

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

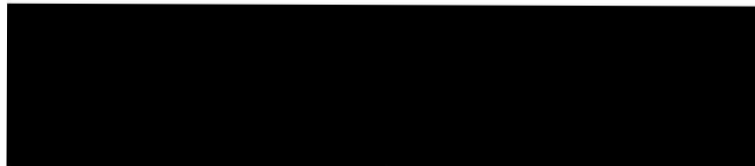
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B₂



FILE:

LIN 08 031 5014

Office: NEBRASKA SERVICE CENTER

Date:

SEP 29 2009

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 a 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).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner, an investment banking and financial services company, 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 earned 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 she 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) and that the petitioner submitted comparable evidence of her extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4).

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 16, 2007, seeks to classify the beneficiary as an alien with extraordinary ability "as a Human Resources Professional of Extraordinary Ability in the field of Human Resources and Recruiting within the Investment Banking Industry." 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 the beneficiary's eligibility 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).¹

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

The petitioner submitted several letters of support discussing the beneficiary's work as a human resource professional.

In his initial letter, [REDACTED] Silver Point Capital, Connecticut, states:

I have known [the beneficiary] since 1999, when I hired her. At the time I was Regional Head of Europe Human Resources for Credit Suisse First Boston and I hired [the beneficiary] as the Head of Staffing for all Europe businesses. [The beneficiary's] efforts in overseeing the Staffing function and her demonstrated extraordinary ability in sourcing, assessing and hiring candidates for senior level positions made her an extremely valuable member of the European team.

Among the major contributions of [the beneficiary] was developing an interviewer training initiative across the European offices (22 in total with over 5000 employees), developing a vendor management program which saved the Firm almost \$2,000,000 USD per annum, sourcing and hiring over 100 employees across the locations of Europe and providing coaching and counseling to senior executives on the selection and assessment of candidates.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

In his letter submitted in response to the director's request for evidence, [REDACTED] states:

From my first dealings with [the beneficiary] when I hired her in 1999 onto my Europe HR Staff while with Credit Suisse in London through my recent interactions with her in her current leadership role with Macquarie, [the beneficiary] continues to provide a level of thought and transactional leadership within HR that is unparalleled. [The beneficiary's] contributions to the field of human resources within the investment banking industry have challenged the status quo. In particular her creation of a [sic] Employment Vendor Management program for the Europe Businesses during her tenure within Credit Suisse, London continues to be used to this day (almost 10 years ago) and has yielded significant savings for the Firm. The creation of a strategy, a set of tactics, and the creation of a process relative to the Vendor Management program reflected [the beneficiary's] ability to go "top to bottom" in her thinking and approach. . . . This Vendor Management effort combined with [the beneficiary's] work at the time on an Interviewer Training Program – components of which are still in use today (again, almost 10 years later) – had deep and sustained impact on the 6000 employee business that was Credit Suisse Europe.

While the beneficiary's development of an interviewer training program and an employment vendor management program helped to benefit Credit Suisse's business operations, there is no evidence demonstrating that these programs constitute original contributions of major significance in the beneficiary's field. For example, there is no evidence showing that the beneficiary's two programs have impacted the human resources industry beyond her former employer.

[REDACTED] Head of Talent Management, Infrastructure Division, Morgan Stanley, states:

I have known [the beneficiary] since 2000 when I joined Credit Suisse First Boston's HR department, as the Head of HR Strategy for the Infrastructure Division; [the beneficiary] was in charge of global Resourcing for that same Division. We interacted particularly closely on two initiatives: firstly, the integration of [REDACTED] and [REDACTED] where she was responsible for the redeployment of those people displaced from roles due to overlap of functions or elimination of certain lines of business. Secondly, on an in-depth review of **Recruitment suppliers and methods of recruitment**. In both of these initiatives, [the beneficiary] brought an approach to the business issue that was innovative and far ahead of the norms for the industry at the time. For example, in relation to the DLJ acquisition, [the beneficiary] pioneered the use of web-technology for internal job posting and candidate sourcing. This, whilst common today, was revolutionary in Financial services at the time, particularly for "internal" job postings. In relation to the Recruitment suppliers/methodologies, [the beneficiary's] unusual breadth of experience across Lateral recruitment, Executive Search, Contingent staffing and Campus Recruitment, meant that she could drive a holistic approach to addressing 'workforce planning' in its entirety. . . . As a direct result of [the beneficiary's] ability to drive this approach, the strategic decision focused on two clearly differentiated operating models, one "high touch" with significant interaction between the

team managing the recruitment and the recruiting manager, and one 'high volume' where the modus operandi was to source multiple people with similar skills for similar roles.

