the beneficiary's credentials. Regardless, [redacted] fails to provide specific examples of how the beneficiary's work has significantly impacted the financial industry or otherwise constitutes an original contribution of major significance in his field. To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that the beneficiary's work was novel and useful to his past employers and clients, but also that it was of major significance in the field. The AAO acknowledges [redacted] comments regarding the confidential nature of the beneficiary's work projects. While such confidentiality may be normal in the field, without evidence that the beneficiary is impacting the field beyond his employers or clients in at least some manner, he cannot be considered to have made a contribution of major significance in the field.

[redacted] University of California at Berkeley, states:

> I was one of [the beneficiary's] [redacted] at Berkeley, where he earned a Ph.D. in finance several years ago.
>
> * * *
>
> I came to know [the beneficiary] well in 1993, when he joined the Finance Ph.D. program at Berkeley's [redacted]
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> * * *
>
> His Ph.D. dissertation was considered one of the most innovative ever produced in the field of market microstructure, because it provided insights – never documented before – on how information . . . affects stock prices, and allowed researchers to test the validity of many theories that had been produced in this field, but had not been tested the right way.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires not only that the beneficiary's work be original, but also "of major significance in the field." There is no evidence showing that the beneficiary's Ph.D. dissertation is frequently cited, that his findings are being widely applied throughout the financial industry, or that his work otherwise constitutes an original contribution of major significance in the field. While the beneficiary's Ph.D. work is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scholarly or business community. Any Ph.D. thesis or graduate research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every financial scholar who performs original research that adds to the general pool of knowledge has inherently made a contribution of "major significance" to the field as a whole.

[redacted] states:

> This is an independent evaluation of the professional credentials of [the beneficiary]. I have interviewed [the beneficiary] and have reviewed various materials provided to me by his representatives.
>
> * * *
>
> I have reviewed some of [the beneficiary's] work at Berkeley; in my opinion, [the beneficiary's] dissertation on new ways to think about investor behavior was revolutionary and groundbreaking.
>
> * * *
>
> [The beneficiary] played a key role in important and innovative work at [redacted] one of the world's largest investment funds, managing and trading securitized products including mortgage-backed securities. Most notable to me was his work in structuring and launching the fund's first collateralized loan obligation, an influential and first of its kind investment product that was much in demand by investors.

[redacted] does not state that he was aware of the beneficiary's original contributions prior to being requested to evaluate the beneficiary's credentials. [redacted] asserts that the beneficiary's dissertation regarding investor behavior was "revolutionary and groundbreaking," but he does not provides specific examples of how the beneficiary's work is being utilized by others in the financial industry or otherwise constitutes an original contribution of major significance in the field. 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). Further, while the beneficiary's work in structuring and launching Citadel's first collateralized loan obligation was important to the company's financial operations, there is no evidence demonstrating that the beneficiary's original work was recognized beyond the project such that his work constitutes an original contribution of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than limited to one's employer, its business partners, or clients.

[redacted] of Management, states: "I came to know [the beneficiary] while I taught at Berkeley's [redacted] At that time, [the beneficiary] was pursuing a Ph.D. in finance at the university. His 1998 thesis was and remains one of the most innovative I have ever supervised." [redacted] does not provide specific examples of how the econometric model employed by the beneficiary in his thesis is being widely applied by others in the field. Further, there is no evidence showing that the beneficiary's findings are frequently cited by independent financial scholars or otherwise equate to original business-related contributions of major significance in the field.

Regarding the beneficiary's work at [redacted] states: "As a portfolio manager at [redacted] [the beneficiary] had an unusually broad scope of duties. Not only was he identifying investment opportunities, but in fact he was actually creating investment

opportunities in business segments where they did not previously exist." [redacted] does not provide specific examples of how the beneficiary's work has impacted the financial industry or otherwise constitutes an original contribution of major significance in the field. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the beneficiary's original contributions be "of major significance in the field" rather than limited to his employer or its projects.

[redacted] states:

> I met [the beneficiary] in 2004, when [redacted] became business partners for [redacted] collateralized loan obligation (later, known as [redacted] issued in April 2005). . . . [The beneficiary] was appointed by [redacted] as the manager in charge of launching its first CLO vehicle. . . . [The beneficiary's] highly quantitative academic background, and years of experience building and developing corporate strategies were critical for the successful closing of this transaction. [redacted] became a critical piece in [redacted] multi-billion private lending strategy, as it allowed the fund to secure $761 million in long-term, cost efficient financing for its loan portfolio . . . .

