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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 01 203 55387

Office: Vermont Service Center

Date: **AUG 27 2002**

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)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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

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 to the United States will substantially benefit prospectively the United States.

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 achieved sustained national or international acclaim are set forth in Service regulations at 8 C.F.R. 204.5(h)(3):

Initial evidence: 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. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

- (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 materials 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 specification 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.

The petitioner is an entrepreneur and the founder of China US Commerce.Com Inc. The business plan for that company states, in part:

The goal of China US Commerce dot com is to become a leading B to B e-commerce company to link Chinese enterprises, especially fast growth private enterprises with American enterprises which want to expand its [sic] business into Greater China to take the unprecedented opportunity of China[']s entry [into the] WTO to strengthen business ties between Chinese and American enterprises.

The business plan projects revenues of \$50 million in 2000, \$200 million in 2001 and \$400 million in 2003. The petitioner has not submitted documentation to show the extent to which his company has met the predictions made in the business plan.¹

¹ As of July 31, 2002, the web page at www.chinauscommerce.com reads "Coming Soon!/chinauscommerce.com/This page is parked FREE at Go Daddy!" followed by advertisements for domain names, e-mail accounts, and other services relating to establishing new web sites. There is no evidence in the record that the petitioner's web site has ever been active.

The petitioner submits a copy of an electronic mail message that reads, in part:

Thanks to all Challenge Playoff participants for your participation in the first ever Individual Investor of the Year™ Challenge series sponsored by Individual Investor Group, Inc. and E*TRADE®. Here is a final status report for your September Playoff portfolio:

Final Standing as of September 30, 1999:

Tournament Return:	129.64%
Tournament Rank:	12
Final Equity:	1,148,221.93

September Competition Summary Statistics

Total Portfolios:	1,500
Top Performance:	+346.20%
Bottom Performance:	-49.92%

The record contains no other information about this competition, such as whether the competitors' "equity" represented actual funds rather than simulated funds, solely for the sake of the contest, with no real value. The record also fails to show that the petitioner, as a result of his ranking, won national or international attention from the business community.

The petitioner submits a copy of a letter indicating that he has "been selected as a potentially qualified candidate for inclusion in the 2000 edition of International WHO'S WHO." In the best of circumstances, inclusion in a large professional directory is weak evidence of acclaim. In this instance, the petitioner has shown only that he was "potentially qualified" for inclusion in such a directory.

The petitioner also submits a manuscript entitled *Grades Growth Curve: A model of identifying potential talents*. The petitioner labels this manuscript as an "original work (idea)" but he does not otherwise explain its significance. The petitioner appears to have written the manuscript while he was a graduate student at the University of Baltimore; the name of the university appears at the bottom of each page alongside the petitioner's name.

The petitioner submits documentation of his passing grade on the General Securities Representative Examination. While this document demonstrates that the petitioner is a qualified securities representative, it does not in any way demonstrate or imply sustained national or international acclaim. The petitioner's score of 82%, while sufficient to pass the examination, does not appear to be intrinsically demonstrative of extraordinary ability.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. The director requested specific evidence relating to the regulatory criteria at 8 C.F.R. 204.5(h)(3). In response, the petitioner submits a personal statement along with various documents relating to his business ventures. The petitioner's statement reads, in part:

As an outstanding private business man in China, I have been starting up an e-commerce company, ChinaUScommerce.com, to facilitate the commercial activities between China and US small and medium size companies. . . .

My past business success, business education in USA and my business practice in USA distinguish myself to continue to achieve extraordinary business success in USA. In my hometown, Shanghai . . . I, together with my family, started up a small business with just initial investment of RMB10,000.00. The business has now grown into [a] remarkable company with assets value of RMB3,000,000.00. . . .

During my MBA study in the University of Baltimore, I won the first prize in investment challenge sponsored by the school, ranked 6 of 62645 in Yahoo investment, and ranked 12 among 1500 finalists in E-trade 1999 investment challenge.

The petitioner adds that “a few venture capitalists” have expressed willingness to finance his new company.

The documents concerning the petitioner’s Chinese company contain raw numbers but do not establish how the petitioner’s business ranks among others in China. Simply operating a viable enterprise does not establish that the petitioner is an extraordinary businessman, at the very top of his field. Similarly, documentation of venture capital for China US Commerce.com establishes little except the fact that the company is very new, and that the petitioner apparently did not have sufficient funds to launch the company without financial assistance.

The director denied the petition, noting that the petitioner has not submitted “extensive documentation” as the statute requires. The director determined that the petitioner has not shown that he is any more successful than countless other entrepreneurs.

On appeal, the petitioner states that his business “will help U.S. small and medium companies to sell their goods and services in [the] big China market.” This statement is speculative, absent evidence that the company has already facilitated trade in this way. Furthermore, involvement in exports is not *prima facie* evidence of extraordinary ability or of sustained acclaim.

The petitioner contends “only a very few elite businessmen have the ability to start-up global e-commerce companies.” The petitioner offers no support for this assertion, and at any rate, the record contains no evidence that the petitioner has indeed succeeded in starting up a global e-commerce company. He has shown only that he has drawn up a business plan and solicited venture capital within months of obtaining his Master of Business Administration degree. In the United States, where businessmen of extraordinary ability include such figures as Bill Gates, Ted Turner, and Donald Trump, the petitioner cannot show extraordinary ability simply by showing he intends to set up an e-commerce website.

The petitioner states that his “self-developed financial strategy proved to [be] extraordinarily effective in global finance markets.” This assertion, like many of the petitioner’s claims, is entirely

unsubstantiated. The petitioner has submitted no evidence that he has earned national or international acclaim as one of the very top business figures in the U.S., China, or elsewhere.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself as a businessman 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 petitioner's achievements set him significantly above almost all others in his field at a national or international level. The petitioner has submitted no evidence to satisfy any of the regulatory criteria set forth at 8 C.F.R. 204.5(h)(3). 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.