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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 15 2004

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]

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.

Mari Johnson

Robert P. Wiemann, Director
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 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. 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 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 in technology development management. 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 that, he claims, meets the following criteria.

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

The director concluded that the petitioner meets this criterion and we concur. As will be discussed below in more detail, however, the petitioner appears to derive almost all of his other claims from the evidence submitted to

meet this criterion, in some cases referring to such evidence as "comparable" evidence to meet other criteria. 8 C.F.R. § 204.5(h)(4) permits the use of comparable evidence "if the above standards do not readily apply to the beneficiary's occupation." Citizenship and Immigration Services (CIS) need not consider claims of "comparable evidence" simply because an alien fails to meet a criterion. Rather, such evidence is only relevant if the criterion itself does not readily apply to the alien's occupation. The criteria are clearly designed to apply to many different occupations. While there are certainly cases where a particular criterion might not readily apply but comparable evidence exists, a case based almost entirely on claims of "comparable evidence" is not particularly persuasive. Finally, the requirement that a petitioner meet three criteria would be meaningless if meeting a single criterion, even overwhelmingly, constituted "comparable evidence" to meet other criteria.

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

The petitioner submitted letters from several professionals in his field. The letters are all highly complimentary and rank the petitioner at the top of his field based on his position with a leading company. What is relevant for this criterion, however, is whether they identify specific business-related contributions that are considered contributions of major significance in the field.

David L. Treadwell, President and Chief Executive Officer of ASC, Inc. where the petitioner works, discusses the petitioner's responsibilities with ASC. Mr. Treadwell concludes:

> In summary, [the petitioner] leads and managers the development of all technologies involved in component and vehicle design, prototyping, testing, and manufacturing in one of the world's leading corporations in the field. Thus he is a leading player in the development of these new technologies which are incorporated into top-of-the-range models such as the Dodge Viper, the BMW Z3, the Toyota Camry Solara Convertible, the Pontiac Trans Am & Firebird, and the Mitsubishi Eclipse.

Wallace Rueckel, a principal at Questor, asserts that he became familiar with the petitioner when investigating ASC, Inc. as a possible stock purchase by Questor. Mr. Rueckel explains that the abilities of the Chief Technology Officer are crucial in determining the viability of a corporation that is technology driven. Mr. Rueckel asserts that as Division Manager for Jastram-Werke, the petitioner restructured and diversified his division by introducing new product lines and processes and expanding the worldwide sales and marketing division, broadening the client base. At Audi, the petitioner was Project Manager for "Dolphin," a company-wide reengineering project. Mr. Rueckel asserts:

> This was a ground-breaking project aimed at creating new processes and procedures to enable the company, through greater flexibility, to improve its competitiveness in international automobile markets. The project was a major success resulting in major cost savings for Audi, high consumer satisfaction, and improved market position for the company.

According to Mr. Rueckel, the petitioner then directed Audi's joint venture in China. Subsequently, the petitioner accepted a position as Executive Director and Chief Executive Officer at Audi subsidiary Cosworth Engineering. In this position, the petitioner "undertook another successful major repositioning of a business, gaining major projects for this pioneering engineering company." While these comments suggest that the petitioner has been successful, they do not explain how the petitioner has contributed to the field itself. For example, Mr. Rueckel

provides no examples of how the field has changed due to the petitioner's restructuring successes. Specifically, he fails to identify a specific contribution by the petitioner that has had a major impact on the automotive industry or technology business practices in general.

Officials at Audi and its affiliates praise the petitioner's successes with that company. Other references, prominent members of the automotive industry, discuss the importance of improved safety and engine performance. For example, Steven Morello, formerly General Counsel of ASC's parent company, states that the petitioner has contributed to improvements in safety and car manufacture through his "long history of designing new components, testing them thoroughly, and introducing these improved parts into vehicular manufacture." Dr. Herbert H. Demel, President of Volkswagen, states:

> Indeed, [the petitioner's] efforts have led to many major improvements in the quality, performance, reliability and safety of production cars at Audi, and now at those corporations who rely upon parts and components designed and manufactured by ASC. This is evidenced by the fact that he is the holder of a patent in the US and is a frequent invited speaker at trade and industry shows and conferences. Further evidence is found in the fact that, throughout his engineering and managerial career, his exploits and those of the teams he has led have been reported extensively in major media around the world.

The petitioner also submitted uncertified translations of old job reference letters. The petitioner did not submit the signed originals. Thus, the uncertified translations have no evidentiary value.

The petitioner initially submitted a 1992 U.S. patent of which the petitioner is listed as an inventor and untranslated German patent documentation also including the petitioner's name. Subsequently, the petitioner submitted evidence that he is listed as inventor on two approved European patent applications dated 1989 and 1990 and "unexamined" German patent applications from 1990 and 1991.