While [redacted] discusses the beneficiary's work on [redacted] project, she does not provide specific examples of how his work has impacted the field of finance or otherwise equates to an original contribution of major significance in the field.

[redacted] states:

> [The beneficiary] has over seven years of experience in project management and business plan design and execution. Throughout his career, [the beneficiary] has successfully led many teams in the development and rollout of various projects and business ventures (e.g., various mergers and acquisitions engagements at [redacted] the launch of [redacted] first collateralized loan obligation investment vehicle, and [redacted] rollout of the Miami Office).

While [redacted] discusses the beneficiary's prior work experience, he does not explain how the beneficiary's original work has impacted the field at a level indicative of original business-related contributions of major significance. In support of [redacted] comments, the petitioner submitted evidence of the beneficiary's business presentations to clients of [redacted] and documentation pertaining to the beneficiary's work on [redacted] collateralized loan obligation project. There is no evidence showing that beneficiary's original work on these projects equates to original contributions of major significance in the field. The petitioner submitted a four-sentence news item in the April 15, 2005 issue of *Loan Market Week* stating: [redacted] has arranged a $750 million collateralized loan obligation for [redacted] The AAO notes that the brief news item in *Loan Market Week* does not mention the beneficiary or his involvement. Instead, the material credits [redacted] with arranging the collateralized loan obligation.

[redacted] states:

> Most recently as Head of Corporate Strategy and Finance at [redacted] [the beneficiary] has successfully established, developed and managed what in my view is one of the best U.S. hedge fund operations focused on Global Emerging Markets, even though he launched operations during one of the most challenging environments the financial industry has ever faced.

[redacted] does not explain how the beneficiary's creation and management of hedge fund operations for [redacted] has impacted the industry beyond his employer such that his work constitutes an original contribution of major significance in the field.

[redacted], a global executive recruiting firm, states that her firm recruited the beneficiary for the [redacted] further states that the beneficiary "is an expert in the field of international corporate finance and strategic business development. . . . There is a scarcity of executives who match [the beneficiary's] intellectual and business acumen and his hands on experience." [redacted] does not explain how the beneficiary's knowledge and experience constitutes an original business-related contribution of major significance. Significantly, unique training and experience does not even qualify an alien for a waiver of the alien employment certification process in the national interest under a lesser classification set forth at section 203(b)(2) of the Act. Assuming the beneficiary's skills and knowledge are 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 certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221 (Comm'r 1998). It is not enough to be skillful and knowledgeable and to have others attest to those talents. At issue is how the beneficiary has demonstrably impacted the field as a result of his training and experience.

[redacted] states:

> Prior to [redacted] I worked at the [redacted] of Mexico for seventeen years, being Managing Director in charge of implementing monetary and foreign exchange policy, my last position at the Bank.
>
> * * *
>
> I have known [the beneficiary] and his work for many years, dating back to the time he worked at the [redacted] of Mexico back in 1990.
>
> * * *
>
> [The beneficiary] spent three years at the bank in the early 1990s, and was given responsibilities as a trader and investments analyst for the interest rate derivatives and U.S. Treasury bond portfolios.

* * *

> At the [redacted] of Mexico [the beneficiary] demonstrated extraordinary abilities . . . by analyzing and designing complex investment strategies (that enabled him to work head-to-head with counterparties at distinguished financial institutions) and leading the development of the infrastructure and systems that allowed the [redacted] to execute this type of financial strategies. The trading strategies and infrastructure that [the beneficiary] implemented and developed were critical to the [redacted] not only because at that time, they allowed the [redacted] to effectively perform two specific fiduciary duties with regards to the Mexican Government (management of international reserves, and hedging of interest rate payments derived from Mexico's external debt – i.e. [redacted], but also because they became a very important part of the trading platform the [redacted] still uses.

[redacted] provides no explanation regarding how the beneficiary's trading strategies and trading platform infrastructure were original or how they impacted the financial industry at large. For example, [redacted] does not explain how the beneficiary's original methodologies have significantly influenced the field of finance beyond his former employer. Once again, a contribution to the beneficiary's employer is not necessarily an original contribution of major significance to the field at large.