We acknowledge that the beneficiary performed admirably in reviewing and improving Credit Suisse First Boston's internal recruitment process, but there is no evidence showing that her work had major significance in the field.

With regard to the DLJ acquisition, [REDACTED] Human Resources, Royal Bank of Scotland (RBS) Greenwich Capital, Connecticut, also discusses the beneficiary's use of web-technology for internal job posting and candidate sourcing. [REDACTED] states:

I have known [the beneficiary] since 2000 when she was in charge of the global resourcing work stream for Credit Suisse First Boston during its acquisition and integration of [REDACTED] and [REDACTED] I was a consultant to DLJ responsible for its U.S. integration work stream. . . . Not only was [the beneficiary] responsible for the recruiting process for the retained staff and the internal redeployment of those displaced from roles but retained on staff, she was also responsible for the job search support to be made available to the departing staff. Although the use of web portals is commonplace today, in 2000, it was highly unusual for a former employee to be able to access an internal job posting website through which to continue conducting a job search at CSFB [Credit Suisse First Boston].

* * *

The benefit to the firm was two-fold: first, departing employees felt they were being accorded a benefit as a result of their loyal service to DLJ or CSFB that put them several days ahead of their competition who were learning about CSFB job openings through the public internet postings; second, although the portal created an incentive for employees to go onsite to the outplacement firm to view the CSFB intranet site, while there, the employees also took advantage of the full suite of outplacement services available to them.

While the beneficiary's utilization of web-technology for internal job posting and candidate sourcing was beneficial to CSFB and DLJ's displaced employees, there is no evidence showing that this technology was the beneficiary's original innovation or that her implementation of the internal website at CSFB was tantamount to a contribution of major significance in the human resources field.

[REDACTED] further states:

I have also had other opportunities to work directly with [the beneficiary] in the field of Human Resources. In 2004 [the beneficiary] was asked by RBS to take on the role of Global Head of Human Resources, Financial Markets. . . . [The beneficiary] retained my services as an interim senior HR professional to head up the US operation while she underwent a staffing and structural review. During my time supporting [the beneficiary] one of the key

initiatives she developed was the design and development of a global leadership development program.

The program's focus was on two core components: people management and leadership (including individual leadership and strategy). The leadership component was heavily tailored to the top cadre of senior staff identified by the senior executive team and included the use of 360 degree feedback and personal coaching to identify the person's most effective personal leadership style in setting and driving corporate strategy. RBS continues to partner with London Business School, a pre-eminent business school in the UK (equivalent to Columbia Business School in the US), to deliver this program.

* * *

When I rejoined RBS Human Resources in 2006 following the restructure of its Financial Markets and Corporate Banking businesses in Global Banking & Markets I was delighted, but not surprised, to see that this leadership development program formed the cornerstone of the newly branded program being rolled out for the new business. This program, now called The Winning Margin, continues to be a key development activity for RBS Global Banking & Markets available only to the "Top 250" key individuals by invitation only.

[REDACTED] Human Resources, Global Markets, RBS, also discusses the beneficiary's implementation of a leadership development program at RBS stating:

The Global Markets division of RBS was formed following a restructure of various different businesses within RBS. One of those businesses was RBS' Financial Markets division, of which [the beneficiary] had previously held the role of Head of HR.

During her time as Head of HR, RBS Financial Markets, [the beneficiary] pioneered a leadership development program for the top performing staff identified as potential future leaders in RBS Financial Markets. After the restructure which formed RBS Global Markets this program was continued under the name of The Winning Margin. This program was and still is a critical component of RBS GBM' [Global Banking & Markets] leadership skills development for its senior executives – participation is by invitation only and is strictly restricted to the top 250 most critical staff in the Global Banking & Markets division.

a human resources consultant contracted by Macquarie Holdings (USA), states:

I have known [the beneficiary] since November 1997 when I began my association with Macquarie Holdings USA.

