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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 0 6 2010

SRC 08 241 51971

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:

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

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on April 22, 2009, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined that the petitioner had not established that the beneficiary had the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on August 4, 2008, seeks to classify the beneficiary as an alien with extraordinary ability as Senior Vice President, Head of Japanese Practice for

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

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

Counsel claims the beneficiary's eligibility for this criterion based on the beneficiary's receipt of the 2000 and 2002 Bronze Achievement Award from and being acknowledged by for a successful year in 2005. Counsel submitted copies of all three awards evidencing the beneficiary's receipt of these awards.

The plain language of 8 C.F.R. § 204.5(h)(3)(i) requires "receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." However, the awards received by the beneficiary appear to be internal company and service recognition awards rather than nationally or internationally recognized prizes or awards for excellence as required under 8 C.F.R. § 204.5(h)(3)(i). Counsel did not submit any other documentation regarding the nature and stature of these awards to demonstrate their recognition beyond the awarding entities.

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

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

Counsel claims the beneficiary's eligibility for this criterion based on his membership with Certified Commercial Investment Member (CCIM) and the New York State Bar Association (NYSBA). Regarding CCIM, counsel submitted a copy of the beneficiary's certificate for CCIM membership and information from CCIM's website. According to CCIM, more than 9,000 professionals hold CCIM designation with an additional 10,000 pursuing CCIM designation. In order to be a member of CCIM, an individual must:

1. Complete four core courses;
2. Submit a portfolio of closed transactions and/or consultations showing a depth of experience in the commercial investment field; and
3. Complete a comprehensive examination.

According to the bylaws from NYSBA's website[1], membership requires:

> Any member of the legal profession in good standing admitted to practice in the State of New York may become an Active member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all responsibilities of membership.

The listed above requirements for membership with CCIM or NYSBA do not demonstrate that outstanding achievements are required. Other than meeting the minimum qualifying standards, outstanding achievement is not a prerequisite for membership with CCIM or NYSBA. The petitioner has failed to establish how CCIM's or NYSBA's membership requirements reflect outstanding achievement as judged by national or international experts in the field as an essential condition for admission with CCIM or NYSBA.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the beneficiary's 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.

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

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

Counsel claims the beneficiary's eligibility for this criterion based on the following articles:

1. Bill Krouch, *Invest in Market Talent*, Markets Update, September 5, 2007;
2. Unknown author, *Jones Lang LaSalle*, Real Estate Weekly, October 24, 2007;
3. Unknown author, unknown title, www.allbusiness.com, unknown date;

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[1] *See* http://www.nysba.org accessed on November 12, 2009, and incorporated into the record of proceeding.

4. Unknown author, *Jones Lang LaSalle*, www.entrepreneur.com, October 24, 2007;
5. Advertisement in New York Times on January 9, 2001;
6. Unknown author, *GVA Williams Completes More Than 25,000 SF of Transactions at 475 Fifth Avenue*, www.gvawilliams.com, May 3, 2005;
7. Unknown author, *Two New Tenants Take Center Stage at Fifth's 'Rising Star'*, Real Estate Weekly, May 4, 2005;
8. Unknown author, *SageGroupAssociates*, www.allbusiness.com, December 21, 2005;
9. Unknown author, *Nippon Express Moves to DFW Airport Site*, www.cushwake.com, December 8, 2006;
10. Unknown author, *Nippon Express USA, Irving Business Update*, December 8, 2006; and
11. Unknown author, Interviewing a Top Person, Nikkin America, Inc., June 12, 2000.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation." However, besides Item 1, the name of the authors for the remaining articles have not been identified, as required by 8 C.F.R. § 204.5(h)(3)(iii). As such, the AAO cannot determine whether the evidence supports counsel's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Regarding Item 1, the article is from an inter-company newsletter. The regulation for this criterion requires the published material to be in professional or major trade publications or other major media. Counsel failed to submit documentary evidence establishing that Markets Update, or any of the other publications, are professional or major trade publications or other major media. We also note that the majority of the articles simply mention the beneficiary as representing tenants in real estate transactions or are press releases announcing his new employment and are not published material "about" the beneficiary as required under this regulatory criterion.

