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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

[redacted]

File: EAC-01-086-52215 Office: Vermont Service Center Date: FEB 4 2003

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)

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

Elizabeth Hayward

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 sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service 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 he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a managing director. Initially, the petitioner submitted the organizational documentation for Ara Rugs, Inc., the petitioner's employer, photographs of the inventory, and a letter from the president of that company, Tabassom Ara. On September 7, 2001, the director requested additional documentation. While the director failed to list the ten criteria, the request addresses most of the applicable criteria required for this classification, including that the petitioner receive a high remuneration for his services. In response, the petitioner submitted another letter from Ms. Ara asserting that she

personally is not paid by salary but owns her own companies. Ms. Ara further states that she is an expert carpet designer, weaver, manufacturer, and herbalist. Ms. Ara does not discuss the petitioner's qualifications. The petitioner also submitted his own statement asserting that he intended to establish a "manufacturing unit" for making hand made carpets and rugs, the only one of its kind in the United States. Finally, the petitioner submitted numerous documents regarding Ara Rugs, Inc., much of which is unrelated to the criteria discussed below. On appeal, Ms. Ara continues to argue that the petitioner's investment, allegedly over $250,000,[1] warrants an approval of the petition.

The amount of the petitioner's investment is not relevant to the classification sought. In fact, section 203(b)(5) of the Act defines a special visa classification for alien entrepreneurs who invest $1,000,000 ($500,000 in certain areas) and create 10 jobs. The instant petition seeks classification as a first preference alien of extraordinary ability in business. Thus, evidence of the petitioner's investment and plans for future investment, such as the agreement with Ms. Ara to invest $500,000, are not determinative. Rather, the petitioner must demonstrate national or international acclaim as defined in the relevant regulations.

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, international 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. The petitioner has never argued which criteria he meets. As such, we will consider whether the record contains evidence relating to any of the following criteria.

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

The director concluded that the petitioner had not submitted evidence that he had obtained national recognition through awards. The appeal does not challenge this conclusion.

We concur with the director. The petitioner submitted a letter addressed: "Dear Elizabeth Merchant," inviting him to a business luncheon for all local merchants. A business luncheon for all local merchants is not an award or prize and does not distinguish the petitioner from other business leaders nationwide.

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.

While neither the petitioner nor the director has addressed this criterion, we feel at least some discussion of this criterion is warranted at the appellate level. The petitioner submitted winter 2000

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[1] The 1999 corporate tax returns reflect capital of only $71,253.

and summer 2001 badges identifying him as an area rug buyer for Jersey City. The record does not contain the requirements for this designation. As such, the petitioner has not demonstrated that this constitutes membership in an organization that requires outstanding achievements as judged by national or international experts.

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.

The director concluded that the petitioner had not submitted evidence to establish his national or international acclaim through published materials. The petitioner does not address this concern on appeal. We concur with the director. The petitioner submitted photographs printed in an unidentified newspaper showing a large loom transported to a workshop in Pasadena, California. The captions identify Nasser Rahmanan, president of the Oriental Rug Importers Association; Kathy Jarvis, director of design for the Woodland Hills Glabman Furniture Store; V.K. Sud, marketing manager for the Ministry of Textiles; and Cynthia McGinley, director of design for the Glabman Furniture Store. These photographs do not represent published material about the petitioner.

In addition, the petitioner submitted newspaper advertisements for Ara Rugs printed in the *Courier-Post*. Advertisements purchased by the petitioner's business cannot establish his national or international acclaim. They are not indicative of major media coverage by journalists.

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.

Neither the petitioner nor the director addresses this criterion and we find that the record contains no evidence relating to this criterion.

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

As stated above, the petitioner has submitted numerous documents regarding his business operations such as partnership agreements for businesses in the United States and India, business registration certificates, letters pertaining to specific business deals, leases, insurance policies, corporate tax returns, importation documentation, credit card receipts, etc. These documents appear typical of any operational business. Simply operating a successful business is not evidence that the petitioner has made contributions of major significance to the field of business such that he has attained national or international acclaim.

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

Neither the petitioner nor the director addresses this criterion and we find that the record contains no evidence relating to this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

As this criterion does not apply to the petitioner, the director did not discuss it. Nevertheless, we find that some discussion is warranted at the appellate level. The petitioner submitted a flier for exhibit space for "Surfaces 2001" at a conference center in Las Vegas, Nevada, and a flier advertising a display of "Aura Rugs" at the Atlanta International Area Rug Market's National Oriental Rug Show. The record contains no evidence that the petitioner exhibited his imported rugs at the Nevada conference. Regardless, the flier for that conference reveals that exhibit space was provided on a first-come, first-serve basis. As exhibition space was not reserved for the top members of the field, exhibition at this rug show is not indicative of national or international acclaim. Most significantly, the petitioner is not seeking classification as an extraordinary rug designer, but as a managing director. Thus, the display of the rugs imported by the petitioner is not evidence of the display of *his work.*

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

The director failed to discuss this criterion despite its clear relevance to the petitioner's field. The petitioner owns Ara Rugs, Inc. and is the managing director. While these are leading roles for the company, the record does not establish that Ara Rugs, Inc. enjoys a distinguished reputation nationally. That Ara Rugs is successful and has satisfied buyers and suppliers is not evidence of a distinguished national reputation.

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

The director requested evidence regarding this criterion and, in response [redacted] efers only to her own income. The company tax returns, however, reflect that in 1999 the petitioner earned $12,000. The director concluded that the petitioner had not provided "realistic comparisons of other professionals" in the petitioner's field. The petitioner does not address this concern on appeal and we concur with the director. The record is absent evidence that $12,000 is significantly high remuneration in the field of business nationally.

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

This criterion is not relevant to the petitioner's field.

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 managing director 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 indicates that the petitioner is a successful managing director, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.