The director concluded that the above letters were mostly general and unsupported by other evidence. The director questioned whether the European patents were granted and whether they are applicable to the petitioner's contributions as a technology development manager. On appeal, counsel asserts that the letters are detailed and supported by the remaining evidence of record. Counsel further asserts that the petitioner's technical expertise is related to his field of technology development and management. Finally, counsel notes that three of the petitioner's patents have been approved and concludes that such approval "is in and of itself recognition by an official agency of the federal government that the patented technology is new, original and useful to the relevant field."

The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. While such letters are important and will be considered below, independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

We acknowledge that some of the letters contain some detail of the petitioner's achievements for his employers, although they are less detailed in their claims of contributions to the field as a whole. The record contains no evidence that the petitioner is personally responsible for safety and efficiency technology that has influenced the field and had a demonstrable impact on the automotive industry. The record contains no evidence that crash tests

have verified the superiority of the technology developed under the guidance of the petitioner or that fuel efficiency has increased for customer car companies. The references do not identify any specific safety or efficiency technology developed by the petitioner that has changed the automotive industry in a demonstrable way. The record does not contain any letters from high-level officials at relevant federal or multiple state highway safety agencies confirming the claims that the petitioner has made a significant contribution to car safety and engine efficiency.

While we accept counsel's argument that the patents are relevant to the petitioner's area of expertise, the patents are not persuasive evidence of his alleged acclaim. Patents are issued to the inventors of original processes or devices that are useful. No evaluation as to the significance of the invention is made; rather, patents are a property right. We note that this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). If a patent is not sufficient to establish eligibility for a lesser classification, the national interest waiver for aliens with exceptional ability or advanced degree professionals, it is certainly not evidence of national or international acclaim. The record lacks evidence that the technology patented by the petitioner has been widely licensed or marketed.[1]

While the evidence relating to this criterion appears to address the petitioner's contributions to his employers more than his contributions to the field, we note that even if we concluded that the petitioner minimally meets this criterion, he would only meet two. For the reasons discussed below, we find that the petitioner falls far short of meeting any other criterion. A petitioner must meet three criteria in order to establish eligibility.

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

Initially, counsel argued that the market success of the petitioner's initiatives and his promotions constitute comparable evidence to meet this criterion. The director rejected this argument. On appeal, counsel reiterates the argument.

First, the record does not establish that no national or international prizes or awards exist in technology business management. Thus, the petitioner has not established that this criterion is inapplicable. As such, CIS need not even consider claims of "comparable evidence."

Second, even if the petitioner had established that this criterion is not applicable to his occupation, the petitioner has not established that the success of his innovations in the market place and his promotions in the field constitute comparable evidence of nationally recognized prizes or awards for excellence. Success in the market place is not a prize or award. Specifically, it is not formal recognition by a distinguished entity with expertise in the petitioner's field.

Finally, the petitioner's promotions directly relate to another criterion, performing a leading or critical role. As stated above, CIS has already determined that the petitioner meets that criterion. The regulations specifically

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[1] We acknowledge that the petitioner has managed the manufacture of car parts for clients in the automotive industry and that the cars using these parts have been marketed. The record does not establish that this work was enabled by the technology patented by the petitioner.

require that a petitioner meet three separate criteria. In order to give that requirement meaning, evidence sufficient to meet one criterion cannot serve as "comparable evidence" to meet another criterion.[2]

In summary, the petitioner has not demonstrated that the automotive industry does not issue individual awards for technology management. Moreover, the petitioner has not submitted evidence truly comparable to this criterion, such as evidence that the petitioner was directly responsible for a demonstrable increase in automotive awards issued to his employer. Thus, we cannot conclude that the petitioner meets this criterion as written or through "comparable evidence."

> *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.*

Initially and on appeal, counsel asserts that the petitioner's writings are "proprietary" and "not amenable to having material written about them. Thus, counsel once again argues that CIS should consider "comparable evidence" to meet this criterion. Specifically, counsel asserts that "extensive reliance upon his works in business-critical decisions is a form of citation that is far more profound and far more complimentary to the quality of his work than mere kind words written about his works." The director rejected counsel's argument. We concur with the director. As with the above criterion, the petitioner has not established that this criterion is not applicable to his occupation. The existence of numerous national business and automotive journals and magazines suggests that there is a wealth of published material about automotive technology and business management. In fact, as will be discussed below, the petitioner himself submits some published material relating to his work. Thus, CIS need not consider "comparable evidence" to meet this criterion.