Ultimately, the record contains no evidence that the beneficiary developed an original model, methodologies, or strategies that are being applied in the field at a level consistent with original contributions of major significance. None of the references identify any independent financial professionals using the beneficiary's models, systems, or projects, other than those who work for his former employers and clients. For instance, it can be expected that if the claim that the beneficiary's Ph.D. dissertation regarding investor behavior was "revolutionary and groundbreaking" is accurate, the beneficiary's published findings would be frequently cited by independent financial scholars, his econometric model would have been widely licensed, his model would be covered in the trade media, numerous examples of the beneficiary's model being used outside of the University of California at Berkeley would be available, or professors at multiple business schools would be teaching his model. The petitioner did not submit any evidence of this type or any comparable evidence that would support the broad, poorly supported assertions in the reference letters.

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the

beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a business executive who has made original contributions of major significance. Without additional, specific evidence showing that the beneficiary's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that the beneficiary meets this regulatory criterion.

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

The petitioner submitted the beneficiary's Ph.D. dissertation entitled "Endogeneity of Time between Stock Price Movements and Asymmetry of Price Transitions: An Empirical Assessment" and an internet printout listing the dissertation in the University of California at Berkeley Library Catalogue. The petitioner also submitted the beneficiary's undergraduate dissertation entitled "Investing for the long-term: the problem of portfolio asset allocation of retirement (pension) funds" and an internet printout listing the dissertation in the [redacted] Library Catalogue. While the beneficiary's Ph.D. and undergraduate dissertations appear in his schools' library catalogues, there is no documentary evidence establishing that the preceding papers authored by him were "in professional or major trade publications or other major media."

The petitioner submitted evidence showing that the beneficiary coauthored a single article published in the October 4, 1995 issue of [redacted] *Europe*. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the beneficiary's "authorship of scholarly *articles* in the field, in professional or major trade *publications* or other major *media*" [emphasis added] in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, as the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of the beneficiary's authorship of scholarly *articles* in more than one major publication, the beneficiary's authorship of a single published article in [redacted] *Europe* does not meet the plain language requirements of this regulatory criterion.

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

The petitioner submitted a May 29, 2008 letter from [redacted] reflecting that the beneficiary was offered "the position of Head of Corporate Strategy and Finance (Managing Director)" at [redacted] In response to the director's NOID, the petitioner submitted letters from [redacted] indicating that the beneficiary works for [redacted] as the [redacted]" [redacted] specifically states that the beneficiary has worked as [redacted] since June 2008. The petitioner also submitted a May 2008 [redacted]' as evidence of the company's distinguished reputation. While the beneficiary appears to be performing in a leading role for [redacted] the self-serving nature of the "Investor Presentation" material prepared by [redacted] is not sufficient to demonstrate that the company has a distinguished reputation in the financial industry. 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).

The petitioner submitted a December 13, 2006 letter from the [redacted] in New York indicating that the beneficiary would be hired as [redacted] Group in Miami, Florida. The letter further states:

> The Head of the [redacted] Miami Group will have full budget/PNL accountability for the group's performance, and will be responsible to setup and run the office, develop (negotiate and execute) business opportunities for the bank in this region (e.g., creating joint ventures with local financial institutions to source new assets etc.), establish and manage relationships with clients, local business organizations and partners, cover key client accounts, and manage a sales force initially composed by *four DB employees*.

[Emphasis added.]

The petitioner also submitted letters from individuals such as [redacted], discussing the beneficiary's work for [redacted] in Miami. For instance, [redacted] letter indicates that the beneficiary managed the Capital Markets group based in Miami covering mostly Florida-based accounts, Mexican broker-dealers across the United States, and financial institutions in Puerto Rico, the Caribbean and Latin America. The petitioner's documentation also included information about [redacted] stating: "A leader in Germany and Europe, the bank is continuously growing in North America, Asia and key emerging markets. . . . With roughly 80,000 staff from 145 nations and approximately 2000 branches, [redacted] offers in 72 countries a wide variety of investment, financial and related products and services . . . ." The petitioner also submitted a [redacted] "Fact Sheet" listing the company's [redacted] including positions such as [redacted] and [redacted] Americas. The petitioner failed to submit an organizational chart or other evidence from [redacted] documenting where the beneficiary's

position as [redacted] (managing four salespersons in a Florida branch office) fell within the company's general hierarchy. While the documentation submitted by the petitioner adequately demonstrates that [redacted] has a distinguished reputation, there is no evidence showing that the beneficiary's role was leading or critical to the company, particularly in relation to senior executives serving on [redacted] Management Board/Group Executive Committee.

