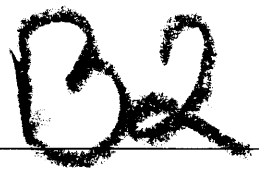
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services



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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: EAC 02 080 53705 Office: VERMONT SERVICE CENTER Date: MAY 7 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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office 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 pertinent regulations 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.

The petitioner seeks employment as an entrepreneur and corporate officer. Counsel describes the petitioner's work:

> As an electrical engineer, [the petitioner] designed, manufactured, and produced the first Chinese karaoke processor in 1992. Prior this point, Japan held the market on karaoke processors. Since 1992, [the petitioner's] processors have expanded globally while he has co-founded and directed three companies, which design and produce other audio electronics. . . .

> [The petitioner] started his first company Yadi with only US$60,000.00 in 1992. Now, [the petitioner's] companies now generate nearly $50 million in sales and manufacture over 3 million products annually.

If the petitioner's companies "manufacture over 3 million products annually" and "generate nearly $50 million in sales" each year, then the average price of each product would have to be roughly $16, an unrealistically low price for the kind of audio equipment (such as speakers and amplifiers) that the petitioner manufactures. Other materials in the record indicate that the petitioner's companies manufacture between 20,000 and 30,000 units per month, for an annual total about ten times lower than the three million figure cited by counsel, and which appears to be more consistent with the wholesale prices of audio electronics.

Several of the exhibits in the record are either statements by the petitioner or promotional materials created by his companies. The information in these statements and materials constitute claims rather than evidence to support those claims. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 submitted evidence which, counsel claims, meets 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.*

Counsel states that the petitioner "has won numerous awards from the National Audio & Video Equipment Exhibition for consecutive years" and that the petitioner's "products also won an award from the Consumer Product Quality Tracing Campaign." Various products manufactured by the petitioner's companies won such titles as "A Deeply Praised Product" and "Consumers' Best Loved Product." The record lacks independent information about these awards, such as the number of awards presented on each occasion, the ratio of award winners to entrants, publicity within the field that is attendant on the award announcements, and so on.

> *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 states "[a]s a result of [the petitioner's] achievements with his [redacted] products, [the petitioner] was extended membership into the following professional societies: Sichuan Quality Control Association, China Electronics Society, China Acoustics Society, Acoustic Frequency Engineering Branch, China Electronic Audio Industry Association, and China Electronics Association." Counsel asserts that these "business societies . . . require outstanding

achievements for members." The record documents the claimed memberships, but not the criteria for admission. Furthermore, some of these memberships are corporate rather than individual memberships; the company, rather than the petitioner specifically, is the member of such associations. The petitioner is not the sole owner or sole founder of the member companies, and thus it cannot be claimed that the corporate memberships belong, in effect, to the petitioner. Thus, the petitioner has not satisfied this criterion.

> *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 petitioner submits copies of articles from several Chinese-language publications. The petitioner has submitted translations of the titles of the articles, but not of the articles themselves. Therefore, it is impossible to determine the extent to which these articles are about the petitioner. Articles about the petitioner's company, with little or no specific mention of the petitioner, are not "about the alien." The petitioner has also failed to show that these publications represent major media, circulated nationally or internationally rather than locally. Thus, the untranslated articles fail to meet several of the requirements spelled out in the above regulation.

One of the articles in the initial submission does include a translation. An interview with the petitioner appeared in *Huaxi City Daily* in 2000. The record does not establish the scope of this paper's circulation. The interviewer asserts that "Tonewinner brand products have possessed a significant position in [the] audio field of China, and [are] reputed not only domestically but abroad." The record does not establish that this newspaper, the name of which is consistent with a local publication, circulates nationally.

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

Counsel states that the petitioner "created the first Chinese karaoke processor in 1992. In addition to this product, [the petitioner] has developed dozens of other products. . . . An alien who develops business products, which generate US$50 million in sales annually, has certainly made original business contributions." The initial record contains little direct documentary evidence of the petitioner's achievements. As stated above, the petitioner's own promotional materials amount in effect to claims rather than corroborative evidence. Counsel's assertion that operating a successful business is automatically a contribution of major significance is not persuasive.

With regard to the petitioner's creation of China's first karaoke processor, the petitioner does not claim to have invented the device; counsel concedes that such devices were already available from Japan. It is, therefore, not readily apparent that the petitioner's creation is an original contribution. The petitioner has not shown that his karaoke processor is generally regarded as a major improvement over existing models, and the fact that the petitioner's processor is made in China instead of Japan is not, by itself, an original contribution. Furthermore, the petitioner has not shown that the demand within China for domestically produced karaoke processors was so substantial that the petitioner's creation amounts to a contribution of major significance. More generally, the petitioner's creation of patented inventions is indicative of originality to an extent, but not of major significance.

