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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[REDACTED]

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: **NOV 24 2003**

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision 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 Citizenship and Immigration Services (CIS) 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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined 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 the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is a provider of software and management consulting and systems integration. The petitioner seeks to employ the beneficiary as its business strategist, chief executive officer (CEO) and president.

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. To explain how the evidence fits the criteria claimed, the petitioner submits a letter from Kenneth Smith, the petitioner's Human Resources manager.

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.

Mr. Smith states:

[The beneficiary] is a member of the **Stanford Global Supply Chain Management Forum**, a leading research institute in partnership with industry and academia entities that advances the theory and practice of excellence in global supply chain management.

...
Affiliated primarily with the Stanford School of Engineering and Graduate School of Business, the Forum offers select membership to industry professionals, faculty and scholars from other institutions on a very selective basis. A few select members of the forum (1-2%) are fortunate enough to participate in research activities and be designated as Research Fellows. [The beneficiary] has been a Research Fellow at the Stanford Supply Change Forum.

The petitioner cites a letter from Deborah Nobel Newman, assistant director of the Forum. Ms. Newman affirms that the beneficiary "is a member and research fellow," and offers the vague assertion that "[t]he Forum brings faculty and students from different schools, departments and disciplines together to work on research projects on a highly selective basis." Ms. Newman does not indicate that the Forum is an association in the field, rather than one of many university-affiliated research institutions. She also does not indicate that members and research fellows are selected on the basis of outstanding achievements as judged by recognized national or international experts. The record does not reveal the criteria for selection as a member or research fellow of the Forum.

Mr. Smith adds that the beneficiary "has also spearheaded an alliance with Oracle Corporation, which again is offered to select high technology systems integrators." There is no evidence that a business arrangement between Oracle and the petitioning company constitutes anything resembling membership in an exclusive association.

Subsequent to a request for further evidence, counsel has reiterated prior claims regarding the Forum and added that the beneficiary is a member of the American Electronics Association (AeA). The supplementary submission contains no new evidence to show that the Forum qualifies as an association at all, or to establish any specific membership requirements. Counsel states that the AeA "is the nation's largest high-tech trade association," comprising "more than 3000 companies with 1.8 million employees." Large membership is not readily consistent with highly restrictive membership requirements. Furthermore, the association's members are companies rather than individuals.

Counsel states that the petitioner "is a member of the Program Committee of AeA. This is a select forum, which is the core section of the organization in charge of suggesting topics and speakers." The petitioner submits a letter from Susan Martindill, who asks the beneficiary to "[p]lease accept my invitation to join AeA's Program Committee." Elsewhere in the letter, Ms. Martindill refers to "[t]he South Bay Program Committee," indicating that the committee is merely one of numerous local (rather than national or international) committees. Ms. Martindill's title is "Program Director, AeA Bay Area," reinforcing that the invitation applied to the local Program Committee. There is no indication that the Bay Area program director is authorized to appoint national-level officials or committee members. Her letter is dated February 19, 2003, six months after the petition was filed in August 2002, and two months after the director requested further evidence in December 2002. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which CIS held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

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.

Mr. Smith states that the beneficiary's work for the petitioner "has been cited both in major publications and information technology journals with broad circulations." The petitioner submits copies of three articles, all published within a few weeks of each other in June and July of 2002. Mr. Smith calls these articles "[a] sample listing," but there is no evidence that any other published material exists. We can only consider the evidence available in the record; the petitioner's suggestion that other articles exist cannot serve in place of the articles themselves.

The articles submitted concern the petitioning company, and mention the beneficiary only briefly in order to identify him as the CEO. Such articles are not "about the alien" as the regulation requires. The articles all announce the opening of new offices in Bangalore. Corporate expansion is generally a sign of the company's overall soundness, but news coverage of the opening of new offices (apparently deriving from the petitioner's own press releases rather than independent media interest) do not establish acclaim for the head of the company.

Subsequently, the petitioner has submitted a one-paragraph article from the "Business Extra" section of the *San Jose Mercury News* announcing that the petitioner had named the beneficiary as president and CEO. The same page announces similar appointments at other local businesses. The petitioner has not shown that the *San Jose Mercury News* constitutes major media rather than a predominantly local newspaper.

One of the publications claimed by the petitioner is an internal newsletter distributed electronically to employees of Cisco Systems. The petitioner does not explain how an internal corporate newsletter

qualifies as major media, when few people outside of Cisco even have ready access to it. Even then, the article mentions the beneficiary only once.

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.

The petitioner initially did not discuss this criterion. Counsel has subsequently cited the beneficiary's "work as a judge at the MBA Global Consulting Challenge at [the] University of Southern California."