* * *

[The beneficiary's] work at the Royal Bank of Scotland to jointly develop a professional development program for traders and their staffs in conjunction with the London Business

School is particularly noteworthy. It was designed to ensure that individuals obtain additional skills while limiting their time off of the trading floor.

In response to the director's request for evidence, the petitioner submitted an invitation for a September 2008 session of the RBS' Winning Margin Program at the London Business School. While this invitation indicates that the program developed by the beneficiary continues to provide training for RBS' Global Banking & Markets division senior executives, there is no evidence demonstrating that the beneficiary's work with regard to this company training program equates to an original contribution of major significance in her field.

[REDACTED], Human Resources, Mitsubishi UFJ Securities (USA) Inc., served as a human resources consultant to Macquarie Holdings (USA) in 2008. Ms. [REDACTED] states:

I have known [the beneficiary] personally since 2007 [The beneficiary's] introduction of an on site outsourcing model for the industry was a first and the overall success has driven similar strategies for other firms. She defined the baseline platform and best practices for success and cost efficiency for this function. The use of technology in tracking candidates globally and sharing this information across regions as well as standardizing search fee arrangements with global providers was very innovative. [The beneficiary's] ability to work across cultures and time zones is a tribute to her deep understanding of the diverse global investment banking industry and markets.

[REDACTED], The Trafalgar Partnership, England, states:

I have known [the beneficiary] since 1996 when she was the Head of Resourcing at Bankers Trust in London and I was the Corporate Account Director for Robert Walters Associates.

[The beneficiary] was holding a particularly difficult position that demanded very strong influencing skills, a commercial mind and an ability to engage external suppliers to ensure service was in turn maximized for the internal client. What was more significant was [the beneficiary] was tasked in relation to implementing and developing one of the first outsourced recruitment models in London, where the recruitment industry, line management and to a degree Human Resources all had differing concerns over this innovative approach to delivering talent. [The beneficiary] demonstrated then as she has continued to do so throughout her career, a truly entrepreneurial approach to product development, an acute and innate understanding of market dynamics and an intellect and character which she applies to simply 'getting the job done.'

[REDACTED] Interim Head of HR, Europe, Middle East, and Africa, Macquarie Group Services Australia Pty Limited, previously served as Director of Human Resources for Credit Suisse. Ms. [REDACTED] states:

I have known [the beneficiary] since 1999 during a period when we both worked at Credit Suisse. . . . [The beneficiary] and I were both senior members of the European HR management team.

* * *

[The beneficiary's] contributions to the field of human resources within the investment banking industry have challenged the status quo. Whilst at Credit Suisse [the beneficiary] devised and implemented a new recruitment strategy across the entire back office of the bank globally at a time of significant growth and a major acquisition. She was responsible for implementing a new technology platform for recruitment as well as re-engineering recruitment processes to create consistency and efficiencies across the integrated business following the acquisition of DLJ in 2000. At that time, outsourcing recruitment was still relatively uncommon in investment banking, so [the beneficiary's] success placed Credit Suisse at the cutting edge of recruitment strategy and gained the organization advantage in the market.

The letters of support from [redacted] and [redacted] indicate that the beneficiary was tasked to develop and implement Credit Suisse's outsourced recruitment model. Ms. [redacted] letter states that outsourcing recruitment was "relatively uncommon in investment banking" in 2000, but there is no supporting evidence showing that the beneficiary was the first in her industry to utilize such an approach. Further, there is no evidence showing that the beneficiary's outsourcing model has attracted significant attention beyond those with whom she has worked in a manner consistent with sustained national or international acclaim. Accordingly, the petitioner has not established that the outsourcing strategy developed by the beneficiary for Credit Suisse was tantamount to an original contribution of major significance in her field.