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

Counsel asserts that, in addition to being "a savvy businessman, [the petitioner] is also a prominent senior engineer who has produced many publications in the field of electrical design." The petitioner submits copies of articles that have appeared in *Electronics Weekly*, *Audio-Visual World*, *AV China Audiophile*, *Practical Video and Audio Technology* between 1992 and 1999. The petitioner submits translations of the titles of the articles, but not of the articles themselves. The nature of the articles' content is not clear. Given the small size of the text and the occasionally poor quality of the photocopies, it is difficult to determine whether some of the articles identify the petitioner as their author.

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

Counsel asserts that the petitioner's participation in trade shows and exhibitions satisfies this criterion. Such trade shows, however, are commercial rather than artistic exhibitions and thus fall outside the plain wording of the regulation. The petitioner has not shown that to participate at such trade shows is a mark of acclaim, reserved for the elite, rather than an opportunity available to any exhibitor who rents space at such events.

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

Counsel observes that the petitioner is the co-founder, chief engineer and director of "three companies, which produce [redacted] brand name products. . . [redacted] is an established name in China, and [the petitioner] is responsible for its success." The initial submission, as noted above, contains minimal evidence regarding the reputations of the petitioner's companies.

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

Counsel states "[t]he companies that [the petitioner] owns and directs generate US$50 million annually, which is very high remuneration by any field's standard." A company's sales receipts or gross earnings, however, do not represent remuneration for services unless the petitioner personally receives all of that money in the form of salary or bonuses. Any monies paid to other employees, disbursed to meet corporate expenses, or retained by the company as profit cannot reasonably be called the beneficiary's remuneration.

The director instructed the petitioner to submit further evidence of remuneration, the petitioner's claimed reputation in the field, leading or critical roles with distinguished organizations and establishments, and "coverage . . . in recent 2000 and 2001 major magazines or other media with proof of their distribution coverage." In response to this notice, counsel states that the director did not request additional evidence of awards, memberships, original contributions, publications, or exhibitions. Review of the director's notice shows that the director did, in fact, request further evidence regarding awards. The director also observed that "[s]imply going on record noting the

beneficiary's accomplishments and contributions . . . is not sufficient" to establish eligibility. Clearly, the director did not stipulate to five criteria as counsel claims, but rather plainly stated that the petitioner has not provided persuasive documentation of sustained acclaim.

Regarding the petitioner's salary, counsel states that the petitioner need not show how his salary compares with that of top businessmen in the field; he need only compare it against the field as a whole. Counsel maintains that the petitioner "has provided evidence that his 'compensation is significantly higher than that of others performing the same or closely related occupation.'" Counsel cites a newly submitted audit, indicating that the petitioner's earnings in China (with U.S. equivalents) were RMB 895,720 ($108,388) in 1999, RMB 980,450 ($118,640) in 2000, and RMB 1,023,270 ($123,822) in 2001. Because the petitioner's highest earnings were in 2001, we shall focus on the figures from that year. The petitioner submits a printout from the SalaryExpert web site, http://www.salaryexpert.com, which indicates that the salary of CEOs in Chengdu ranges from RMB 665,335 to RMB 1,025,470. Counsel contends that the petitioner's 2001 earnings of RMB 1,023,270 are close to "the *highest* salary earned by a Chief Executive Officer (C.E.O.) in Chengdu, China."

These figures are misleading, however. The SalaryExpert printout submitted by the petitioner shows that RMB 1,025,470 is a "base salary" rather than a total earnings figure. The printout indicates "When benefits and bonuses are added to this salary, the average total compensation for this position would be [RMB] **1,210,279**." This figure, merely an average, exceeds the beneficiary's total earnings for 2001.

The SalaryExpert printout also shows that salary figures for Chengdu are substantially lower than national figures (and, indeed, well below the figures cited for "cost-of-living"). The printout shows figures for the "China National Average" base salary ranging from a low of 1,017,678 to a high of RMB 1,568,530, with an average of RMB 1,300,713. Factoring in benefits and bonuses, the national average is RMB 1,647,530. The petitioner's total earnings for 2001 (the highest-paying year), therefore, are at the low end of the range shown on the "National Salary" table. Because the statutory and regulatory standard is, at minimum, national acclaim, it is entirely appropriate to compare the petitioner's earnings to national, rather than local, statistics. Returning briefly to the local standard favored by counsel, the SalaryExpert report states "[a] renter's COL [cost of living] for this area would be [RMB] 1,177,977." The petitioner's total earnings for his best year thus fall short of the cost of living in Chengdu.