The letter inviting the beneficiary to sit on the judging panel is dated January 6, 2002. This date is incorrect and should read January 6, 2003. The letter refers to the beneficiary by his title of president and CEO of the petitioning company, a position that he did not hold in January 2002. The Global Consulting Challenge was held in February 2003, consistent with the issuance of an invitation one month earlier. As such, the petitioner's work as a judge came months after the petition's filing date, and his invitation to serve as a judge came two weeks after the director requested evidence of the beneficiary's work as a judge.

The letter, from Carl Voigt of the University of Southern California's Marshall School of Business, does not explain how the beneficiary came to be selected as a judge. We note that the beneficiary holds an M.B.A. degree from the University of Southern California's Graduate School of Business Administration, which he earned while working as a research fellow at the Marshall School of Business. The challenge itself consisted of a contest among graduate students from around the world, but there is no evidence that the judges were drawn from an equally broad background. Documents in the record provide telephone numbers for most of the judges. All of the listed numbers have California area codes, indicating that the judges were drawn from a local, rather than national, pool.

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

The petitioner cites several witness letters submitted in support of the petition. Ronald M. Oehm, formerly a consulting partner at KPMG Consulting, states that the beneficiary's "achievements in the area of management consulting, entrepreneurship and creating economic value for clients and his company are truly outstanding and deserve the highest respect. . . . I have seen him grow into a respected consulting professional and leader." Mr. Oehm names various clients with which the beneficiary worked, but he cites no specific achievements. Mr. Oehm states that the beneficiary left KPMG to work for Cisco Systems, a KPMG client, because of Cisco's satisfaction with the beneficiary's leadership of "a significant Business Operations and Strategy engagement" at that company. Mr. Oehm also asserts that the beneficiary's "achievement in growing [the petitioning] company from less than 10 employees to over 80 employees in 8 months in a recessionary economy is truly remarkable and speaks for itself." The petitioner must show that the company's growth is widely recognized as a major achievement, rather than relying on the general axiom that corporate growth is difficult in a sluggish economy.

Douglas C. Allred, a senior vice president at Cisco Systems, states:

In the summer of 2001, Cisco Systems chose to replace the backbone of its service information systems infrastructure. These systems support over 24,000 Cisco Computers and Partners globally and are at the heart of our service operations. Cisco chose to replace these legacy applications with Oracle Customer Relationship Management software. At that time, this software was just released into the market place and as such there were very few professionals with the appropriate experience. . . . [The beneficiary] was able to quickly organize a strong integration team, partnered brilliantly with his business peers and completed the initiative successfully. . . .

This particular initiative was cited by Oracle Corporation to be among the world's largest and most complex implementations of their CRM platform. To have led and completed this initiative successfully under severe challenges would alone rank [the beneficiary] and his capabilities among the best in the world.

Several other witnesses offer similar assessments of the petitioner's work, discussing projects that the petitioner undertook at the witnesses' companies. Client satisfaction is not an outstanding achievement. Rather, it is the goal of every consultant. It cannot suffice to show that the beneficiary's current and former employers are impressed with the beneficiary's completion of large projects. Mr. Smith states "[t]hat [the beneficiary] is professionally acquainted with these experts does not and should not take away from the concrete evidence of his accomplishments." We do not dispute that the beneficiary completed the projects attributed to him, but nevertheless the petitioner bears the burden of establishing that the beneficiary's role in specific projects has led to sustained national or international acclaim. A reputation that is largely confined to the companies where the beneficiary has worked is not tantamount to national or international acclaim. The beneficiary must have made major contributions to the field, rather than major contributions to a given client or employer. To this extent, it is indeed highly relevant that no one except the beneficiary's own employers are on record as crediting him with contributions of major significance.

In response to a request for further evidence, the petitioner has submitted more letters from individuals who have worked with or supervised the beneficiary.

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

The petitioner initially claimed nothing under this criterion. Counsel has since noted the beneficiary's co-authorship of materials presented at the Oracle Apps World Conference and his speech at the Asia Pacific Business Outlook 2003. As with other evidence discussed above, the beneficiary did not undertake these activities until several months after the August 2002 filing of the petition. The Oracle Apps World Conference was organized by one of the beneficiary's former employers. The petitioning company was one of the sponsors of the Asia Pacific Business Outlook event, and therefore the selection of the petitioner's president as one of the 33 seminar speakers is not surprising.

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

Mr. Smith states that the beneficiary "has had a distinguished career with some of the world's major organizations in high technology business development." The beneficiary's past positions include the following:

1994-1995	Plant Finance and Operations Manager - Asian Paints India Ltd.
1997-2000	Manager, High Technology Consulting Services - KPMG Consulting
2002-2002	Senior Manager, Information Technology - Cisco Systems

Mr. Smith states that Asian Paints India is "India's largest paint company," although the beneficiary's own resume describes his time at the company as "very brief tenure, nothing special." Mr. Smith asserts that the beneficiary "led high technology business consulting efforts for major clients in nine countries." Mr. Smith also asserts that the beneficiary's "three largest initiatives [at Cisco] . . . yielded total cost savings of at least \$90 million and generated total new revenues and cost savings in the hundreds of millions." Mr. Smith adds that the beneficiary continues to fulfill a leading and critical function for the petitioning company. Clearly, as CEO and chairman, the beneficiary's role for the petitioner is leading and critical, but the record does not establish that the petitioning entity has earned a distinguished reputation in comparison with other companies in the field.