The petitioner submitted a letter from [redacted] stating that the beneficiary joined [redacted] as "a corporate strategist and business developer" in the Credit Group and later became a portfolio manager for [redacted] The petitioner also submitted a March 31, 2006 letter from the [redacted] stating: "From December 2003 through February 2005, [the beneficiary's] title was [redacted] . . . From March 2005 through January 2006, [the beneficiary's] title was [redacted]" The petitioner's evidence also included information from [redacted] company, providing an overview of [redacted] The [redacted] overview identifies "Key People" for the company such as [redacted] The petitioner failed to submit an organizational chart or other evidence from [redacted] documenting where the beneficiary's positions as [redacted] in the Credit Group and as [redacted] fell within the company's general hierarchy. While the documentation submitted by the petitioner adequately demonstrates that [redacted] has a distinguished reputation, there is no evidence showing that the beneficiary's roles were leading or critical to the company, particularly in relation to the company's "Key People" identified in the Hoovers overview.

The petitioner submitted a letter from [redacted] who identified himself as leader of the firm's Corporate Finance activities in the United Kingdom. [redacted] letter discusses the beneficiary's work as an [redacted] advising clients on projects involving corporate finance and strategy and business development. The petitioner also submitted documentary evidence showing that [redacted] has earned a distinguished reputation. Additional information submitted by the petitioner indicates that [redacted] "has 83 offices in 45 countries." The petitioner failed to submit an organizational chart or other evidence from [redacted] documenting where the beneficiary's position as [redacted] fell within the firm's general hierarchy. While the documentation submitted by the petitioner demonstrates that [redacted] has a distinguished reputation, there is no evidence showing that the beneficiary's role was leading or critical to the firm, particularly in relation to the firm's multiple partners and directors.

The petitioner submitted a letter from [redacted], who states that he "worked at the [redacted] of Mexico for seventeen years" and that he was the "Managing Director in charge of implementing monetary and foreign exchange policy." [redacted] discusses the beneficiary's work for the [redacted] of Mexico as a trader and investments analyst for interest rate

derivatives and U.S. Treasury bond portfolios. The petitioner also submitted a three-sentence description of the [redacted] of Mexico printed from the bank's internet site. The limited information provided by the petitioner about the [redacted] of Mexico is not sufficient to demonstrate that the bank has a distinguished reputation in the financial industry. Further, the petitioner failed to submit an organizational chart or other evidence from the [redacted] of Mexico documenting where the beneficiary's position as a trader and investments analyst for interest rate derivatives and U.S. Treasury bond portfolios fell within the bank's general hierarchy.

A conclusion that the beneficiary played a leading or critical role for the [redacted] of Mexico, [redacted] simply by competently working in positions that needed to be filled would render this criterion meaningless. Specifically, it can be presumed that employers do not typically hire individuals to fill roles that serve no purpose for the employer; yet not every employee for a distinguished organization meets this regulatory criterion. In determining whether the beneficiary's role was critical the AAO looks at his performance in that role and how it contributed to the overall success or standing of his employer. The petitioner's evidence does not demonstrate how the beneficiary's positions differentiated him from the other staff or managers employed by the [redacted] of Mexico, [redacted] let alone their senior managers, partners, directors, or corporate executives. The evidence submitted by the petitioner does not establish that the beneficiary was responsible for his previous employers' success or standing to a degree consistent with the meaning of "leading or critical role."

In light of the above, the petitioner has not established that the beneficiary meets this regulatory 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 AAO withdraws the director's finding that the beneficiary meets this regulatory criterion. The petitioner submitted a May 29, 2008 job offer letter from [redacted] reflecting that the beneficiary was offered "the position of Head of Corporate Strategy, Operations and Finance" at [redacted] The [redacted] job offer states that the beneficiary will receive a minimum compensation of $500,000.00 (gross) divided as follows: (i) $20,833.00 per month; (ii) a bonus of $250,000.00 per year. The job offer also states that the beneficiary will be eligible to take part in discretionary bonus pool based on the profitability of [redacted] operations and individual performance. In response to the director's NOID, the petitioner submitted letters from [redacted] indicating that the beneficiary works for [redacted] "as the Chief Financial Officer and Chief Risk Officer." [redacted] specifically states that the beneficiary has worked as Chief Financial Officer and Chief Risk Officer since June 2008.