[redacted] further states:

Prior to her time at Credit Suisse, [the beneficiary] worked at Lehmans, where she initiated an Investment Banking Recruitment Forum, involving representatives from all the major tier 1 banks in the London market. That forum resulted in a significant increase in the openness with which recruitment issues were discussed across the industry and still exists today.

In discussing the beneficiary's involvement with the Investment Banking Recruitment Forum, [redacted] Senior Vice President and Staffing Executive for Bank of America, New York, states:

I have known [the beneficiary] since 1998 at which time she was the head of Resourcing for the Finance, Administration and Operations division of Credit Suisse First Boston. I was a recruiter working through and [sic] outsourced provider in the company's operations division. [The beneficiary] and I have known each other ever since and she was my manager during 3.5 years when we both worked for The Royal Bank of Scotland.

[The beneficiary's] contributions to the field of human resources and recruiting have made her an HR professional of international renown within the investment banking industry. One significant contribution [the beneficiary] has made to the industry is a founding member of the Investment Banking Recruiters Forum. Established in 1996, the forum brings together recruiting professionals from the most significant industry companies to discuss in a confidential setting the notable things that effect the profession such as market trends, legislation, processes, suppliers and technologies. . . . [The beneficiary] was instrumental in setting this forum up and it is still in existence today. I represented both The Royal Bank of Scotland and Bank of America at the forum when I held head of recruiting positions and can testify to the lasting importance of the initiative that [the beneficiary] played a significant role in starting.

Redwood Search Limited, London, states:

I have known [the beneficiary] since 1999 when she took on the role of managing a significant cost reduction and recruitment supplier review program for Credit Suisse First Boston, based in London. Prior to this I had known of [the beneficiary] through market reputation and was aware of her work at Lehman Brothers – specifically that she had established the Investment Bankers Recruitment Forum that had then begun to have an impact in the recruiting market in London. The establishment of this forum significantly changed the status quo of how the very specialized and closed-door recruiting market in London operated, giving more leverage and 'purchaser-power' to the various investment banks that were the clients of the search firms. While the forum was not initially welcomed by all search firms in the market, those of us seeking to ensure the profession remained respected and viewed as a profession and a valued service recognized, as [the beneficiary] clearly visioned, the benefits to all parties of a collaborative body that could act as one communication channel and forum, in addition to being a useful information sharing body. I, and many others, applauded [the beneficiary's] vision and drive creating such an original and extraordinary tool and I am pleased to see that it has become embedded in the current market almost 10 years later.

In response to the director's request for evidence, the petitioner submitted a non-executed copy of a December 4, 2007 "Mutual Confidentiality Agreement" for this forum indicating that it was limited to investment banking companies having offices in London. Further, the letter from [REDACTED] indicates that the forum consisted of "banks in the London market." Similarly, the letter from Ms. [REDACTED] noted that the forum had "an impact in the recruiting market in London." There is no evidence showing that this forum impacted the human resources field beyond the local participating offices in the London area. Further, while the preceding witnesses claim that the beneficiary was a founding member of the Investment Banking Recruiters Forum, there is no contemporaneous evidence showing her involvement or confirming that she was the driving force that originated the forum. In this instance, the petitioner has not established that the beneficiary's work to establish this local forum equates to an original contribution of major significance in the human resources field.

[REDACTED] further states:

During her tenure at Credit Suisse First Boston [the beneficiary] pioneered the concept of 'Supplier Evenings' – a unique opportunity for senior managers to interact with recruitment suppliers and educate them with regard to the business, its strategy and future recruitment needs. [The beneficiary's] initiative resulted in far more effective working relationships, enabling recruitment suppliers to market the organization far more effectively, thereby giving the organization a stronger 'brand' not only with the suppliers but also with the target workforce population they then reach out to on behalf of the company.

While the beneficiary's "Supplier Evenings" concept is credited with bolstering relationships between CSFB's senior managers and the company's recruiting suppliers, there is no evidence demonstrating that it constitutes an original contribution of major significance in the field. For example, there is no evidence showing that the beneficiary's concept has impacted the recruiting industry beyond her former employer and its suppliers.