As we find the "comparable evidence" claims to be lacking, we will consider the actual published material in the record. The petitioner submitted an undated review of a BMW M3 published in *Auto Express*. While the article references Cosworth Technologies, it does not mention the petitioner by name. Also in the record is a September 2000 "Head to Head" interview with the petitioner. Counsel repeatedly asserts that this interview was also published in *Auto Express*. It is not clear from the record that this is the case. The font and formatting of the two articles are quite different. For example, the interview ends with a box while the article in *Auto Express* ends with a stop sign. In addition, the logo on page 27 of the interview contains the word "Automotive" but the other word, while illegible, appears much longer than "Express." In addition, the petitioner subsequently submitted evidence that *Auto Express* is published weekly. An article published in a "September 2000" issue does not appear to be from a weekly publication. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner also submitted an English-language article entitled "Prufwesen" focusing on the petitioner's work as Director of the Test Center and Test Facilities for Audi. This article appears in an unknown publication and is undated. The record also includes German articles and uncertified translations of those articles. One article is from March 1996; the others are undated. None of the publications are identified. The first German article is

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[2] We do not imply that evidence relating to one criterion cannot also relate to another criterion. Rather, we conclude that evidence directly applicable to only criterion cannot be continually characterized as comparable evidence to meet at least two other criteria.

about the "Dolphin" project and quotes the petitioner. Another article, which reads like a press release, reports Jastram-Werke's name change to JAFO Technologies due to a buy-out. The petitioner is identified as a joint manager of JAFO. The petitioner is quoted in another German article focusing on Jastram-Werke's success. Finally, the petitioner is identified in a photograph and accompanying article regarding the 10,000th airplane galley manufactured by Sell Aviation Division's Herborn plant.

In response to the director's request for additional documentation, the petitioner submitted two identical press releases posted at www.medc.Michigan.org and www.theautochannel.com relating to the petitioner's appointment at ASC, Inc. The petitioner also submitted a July 21, 2000 interview with the petitioner about Cosworth allegedly published in *Autoindustry*. The petitioner also submitted several articles reporting on new automobile projects on which Cosworth is collaborating. None of the latter articles mention the petitioner by name. Finally, the petitioner submitted evidence that *Auto Express* is "the most widely bought motoring weekly in the UK."

The director concluded, at the bottom of page 4, that the articles focus on the petitioner's employer and that the petitioner had not provided any evidence to establish that the article other than the one in *Auto Express* are "in professional or major trade publications *or other major media*." (Emphasis added.) The director noted that the one article clearly published in *Auto Express* makes no mention of the petitioner.

On appeal, asserts that the director erred by only considering whether the articles were in major trade publications and not other major media. As evidenced by the quote above (also quoted by counsel on page nine of her appellate brief), the director clearly concluded that the record did not demonstrate that the articles appeared in other major media. We concur with that conclusion. The record contains no evidence regarding the circulation of the other publications, some of which are not even identified.

Counsel also asserts that the Internet websites that published ASC's press release announcing the hiring of the petitioner constitute major media. Even if we were to accept counsel's assertion, we cannot conclude that the acceptance of press releases issued by the petitioner's employer constitutes evidence of his national or international acclaim. Press releases are not the result of independent journalistic reportage and cannot serve to meet this criterion. That ASC chose to issue the press release is merely evidence of the petitioner's leading role for that company, something CIS does not contest.

Further, counsel continues to assert that the "Head to Head" interview with the petitioner was published in *Auto Express*. Due to the discrepancies discussed above, we conclude that the petitioner has not satisfactorily established that the interview appeared in this nationally circulated weekly magazine.

Finally, counsel requests that the articles that do not mention the petitioner by name be considered "comparable evidence." The pertinent regulation requires published material about the petitioner in major media. We cannot conclude that evidence of published materials that do not meet the unambiguous requirements of the regulation constitute comparable evidence. If published materials that are not about the petitioner were comparable to materials that are about the petitioner, it is not clear why the regulations would specify that the materials must be about the petitioner. The fact is the regulations do require that the materials be about the petitioner. Materials that are not about the petitioner clearly fail to meet the specifications of the regulation because they are deficient and, thus, cannot be considered comparable by any definition.

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.

Counsel relies on the petitioner's managerial responsibilities as Chief Technical Officer for ASC, Inc. The director concluded that these duties were inherent to the job and did not distinguish the petitioner from others in his occupation. On appeal, counsel notes that the law requires that an alien seeking classification under this classification must establish an intention to continue working in his field. Thus, concludes counsel, "the Petitioner is actually meant to use his extraordinary abilities as essential components of his employment activities." Counsel then requests that the evidence also be considered "comparable evidence."