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

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

At the time of original filing of the petition, the petitioner claimed the beneficiary's eligibility for this criterion based on:

> The high-level managerial position that [the beneficiary] occupied at C&W, and presently holds with the Petitioner, demonstrate his prominent role as a judge and mentor of the work of other commercial real estate professionals, and his outstanding

> supervision and training of others has led to extraordinary results for C&W as well as for and [the beneficiary's] clients.

The petitioner also submitted a program that the beneficiary uses to train Mitsubishi Estate employees. The petitioner did not further argue the beneficiary's eligibility for this criterion on appeal.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the beneficiary's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

We find that the routine duties performed by the beneficiary as part of his job responsibilities are insufficient to meet this criterion and inconsistent with the level of acclaim required for this highly restrictive classification. Furthermore, the training of employees is not consistent with judging of the work of others in the same or an allied filed of specialization for this criterion. *See, e.g., Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009)(Internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion).

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

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

Counsel claims the beneficiary's eligibility for this criterion based on the beneficiary's "extraordinary record of success" in commercial real estate negotiations. As evidence of the beneficiary's accomplishments, counsel submitted recommendation letters from representatives of

In this case, the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the above letters are all from individuals who have worked or interacted with the beneficiary. While such letters can provide important details about the beneficiary's role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. *See* section 203(b)(1)(A)(i) of

the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the beneficiary's personal contacts in not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of any immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the beneficiary's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contribution of major significance, we cannot conclude that he meets this criterion.

Furthermore, the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the alien's contribution must not only be of a major significance but also original. The recommendations letters do not indicate any original, major significant contribution made by the beneficiary in commercial real estate. While the recommendation letters indicate that the beneficiary engaged in successful negotiations, has "strong real estate expertise," and "has knowledge of both United States and Japanese language and culture," the petitioner has failed to establish how such qualities reflect contributions of major significance to the beneficiary's field as a whole. The record lacks documentary evidence showing that the beneficiary's work has had a significant impact beyond his employer and other companies he has worked with so as to establish contributions of major significance to his field.

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

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

Counsel claims the beneficiary's eligibility for this criterion based on his employment with and as well as his current employment with the petitioner, Counsel has submitted sufficient documentation establishing the distinguished reputations of and As evidence that the beneficiary has performed in a leading or critical role, counsel refers to the previously mentioned recommendation letters in the above criterion. We acknowledge that the recommendation letters highly praise the beneficiary for his skills as a commercial real estate negotiator and credit the beneficiary in various successful commercial real estate transactions.

However, the documentation submitted by the petitioner does not establish that the beneficiary's positions were leading or critical to these companies as a whole. For example, the record does not include detailed job responsibilities discussing the nature of the beneficiary's duties and significant accomplishments and the importance of his role to the company's operations. The petitioner failed to establish the nexus between the beneficiary's role at or

for instance, and the success and accomplishments at any of these companies. Further, the petitioner has not submitted an organizational chart or other similar evidence showing the beneficiary's position in relation to that of the other vice presidents employed by and . There is no evidence demonstrating how the beneficiary's roles differentiated him from the other vice presidents much less other higher level executives. In this case, the documentation submitted by the petitioner does not establish that the beneficiary was responsible for or success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

Accordingly, the petitioner has not established that the beneficiary 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.*

Counsel did not assert that the beneficiary meets this criterion either at the time of filing or on appeal. The record, however, contains a copy of the beneficiary's 2006 W-2 indicating the beneficiary earned wages of $409,445. We note that the director addressed this issue in his decision and found that the petitioner failed to submit evidence that the beneficiary's salary was high compared to others in his field. As indicated previously, counsel failed to address this issue on appeal. We agree with the findings of the director for this criterion.

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

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 criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4). Counsel argues that the beneficiary's "regular presentations on the U.S. commercial real estate market to some of the largest and most prestigious Japanese banking and real estate service providers" is comparable evidence to establish the beneficiary's eligibility. Counsel submitted three excerpts of presentations allegedly made by the beneficiary. The record fails to reflect that the beneficiary made these presentations or even the beneficiary's involvement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Notwithstanding, there is no evidence showing that these presentations are indicative of sustained national or international acclaim at the very top of his field or is in any way on a level comparable to the regulatory requirements.

In this case, there is no evidence showing that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of the beneficiary's field. Nevertheless, the

regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." 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, the petitioner has submitted evidence specifically addressing five of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Finally, while we acknowledge that USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. 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, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner'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. 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 beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.