Letters from the beneficiary's former employers describe projects that the beneficiary has undertaken, and indicate that the beneficiary drove those particular projects to completion. It does not follow, however, that the beneficiary played leading or critical roles for the companies as a whole. An individual project is not, itself, an organization or establishment with a distinguished reputation. As noted above, the statutory threshold is not a glowing recommendation from an employer, but rather sustained acclaim at the national or international level. Furthermore, we cannot ignore that many of the beneficiary's witness letters are from individuals who greatly outranked the beneficiary at those companies. The petitioner has since submitted more general letters from the mayor of Cupertino and the member of the House of Representatives who represents the local area in Congress, neither of which serves to establish the beneficiary's reputation outside the "Silicon Valley" area.

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

The petitioner initially stated that the beneficiary earns \$175,000 per year but did not claim that this salary was significantly high in the field. Counsel has subsequently claimed that the petitioner satisfies this criterion because "the prevailing wage for a chief executive in Santa Clara County is \$145,226 per year," and thus the beneficiary's salary is "higher than average." Leaving aside the fact that the prevailing wage figures are local rather than national, the regulatory standard is not "higher than average," but rather "significantly high." In conjunction, we must consider the general proposition that the evidence must place the beneficiary at the very top of the field of endeavor, rather than simply above the midline.

Beyond the above evidence, the petitioner cites evidence showing that numerous technology consulting firms collapsed during the recent "dot-com bust" that presaged the latest economic recession. During this same time, the petitioning company has grown substantially, both in income and number of employees. The petitioner contends that the company's growth in the face of adverse economic circumstances demonstrates the beneficiary's extraordinary ability as the head of that company.

To support claims regarding the growth of the petitioning company, the petitioner cites figures from September 2001 and August 2002, showing growth from six to 80 employees, and net income from \$87,370 to \$505,316. Some witnesses have cited this growth as proof of the beneficiary's abilities as an executive. The record, however, is inconclusive as to when the beneficiary actually became the petitioner's president and CEO. As noted above, the petitioner announced the beneficiary's hiring in the August 16, 2002 issue of the *San Jose Mercury News*, and the beneficiary himself states in his resume that he "joined the company in a leadership role in September 2002." The resume also states that the beneficiary has been president and CEO since January 2002, with no explanation for the eight-month discrepancy. Newspaper articles published in India in June and July of 2002 refer to the beneficiary as the petitioner's president and CEO, but a June 28, 2002 article from Cisco's internal newsletter refers to the beneficiary only as an "IT manager" with no mention of the petitioning company. There is no contemporaneous evidence prior to June 2002 to identify the beneficiary as president/CEO of the petitioning company, and thus there is no evidence that the petitioner held that position for more than a small fraction of the period covered by the above statistics.

Even if the beneficiary is entirely and solely responsible for the petitioner's growth, there is no evidence that this growth has attracted any attention, much less acclaim, from the business community outside of the Cupertino area and from the beneficiary's former employers. Counsel has, in effect, declared that the growth of a business during an economic recession is *prima facie* evidence of extraordinary ability. We cannot accept so broad an argument without substantial evidentiary support.

The director denied the petition, citing numerous deficiencies in the petitioner's documentation. On appeal, counsel argues that the director "failed to properly consider all the evidence in the record that [the beneficiary] is recognized as extraordinary in his field."

In a subsequent brief, counsel repeats and expands upon prior arguments. For instance, counsel argues that the beneficiary played a critical role at KPMG. This argument is based largely on letters from Ronald Oehm, who is chairman of the petitioner's advisory board. Counsel repeats prior arguments without rebutting the director's findings about those same arguments. For instance, with regard to the beneficiary's memberships, the director had found "the evidence submitted does not establish that these organizations require 'outstanding achievements for membership, as judged by national or international experts in the field.'" On appeal, the petitioner offers no new documentary evidence to overcome this finding; counsel simply asserts that the beneficiary belongs to an "elite group [which] is based on a very selective process." 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).

The petitioner offers no new evidence on appeal, instead relying primarily on two previously-argued points: (1) the beneficiary's former employers think highly of him, and (2) the petitioning company grew during a recession. Neither of these arguments address the fundamental point that the petitioner must establish that the beneficiary enjoys sustained national or international acclaim at the very top of his field. Recognition among one's employers is not national or international acclaim, and operating a successful business does not automatically cause acclaim. The documentation in the record that does not rely on subjective witness statements reflects, at best, local recognition in southern California.

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 beneficiary has distinguished himself as an executive to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at 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.