Managing Director and Head of Rates North America, RBS Greenwich Capital, Connecticut, states:

I have known [the beneficiary] since 2001 when she joined RBS Corporate Banking and Financial Markets (CBFM) as the Head of Resourcing. Although she was physically based in London, [the beneficiary] was responsible for supporting the recruitment activity of all business managers globally.

* * *

When I undertook the process of searching in the market for individuals, I turned to [the beneficiary] and her team to assist me in the process. I was immediately struck by the unique level of insight and knowledge of the external recruitment market that [the beneficiary] was able to bring to the table. Her ability to engage with the suppliers from a position of mutual respect and understanding of the market in which they would be partnering and working was in a completely different league to that I had experienced from other HR staff.

* * *

I was able to successfully recruit a team of 12 highly specialized individuals in the face of stiff market competition – as a result of which the team that year delivered \$97 million dollars in revenue for RBS. I have no doubt that without [the beneficiary's] unique abilities in the recruitment field we would have struggled to convince the best recruitment suppliers to work with us to attract top quality candidates, and that we would have struggled to attract those candidates so convincingly without [the beneficiary's] exceptionally skilled and expert oversight of the process. I know that I am just one of many internal clients of [the beneficiary's] who have benefited from her expertise

While the beneficiary's knowledge of the external recruitment market has assisted RBS in recruiting qualified individuals, there is no evidence demonstrating that her work constitutes original contributions of major significance in her field. For example, there is no evidence showing that her work has impacted the human resources industry beyond her former employer.

London, states:

I have known [the beneficiary] since 1996 and have watched her career accelerate quickly as first Lehman Brothers, then Credit Suisse, RBS and latterly [redacted] recognized her unique abilities. The Investment Banks are uncomprising [*sic*] and to succeed, flourish and advance rapidly you need an uncommon mix of tenacity, skill and commercial awareness. For an [*sic*] senior HR professional [the beneficiary] possess [*sic*]this very uncommon mix.

Specifically, when she was working at Lehman Brothers, [the beneficiary] pioneered the use of an external recruitment company to perform in house recruitment functions for an investment bank. This was a significant break from the traditional recruitment model that had previously been applied at investment banking, namely reliance on internal recruiters to perform this function. In this context [the beneficiary] lead a change to the business model of both Investment Banks and external recruitment companies in respect of the sourcing and placement of personnel. This model is now commonplace in the investment banking industry. Indeed [redacted] operate [*sic*] this model in North America.

We are not persuaded that seeking an outside contractor to perform in-house business functions (such as recruitment) is an original business practice attributable to the beneficiary. There is no supporting evidence demonstrating that the beneficiary's utilization of an external recruitment company to perform in house recruitment functions for Lehman Brothers equates to an original contribution of major significance in her field.

Eileen Finn & Associates, "a human resources search practice in New York," states:

I have known [the beneficiary] since 2002 at which time I was introduced to her in regard to a search assignment. I was hired by [the beneficiary] & Royal Bank of Scotland to conduct a search for a senior Human Resources professional to run HR for the Americas. [The beneficiary] showed to me during the course of that search, her in-depth knowledge of Human Resources Globally, Financial Services expertise (not just in HR but truly understanding the business) and her ability to translate HR processes across borders. She garnered great support and credibility on both sides of "the Pond."

[The beneficiary's] contributions to the field of human resources within the investment banking industry have challenged the status quo. [The beneficiary] has a background that is extremely difficult to find within the US which is as follows: her knowledge of global financial services both from the headquarters perspective and on the ground within the US. Her experience working in London has helped [the beneficiary] to understand and interpret

the differences between the two business cultures and what that means to an employee population. Her HR skills are top notch. She is creative in her approach to problem solving and always employs practical solutions with keeping home office objectives in mind.

We acknowledge the petitioner's submission of the preceding recommendation letters from the beneficiary's colleagues praising her human resources expertise and discussing her activities in the field. Success and effectiveness in one's field, however, are not necessarily indicative of original business-related contributions of major significance. The record lacks evidence showing that the beneficiary has made original contributions that have significantly influenced or impacted her field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the beneficiary has earned the admiration of those with whom she has worked, the record lacks evidence showing that her work constitutes original contributions of major significance in her field consistent with sustained national or international acclaim. For example, the record does not indicate the extent of the beneficiary's influence on others in her field nationally or internationally, nor does it show that the field has significantly changed as a result of her work.