Furthermore, the audit report submitted by the petitioner shows that the RMB 1,023,270 figure represents the petitioner's total earnings for 2001, rather than his salary as a CEO. The petitioner's earnings break down as follows:

CEO salary, Chengdu Yadi Industrial Ltd.	RMB 200,000
Shareholder dividend, Chengdu Yadi	278,110
CEO salary, Guangzhou Tianyi Electronics Ltd.	180,000
Shareholder dividend, Guanzhou Tianyi	288,350
Other income (unspecified)	76,810
Total	1,023,270

The petitioner must combine income from at least five different sources in order to reach the low end of the national average base salary for a CEO in China. We cannot conclude from this information that the petitioner's remuneration is indicative of extraordinary ability in business. Given the highly misleading analysis which counsel has applied to the above figures, questions necessarily arise concerning the overall credibility of the arguments advanced in favor of this petition.

Regarding the petitioner's media coverage, counsel states that the regulations do not require the petitioner "to present evidence of the circulation of his media coverage." The regulations do, however, repeatedly use the word "major" in reference to qualifying publications. Again, the controlling standard is national or international acclaim; media attention at the local level neither reflects nor results in national recognition. Counsel cites a court case, *Russell v. INS*, No. 98 C 6132 (N.D. Ill. 2001) in which the judge expressed "serious reservations" about "a requirement that the submitted media publications be from news outlets throughout the country." The AAO has held that media publications originating from the same geographic area can be acceptable evidence provided there is national circulation; the exposure arising from strictly local media coverage simply is not national in nature. Counsel offers no suitable alternative definition for "major media" that is consistent with the statutory demand for national or international acclaim. Counsel neglects to mention that, in the cited court case, the court upheld the AAO's dismissal of the appeal.

Counsel maintains that the petitioner's brand, [redacted] earned distinction when the petitioner "designed and manufactured the first Chinese karaoke processor," but the record contains no documentation to support this assertion. Simply introducing a new product (already available as an import) does not necessarily confer distinction on the manufacturer. Counsel observes that several of the petitioner's products won prizes at trade exhibitions. The record contains minimal information about these prizes, and therefore we cannot determine how widely recognized the prizes are, how many such prizes are awarded at each show, and so on. The record contains no evidence that would allow a meaningful comparison between the petitioner's company and other companies in China that provide similar products.

Counsel states "[r]ecent evidence of the excellent reputation of the [redacted] brand is found in a January 11, 2002 article from www.globalsources.com, "Guangzhou: Catering to the world." This article asserts that "the world's top audio brands get their manufacturing done" in Guangzhou, and elaborates "[t]oday, Guangzhou companies manufacture for some of the best names in audio, including Pioneer, Kenwood, JBL, Marantz and Aiwa. They also cater to lesser-known OEM names, mass-market retailers and various buyers and importers." This article contains a one-paragraph reference to "Yadi Industrial, a well-known local A/V brand . . . [which] set up [redacted] Electronics in Guangzhou in 1999 for its foray into exports." A single reference to Yadi Industrial as "a well-known local A/V brand," which could simply mean that the company is well known locally (as opposed to nationally), does not establish a distinguished reputation on a par with "the best names in audio" such as the brands mentioned. We note also that the article was published after the petition's December 2001 filing date.

The director denied the petition, stating that while the petitioner "has experienced . . . a measure of success in his field of endeavor," the record does not show that the petitioner is nationally or internationally acclaimed at the top of his field.

Much of counsel's appellate brief consists of repetition of previous arguments. For instance, counsel has repeatedly asserted that the petitioner "has acquired membership in a prestigious organization based on achievement." At no time has the petitioner ever submitted any evidence to show that the membership in question is in fact based on achievement rather than, for instance, payment of a membership fee, or meeting lesser criteria. Regardless of how often they are repeated, the assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Similarly, the burden is on the petitioner to demonstrate that producing a Chinese version of a karaoke processor already available from Japan constitutes an original contribution of major significance. The burden is not on the Bureau to rebut counsel's emphatic insistence that the major significance of this karaoke processor is self-evident. Counsel also returns to the claim that the petitioner's combined income from five different sources compares favorably to the base salary, before benefits, of other CEOs in Chengdu (who earn significantly less than China's national average CEO salary). These arguments have already been addressed above, and therefore to revisit them in detail would be redundant.

Newly submitted exhibits on appeal amount to new product announcements by the petitioner's company and brief mentions in trade journal articles about trade in the region (rather than specifically about the petitioner). These articles establish that the petitioner continues to operate his electronics business, and that he has earned some reputation in his part of China, but they do not establish that the petitioner has earned national acclaim throughout China or international acclaim elsewhere. The petitioner has not established that ToneWinner stands among the top brands in the audio electronics industry in China or anywhere else.

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. 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.