U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 22 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 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 business manager. 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 graduated from the University School of Administration, Finance and Technology in Medellin, Colombia with a Bachelor's of Business Administration degree in 1987. The petitioner's résumé reveals that he had worked in construction management for approximately sixteen years at the time of filing his visa preference classification petition on May 15, 2002. His claim of extraordinary ability as a business manager is based on his establishment and management of two construction and development companies in Medellin. Through counsel, the petitioner submits evidence that, on appeal, he claims meet the following criteria.

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

On appeal, counsel states that the petitioner's contribution to business stems from his construction work in Medellin. According to counsel, the petitioner was the first in Colombia to "creat[e] a business enterprise, inclusive of all professionals required to complete a development project. Petitioner was the brainchild for the unique idea of developing an organizational enterprise to develop mixed use[] living environments." Counsel asserts that the petitioner "brought together a team of lawyers, engineers, publishers and salesman [sic] etc. to succeed in his business endeavors." She asserts that this was a "unique, original business idea" that succeeded tremendously. 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). As evidence that he meets this criterion, the petitioner submits brochures of several of his construction projects. The record does not reflect that the petitioner's "unique" business idea constituted a contribution of major significance to business. The petitioner submits no evidence that others emulated his work or that this was the first effort of its kind in the business field or the construction industry.

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

The record reflects that the petitioner is the founder and majority shareholder of his construction companies. Counsel asserts that the petitioner's creation of these two companies allowed him to "refine his financial management, business, and organizational skills, as well as his marketing skills." While the record reflects that the petitioner plays a leading role in his companies, the evidence does not establish that the companies enjoy a distinguished reputation. The petitioner submits no evidence of his companies' respective reputations in the construction or real estate development industry, or in the business field.

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

The record reflects that the petitioner receives the U.S. dollar equivalent of approximately $20,000 per year from one of his companies and $70,000 per year from the other. Counsel asserts that considering the region of the world from which the petitioner comes, where 55% of the population lives below the poverty line, a yearly income of $70,000 is certainly evidence that the petitioner commands a high salary. However, the petitioner must show that he commands a high salary in relation to all others in the business field, and not just to everyone who lives in Colombia or in a particular region. Further, the petitioner submitted no comparative evidence of wages or salaries paid to business managers in any location. The record does not reflect that the petitioner meets this criterion.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility [emphasis added]." The petitioner does not specifically claim that any particular evidence falls within this provision. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be

established by the 10 criteria specified by the regulation. We will nevertheless briefly address other evidence submitted by the petitioner under this criterion. The petitioner submits a letter of recommendation from Mr. Jorge Mario Angel, President of Lonja De Propiedad Raiz, S.A. in Medellin. He states that the petitioner is "well known" for his "great" business skills in assuming all responsibilities in the development of the expensive housing projects undertaken by his companies. He also submits a letter from Mr. Jimmy Rivera, Vice President of Operations for Tijuana Joe's, a chain of Mexican Restaurants. Mr. Rivera states the petitioner helped the restaurant chain improve its systems and operations, "with special attention to the redesign and revamping of [the] facilities." Mr. Rivera also states that the restaurant intends to "assign" the petitioner as manager of their new expansion project. While the authors of these letters attest to the petitioner's business acumen, the accomplishments described do not establish that the petitioner has reached the top of his field in either construction or in business management.

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 business 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 is a successful real estate developer but is not persuasive that his 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.