In this case, the recommendation letters submitted by the petitioner are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (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 professional contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a human resources professional who has sustained national or international acclaim. Without extensive documentation showing that the beneficiary's work has been unusually influential or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

The record includes internet documentation and rankings from Vault.com Inc. showing that the Macquarie Group, Lehman Brothers, Credit Suisse, and RBS have distinguished reputations in commercial and investment banking. The documentation is, of course, dated prior to September 15, 2008, when Lehman Brothers filed for bankruptcy protection.

The petitioner submitted a July 11, 2007 e-mail from [REDACTED] of Oakleaf Partnership Limited, a human resources specific search & selection business in London, stating:

I have been asked to comment on the recruitment process for the senior-most human resources position with Macquarie Holdings (USA) Inc. in the United States and on the background and abilities of the candidate identified and selected, [the beneficiary].

* * *

I was approached by [REDACTED] Division Director with Macquarie Bank Limited, the global parent of Macquarie Holdings (USA) Inc. about the role. He laid out the required criteria for the candidate as follows: the company wanted a premier executive-level human resources candidate to direct the recruiting and human resources functions for Macquarie Bank Limited's operations in both North America and Europe. The company required a candidate with in-depth experience across both regions but more importantly, given Macquarie Bank Limited's expansion plans in North America and Europe, it was absolutely essential that the candidate possess extensive experience and expertise in both resourcing and generalist human resources functions. There are very few professionals in the world who possess this combination of experience and expertise within the financial services industry.

The petitioner also submitted an August 6, 2007 letter from [REDACTED] Generalist, Macquarie Holdings (USA) Inc., confirming the company's offer to the beneficiary for the position of Division Director – Head of Human Resources, Americas/Europe, Middle East, and Africa. The record, however, does not include a discussion of the beneficiary's work and achievements for Macquarie Holdings (USA) Inc. demonstrating that she performed in a leading or critical role for the company. Further, while the e-mail from [REDACTED] and the letter from [REDACTED] indicate that the beneficiary was selected to fill the preceding position, there is no information regarding her actual start date. According to the beneficiary's Form G-325A, Biographic Information, she was working for RBS Greenwich Capital Markets as of the date of her signature on the form, August 15, 2007. The petition in this matter was filed on August 16, 2007. In this instance, the petitioner has not established that the beneficiary had performed in a leading or critical role for Macquarie Holdings (USA) Inc. as of the filing date. A petitioner must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

In an August 15, 2007 letter accompanying the petition, [REDACTED] states that the beneficiary worked for Lehman Brothers in the late 1990s serving in the positions of "Manager, Temporary Resources and Recruiting, Europe," "Special Projects Manager," and "Freelance Recruiting Specialist." According to the regulation at 8 C.F.R. § 204.5(g), evidence of qualifying experience "shall be in the form of letter(s) from current or former employer(s) . . . and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien." The record, however, does not include a letter from Lehman Brothers discussing the leading or critical nature of the beneficiary's role for that company. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). There is no evidence in the record differentiating the

beneficiary's roles at Lehman Brothers from those of the other human resources executives employed by that company.

An undated letter from [REDACTED] the beneficiary's former superior who served as Regional Head of Europe Human Resources for CSFB and who hired the beneficiary as the "Head of Staffing for all Europe businesses," states:

[The beneficiary] has had a leading and critical role at both Credit Suisse and RBS. At Credit Suisse, her role as well as the programs, policies and procedures she created required her to be a highly visible senior leader at the Firm and she was able to easily interact with a variety of senior leaders in a multiple number of countries. Her efforts around that most critical aspect of a Firm's efforts — the obtaining of human capital through recruiting — meant that [the beneficiary] was at the very forefront of that most important effort across multiple countries and multiple businesses.