The petitioner submitted a copy of the beneficiary's 2009 U.S. Individual Income Tax Return (Form 1040) showing that he received a total of $20,625.00 in wages, and $1,267,288.00 as "other gains." The record does not include a copy of the beneficiary's IRS Form 4797, Sales of Business Property, showing the breakdown and specific source of the "other gains." In response to the director's NOID, the petitioner submitted a letter from [redacted]

stating that the beneficiary "qualifies as a partner, and therefore is not subject to W-2 filings." The petitioner also submitted a letter from [redacted] attesting that the beneficiary "is a partner in [redacted] and its affiliate [redacted] The letter further explains: "Since [the beneficiary's] compensation is directly linked to an economic interest in both of these entities, his distributive share of income cannot be reported as wages or subject to withholdings reported on Form W-2." The petitioner's response also included transaction records from [redacted] for 2009 and 2010 confirming payments from [redacted] to the beneficiary.

As evidence that the beneficiary earns significantly high remuneration in relation to others in the field, the petitioner submitted salary survey results from mysalary.com for "Top Strategic Planning Executives" in the Miami, Florida area showing that the top ten percent earn bonuses of $598,893 and above. Local salary survey results limited to the Miami area are not an appropriate basis for comparison in demonstrating the beneficiary has earned significantly high remuneration for services, *in relation to others in the field.* [Emphasis added.] Further, the record is void of remuneration information for Heads of Corporate Strategy, Operations and Finance, Chief Financial Officers, and Chief Risk Officers who perform similar work in the hedge fund industry. *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). The record contains no evidence that the beneficiary's compensation from [redacted] constitutes significantly high remuneration in comparison with the most experienced and renowned executives and partners in the hedge fund industry, a well-paid field that typically realizes large bonuses. Accordingly, the petitioner has not established that the beneficiary meets this regulatory criterion.

*Summary*

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

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

Counsel asserts that the beneficiary's business presentations to clients of [redacted] and his structuring and launching the [redacted] first collateralized loan obligation are comparable evidence of his extraordinary ability in business. 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." Thus, it is the petitioner's burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien's occupation and how the evidence submitted is "comparable" to the specific 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

the beneficiary's occupation 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, the petitioner submitted evidence that specifically addresses more than half of the ten categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Counsel does not explain how the documentation indicating that the beneficiary participated in the [redacted] project is "comparable" to any specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). Regardless, the beneficiary's work on [redacted] first collateralized loan obligation and his business presentations to clients of [redacted] have already been addressed under the category of evidence at 8 C.F.R. §§ 204.5(h)(3)(v). In regard to the beneficiary's involvement with [redacted] collateralized loan obligation, the AAO notes that the news item in *Loan Market Week* specifically states that [redacted] arranged the collateralized loan obligation. There is no documentary evidence showing that the beneficiary's work on this project garnered him national or international acclaim at the very top of the field. With regard to the beneficiary's business presentations to [redacted] corporate clients, there is no evidence demonstrating that such presentations were unusual in the business consulting industry or that the beneficiary's presentations garnered him national or international acclaim at the very top of his field.

Regarding the expert opinion 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)(iv), (v), and (viii). Further, counsel does not explain how the reference letters submitted by the petitioner are "comparable" to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such 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 or the beneficiary.

### *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)(i), (iii) – (v), (vi), (viii), and (ix).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the petitioner's evidence does not rise to the level of nationally or internationally recognized prizes or awards for excellence in the field. The AAO notes that the beneficiary's Certificate of Merit from the Colorado Mathematics League, his award from the ITAM Alumni Association honoring his academic performance, his "Best Students in Mexico" honor, and his academic scholarship from CONACYT "to carry out his Ph.D. studies at University of California, Berkeley" were limited to students. Thus, they cannot establish that he is one of the very few at the top of his field. *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. at 953, 954; 56 Fed. Reg. at 60899. Likewise, it does not follow that the beneficiary's receipt of student awards and scholarships which exclude veteran business executives in the field from consideration should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. 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. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." Moreover, there is no evidence showing that the beneficiary has received any nationally or internationally recognized prizes or awards since the 1990s. The statute and regulations require the petitioner to demonstrate that the beneficiary's national or international acclaim has been *sustained. 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 documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim in finance or business as of the June 23, 2010 filing date of the petition.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), the articles in which the authors briefly acknowledge the beneficiary and numerous other individuals were not about the beneficiary and there is no evidence that the articles were