While the evidence submitted to meet a particular criterion must relate to the petitioner's claimed area of expertise, that proposition does not mean that duties inherent to every individual who fulfills the same job title can serve to meet a criterion. The classification sought is very exclusive. The evidence submitted to meet each criterion must be evaluated as to whether it is indicative of or uniquely consistent with national or international acclaim. We concur with the director's reasoning that managerial duties performed by every Chief Technical Officer cannot serve to meet this criterion. The leading nature of the petitioner's position has already been considered above. We reiterate that the requirement that a petitioner meet at least three criteria would be meaningless if meeting a single criterion mandated the conclusion that a petitioner meets another criterion. Further, as with the criteria discussed above, the petitioner has not demonstrated that this criterion is not applicable to his occupation. In fact, as discussed below, the petitioner claims to meet this criterion. Thus, we need not consider "comparable evidence" allegedly relating to this criterion.

The petitioner submitted evidence that in 1990 he was invited to attend the 29th Conference of the International Maritime Organization (IMO) as an advisor to Germany's delegation. A February 27, 1990 letter from the Association for Shipbuilding and Marine Engineering expresses appreciation to the petitioner for agreeing to represent the association at the IMO conference. In response to the director's request for additional documentation, the petitioner submitted evidence that he served on the Technical Standards Board for the Society of Automotive Engineers (SAE) and moderated a panel at a March 2003 SAE conference.

The director questioned whether the petitioner actually attended the IMO conference and, if he did, whether it involved judging the work of others. On appeal, counsel asserts that the February 27, 1990 letter is evidence of the petitioner's participation. Counsel then states:

> The meetings of the IMO review and adjust regulations pertaining to all maritime activities. Thus participation in these deliberations inherently entails the review, evaluation, and judgment of existing technologies, methodologies, practices, regulation and legislation established by other professionals in the field of technology development and management.

Counsel is not persuasive. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record is absent information regarding the level of the petitioner's participation in the conference or the selection process by which the petitioner was chosen.

Finally, regarding the petitioner's work on the pre-college curriculum in Michigan and with SAE, we simply note that the record does not establish that the petitioner had participated on these panels prior to the date of filing. Thus, these positions cannot be considered evidence of his eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12);

Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Moreover, the petitioner has not established that he has served on curriculum panels around the United States. A local request to do so is not evidence of his national recognition. In addition, it is not clear that reviewing curriculum for pre-college students is judging the work of others in the field of technology development management.

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

The petitioner submitted several 1989 and 1990 internal reports prepared for Jastram Industries. Counsel argued that such unpublished reports are equally persuasive as published scholarly articles as they undergo even more scrutiny by the companies that commission the reports because investment decisions worth significant sums are based on these reports. The director rejected this argument, noting the limited audience for which the reports are intended and the lack of peer review.

On appeal, counsel argues that the reports are not only scrutinized by the company, but are tested in the marketplace. Counsel concludes:

> Although we do not retract our argument on the importance of the petitioner's professional writings to the field, we do acknowledge that such evidence would more appropriately be considered as documentation of the petitioner's essential role with organizations of distinguished reputations under 8 CFR § 204.5(h)(3)(viii) or as other comparable evidence under 8 CFR § 204.5(h)(4).

We concur with the director. The reports are not published in professional or major trade publications or other major media. Thus, they cannot meet the plain language of the pertinent regulation. Moreover, the existence of numerous engineering, automotive and business journals suggests that this criterion is applicable to the petitioner's occupation. Thus, we do not need to consider comparable evidence. Regardless, internal documents are not circulated among the industry and do not carry the potential for influence in the field or name recognition that published materials do. As such, they do not appear comparable.

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

The petitioner submitted evidence that Cosworth designs have been on display at trade shows. The director questioned whether this evidence satisfactorily established that the petitioner's personal work in the field has been on display. The director further concluded that trade shows and professional presentations are not comparable to artistic exhibitions or showcases.

On appeal, counsel asserts that the record adequately establishes that vehicles designed under the petitioner's supervision have been displayed at trade shows. Counsel concludes that "the display of actual technology and products developed under the direction of the petitioner is relevant, although primarily as 'other comparable evidence' under 8 CFR § 204.5(h)(4)."

We acknowledge that this criterion is not readily applicable to the petitioner's occupation. Thus, this situation is the type where comparable evidence might be persuasive. The petitioner still bears the burden, however, of demonstrating that the evidence is comparable. We cannot conclude that trade shows, which are inherent to the automotive industry to showcase new products, are comparable to the type of exclusive artistic exhibition or

showcase that might qualify a visual artists under this criterion. The petitioner has not demonstrated that the shows are exclusive to only the most significant technology in the field, as opposed to being open to all recent technology in an industry that is constantly evolving.

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 technology development manager 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 shows talent as a technology development manager, 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.