[REDACTED], the beneficiary's former subordinate at RBS, states:

At The Royal Bank of Scotland where we both worked, [the beneficiary] had a leading and critical role in building the company's recruiting capability at an important time in the company's growth. At a time when recruiting was amongst the highest listed items on the company's Human Resources agenda, she led the redesign of the organizational structure of the group, recruitment policies and processes, technologies employed by the company and its vendor management procedures.

As discussed, the letter from [REDACTED], Human Resources, Global Markets, RBS, indicates that the beneficiary served as Head of HR for RBS Financial Markets division, but his letter focuses primarily on the beneficiary's implementation of the Winning Margin leadership development program rather than the beneficiary's leading or critical role for RBS.

While the preceding letters from [REDACTED] and [REDACTED] and the additional letters discussed under the preceding criterion indicate that the beneficiary performed admirably on various human resources initiatives for CSFB and RBS, 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 a letter of support originating from Credit Suisse's corporate headquarters discussing the nature of the beneficiary's duties and the importance of her role to the company's operations. 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 HR executives employed by Credit Suisse and RBS. There is no evidence demonstrating how the beneficiary's roles differentiated her from the other HR managers who oversaw the companies' regional offices or divisions, let alone the companies' top executives. In this case, the documentation submitted by the petitioner does not establish that the beneficiary was responsible for RBS or Credit Suisse's 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.

In response to the director's request for evidence, the petitioner submitted copies of the beneficiary's Forms W-2, Wage and Tax Statements, for Royal Bank of Scotland North America Services Inc. and Macquarie Holdings USA Inc. reflecting total compensation of \$763,030.39 in 2007. The petitioner also submitted salary and wage information for 2007 showing that the beneficiary's earnings are significantly high in relation to others in her field. Accordingly, we concur with the director's finding that the beneficiary meets this criterion.

In this case, we find that the beneficiary meets only one regulatory criterion, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). We concur with the director's finding that the petitioner has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence 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).

On appeal, counsel argues that the reference letters from the beneficiary's colleagues are comparable evidence of her extraordinary ability as a human resources professional. 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." In that regard, counsel argues that the petitioner established eligibility to submit comparable evidence by virtue of "the confidentiality agreements Beneficiary executed with her former employers and the proprietary nature of the Beneficiary's work product." Counsel further states:

In its timely response to the RFE, the Petitioner, through its Counsel, explained at length that as a result of the confidential nature of human resources and recruiting in the investment banking field, the Beneficiary was prohibited by confidentiality agreements with her former employers from disclosing and/or producing proprietary information/materials detailing, disclosing and/or referencing the cutting edge recruitment and executive training and leadership programs the beneficiary created for her previous employers. In lieu of such confidential and proprietary information, Petitioner submitted a copy of a participant confidentiality agreement and a letter from Austin Dowling . . . attesting to the confidential and proprietary nature of the Beneficiary's programs and of the prohibition with these confidentiality agreements barring the Beneficiary and others from divulging such information.

The letter from Associate Director / Head of Employee Relations, Macquarie Holdings (USA) Inc., New York, states:

Executive training and leadership development tools, such as [the beneficiary's] *The Winning Margin* and the *Investment Bank Recruiters Forum* have been designated confidential and proprietary information and bank officers are not authorized to release information regarding these programs in the context of this application. Consequently, we are forced to rely on the testimony of [the beneficiary's] peers to demonstrate the significance of her contributions – indeed, participation in several of her programs is now mandatory.

We hope you will consider the unique nature of the investment banking field and give appropriate weight to the testimony

The "cutting edge recruitment and executive training and leadership programs" described by counsel and identified in [REDACTED] letter as "*The Winning Margin* and the *Investment Bank Recruiters Forum*" have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v). While the December 4, 2007 "Mutual Confidentiality Agreement" shows the confidential nature of material originating from the forum, the testimony relating to the impact of the forum has been duly considered. Even if the petitioner were to have submitted the internal proprietary and confidential information for the beneficiary's programs, there is no evidence demonstrating that any of them are tantamount to original "business-related contributions of major significance *in the field*." [Emphasis added.]