published in major trade publications or other major media. The petitioner's evidence is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that the beneficiary is one of that small percentage who have risen to the very top of the field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(iv), the AAO cannot conclude that performing job responsibilities assigned by one's immediate employer is indicative of sustained national or international acclaim at the very top of the field. As previously discussed, the petitioner submitted documentation indicating that the beneficiary created a "Credit Training Module" for [redacted], served as a training program coordinator at [redacted] and performed business strategy consulting work for [redacted] clients. The beneficiary's performance of such duties for his employers does not constitute his participation, either individually or on a panel, as a judge of the work of others in the field. The petitioner also submitted documentation indicating that the beneficiary conducted employee performance reviews and participated on a team that made the final hiring decisions on [redacted] new analysts and associates. While the latter evidence may meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of his recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. Being assigned to review subordinates or job candidates for one's immediate employer is not evidence of "national or international acclaim" in the field. The petitioner failed to submit evidence demonstrating that the beneficiary's internal performance reviews and hiring decisions for [redacted] garnered recognition beyond his firm or was otherwise indicative of a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *Cf., Matter of Price*, 20 I&N Dec. at 953, 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). The petitioner has not established that the beneficiary's internal review of job applicants and subordinates at [redacted] is indicative of or consistent with sustained national or international acclaim at the very top of the field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), as stated above, it does not appear to rise to the level of contributions of "major significance" in the field. Demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior work is not useful in setting the beneficiary apart 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 contain sufficient evidence that the beneficiary's original work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. Aside from the petitioner's failure to submit evidence demonstrating that the beneficiary has made original business-related contributions of major significance in the field, the AAO notes that the petitioner's claim is based primarily on reference letters. While such letters can provide important details about the beneficiary's work, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have achieved "sustained national or international acclaim" necessitates evidence of recognition

beyond one's professional contacts. *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 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 the beneficiary 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 8 C.F.R. § 204.5(h)(3)(vi), there is no documentary evidence establishing that the beneficiary's Ph.D. and undergraduate dissertations were "in professional or major trade publications or other major media." Moreover, the citation history of the beneficiary's scholarly articles is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. As previously discussed, there is no citation evidence indicating that independent financial scholars have frequently cited the beneficiary's work. The documentation submitted by the petitioner fails to demonstrate that the beneficiary's articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of the field. Further, there is no evidence showing that the beneficiary has published any scholarly articles subsequent to 1995. The statute and regulations require the petitioner to demonstrate that the beneficiary's national or international acclaim has been *sustained*. *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 documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi) is not commensurate with *sustained* national or international acclaim in finance or business as of the June 23, 2010 filing date of the petition.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), as previously discussed, there is no evidence showing that the beneficiary has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that the beneficiary 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)(ix), there is no evidence demonstrating that beneficiary's remuneration is "significantly high" in relation to other Heads of Corporate Strategy, Operations and Finance; Chief Financial Officers; and Chief Risk Officers who perform similar work in the hedge fund industry, or that his level of compensation places him among that small percentage who have risen to the very top of the field. The petitioner must submit evidence demonstrating that the beneficiary's remuneration places him at the very top of the field rather than simply in the top half of his field in the Miami region. *See* 8 C.F.R. § 204.5(h)(2). The petitioner has not established that the beneficiary's salary and bonus are indicative of or consistent with national or international acclaim in the typically well compensated hedge fund industry.

In this matter, the petitioner has not established that the beneficiary's achievements at the time of filing were commensurate with sustained national or international acclaim as an executive in the financial industry, or being among that small percentage at the very top of the field of endeavor.

The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). 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 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 the beneficiary for him to qualify for the classification sought, it appears that the very top of his field of endeavor is above the level the beneficiary has attained.

***D. Prior O-1 Nonimmigrant Visa Status***

The AAO notes that the alien is the beneficiary of an approved O-1 nonimmigrant visa petition for an alien of extraordinary. This prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. Each case must be decided on a case-by-case basis upon review of the evidence of record. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

**III. Conclusion**

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

or international level. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.