Counsel's brief and the letter from [REDACTED] do not specifically address why the remaining regulatory criteria at 8 C.F.R. § 204.5(h)(3) "do not readily apply to the beneficiary's occupation." 8 C.F.R. § 204.5(h)(4). For example, we note that the petitioner submitted an article in *Business Week* that discusses the recruitment efforts of human resources executive [REDACTED]. Thus, there is no indication that the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) does not apply to the beneficiary's occupation. The *Business Week* article only reinforces the conclusion that other regulatory criteria at 8 C.F.R. § 204.5(h)(3) apply to the beneficiary's field. Further, we cannot ignore that counsel has specifically argued that the beneficiary meets the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v), (viii), and (ix). In this case, the regulatory language at 8 C.F.R. § 204.5(h)(4) precludes the consideration of comparable evidence, 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). Where an alien is simply unable to meet three of the regulatory 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.

Nevertheless, the reference letters submitted in support of this petition have already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii). There is no evidence showing that the reference letters that the petitioner requests re-evaluation of as comparable evidence constitute achievements and recognition consistent with sustained national or international acclaim at the very top of the beneficiary's field. While reference letters may provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective 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). Further, the classification sought requires "extensive documentation" of sustained

national or international acclaim and recognized achievements in the field. *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 the opinions expressed by one's professional acquaintances.

We cannot ignore that all of the individuals offering letters of support have professional ties to the beneficiary. With regard to the opinions of individuals who have worked with the beneficiary, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the beneficiary has sustained national or international acclaim for her achievements outside of those who are close to her. The statutory and regulatory requirement for "extensive documentation" of "sustained national or international acclaim" necessitates evidence of recognition beyond direct acquaintances of the beneficiary. *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, counsel fails to explain how the beneficiary was purportedly able to achieve sustained national or international acclaim if much of her work consisted of closely held proprietary and confidential material. We note that the burden of proof is on the petitioner to submit evidence to support its claims.

Section 291 of the Act provides:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant, immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be.

The law goes on to assert that the evidence must establish eligibility "to the satisfaction" of the adjudicating officer. This burden is confirmed in *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965) and *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner cannot avoid this burden simply by asserting that certain evidence exists, but cannot be obtained or submitted because of its proprietary or confidential nature. If knowledge of the beneficiary's work is deliberately restricted, then by definition national or international acclaim is virtually impossible.

Counsel's contention that reference letters are a comparable substitute for "extensive documentation" of achievements and recognition as required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3) is not supported by a plain reading of the statute, the regulations, or standing precedent. The regulations governing the extraordinary ability immigrant visa classification have no requirement mandating that USCIS specifically accept the credibility of personal testimony, even if not corroborated. The regulations provide that eligibility may be established through a one-time achievement or through documentation meeting at least three of ten criteria. The criteria require specific documentation beyond mere testimony, such as awards, published material about the alien, and

a high salary. As an example of the specific nature of the documentation required, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the "title, date and author" of the published material about the alien. The only criterion for which letters are specifically relevant is the criterion relating to the alien's leading or critical role for an organization with a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii). The first issue is the role the alien was hired to fill. According to 8 C.F.R. § 204.5(g) letters from employers are acceptable evidence of experience.² While letters may place the evidence for the other regulatory criteria in context, they cannot serve as primary evidence of the achievement required by each criterion. Further, while the regulation at 8 C.F.R. § 204.5(h)(4) permits "comparable evidence" where the ten criteria do not "readily apply" to the alien's occupation, the regulation neither states nor implies that opinion letters attesting to the alien's accomplishments in the field are "comparable" to the strict documentation requirements in the regulations setting forth the ten criteria. Accordingly, we cannot conclude that the opinion letters submitted by the beneficiary's current and former colleagues are comparable to the types of achievements and recognition required by the regulation at 8 C.F.R. § 204.5(h)(3). Moreover, where the regulations require specific evidence in support of a petition, the petitioner's burden of proof is not satisfied by submitting unsupported testimony. Accordingly, the AAO gives the submitted letters less weight and finds them unpersuasive on the whole. *Matter of Caron International*, 19 I&N Dec. at 791.

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

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.

² We note, however, that an alien would also need to submit objective evidence of the reputation of the employer to satisfy the specific requirement of 8 C.F.R. § 204.5(h)(3)(viii).