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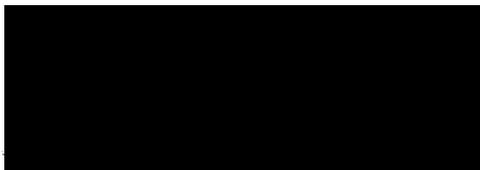
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U.S. Citizenship  
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*Br*



FILE: [REDACTED]  
WAC 04 183 52818

Office: CALIFORNIA SERVICE CENTER Date: **AUG 12 2005**

IN RE: Petitioner: [REDACTED]  
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:

SELF-REPRESENTED

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.

*Robert P. Wiemann*

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 classification of 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 with extraordinary ability in business.<sup>1</sup> The director determined that the petitioner had not established that the beneficiary had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability in business as the President and Chief Executive Officer (CEO) of the petitioner, a retail furniture store. The petitioner submitted supporting documents including the company's tax returns, profit and loss statement, bank and payroll statements, two reports about the company by "D&B" (identified as Dun and Bradstreet by the petitioner), newspaper articles in English and Spanish, the beneficiary's diploma in civil engineering, the company's business plan, Arizona trade name certification and tax license, a list of suppliers, the beneficiary's social security statement, a company brochure, a commercial security agreement and mortgage documents

<sup>1</sup> It is noted that an attorney who is currently on the list of suspended and expelled practitioners represents the petitioner. See <http://www.usdoj.gov/eoir/profcond/chart.htm>, accessed on August 10, 2005. Therefore, the AAO may not recognize counsel in this proceeding.

relating to real estate owned by the beneficiary and his wife, and a letter and certificate acknowledging the business accomplishments of the beneficiary's wife. The director determined the record did not establish that the beneficiary had earned the sustained acclaim requisite to classification as an alien with extraordinary ability.

On appeal, the petitioner submits an unsigned brief and additional evidence including two newspaper articles; a digital video disc (DVD) of a television interview with the beneficiary and his wife; a brochure for Grupo Sol, a group of companies including the petitioner; a media card with a promotional presentation about the [REDACTED] Hispanic Advertising company; the petitioner's 2004 balance sheet, profit and loss statement, and recent payroll statement; four letters of recommendation; the petitioner's Certificate of Good Standing from the Corporation Commission of Arizona; a report of the petitioner's good standing with the Better Business Bureau (BBB); an additional [REDACTED] report on the petitioner; the 2004 U.S. Small Business Administration Personal Financial Statement for the beneficiary and his wife; and a Comprehensive Action Plan for the petitioner. The petitioner's claims and the additional evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed. The evidence submitted and the petitioner's claims are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

On page three of its initial brief, the petitioner claimed that the beneficiary met this criterion by virtue of the petitioner's "extremely high rating by [REDACTED]. The petitioner further stated, "One does not apply for [REDACTED] rating - it is the oldest and most distinguished rating that a company can be given for their [sic] achievements." The record does not support this claim. The petitioner initially submitted a report entitled [REDACTED] CreditX Monitoring" for the company. A letter dated March 16, 2004 that accompanies the report states, "Thank you for ordering [REDACTED] CreditX service, one of [REDACTED] premier self diagnostic tools created for business professionals like yourself. As you know, part of the service is to provide you with your company's commercial credit score on a quarterly basis for one full year." This report lists the beneficiary as the petitioner's CEO and owner and ranks the company as having a "1 - Low Risk" credit score in the 94<sup>th</sup> percentile (with 100 representing the lowest risk). A second report submitted with the petition is entitled "BusinessScope" and is also dated March 16, 2004 and addressed to the petitioner and the beneficiary as the petitioner's CEO. The report begins by stating, "Thank you for ordering [REDACTED] BusinessScope, our new service that lets you see how you compare to other companies in your line of business." The executive summary states, [REDACTED] demonstrated a strong financial condition as of the interim statement dated Oct 31, 2003. This assessment is supported by a favorable liquidity position and a satisfactory ratio of debt to equity relative to other companies in this line of business." On appeal, the petitioner submitted a third [REDACTED] report entitled "ImageScope," which begins by thanking the beneficiary "for ordering [REDACTED] ImageScope, our new service that lets you see what information is available on your business to [REDACTED] customers." This report states that the company has a "High Composite Credit Appraisal" as a business with a worth between one to ten million dollars based on the petitioner's October 31, 2003 interim financial statement. These reports indicate that the beneficiary is the CEO of the petitioner, a reputable and financially sound business. Yet the reports were ordered by the beneficiary and do not constitute a prize or award for business excellence.

The petitioner also submitted evidence that the beneficiary's wife was nominated to serve as one of Arizona's Voting Delegates at the 2004 National Republican Congressional Committee (NRCC) Tax Summit and that she was recognized by the NRCC's Business Advisory Council as a 2003 Businesswoman of the Year. These honors were presented to the beneficiary's wife, not the beneficiary. The record shows that the beneficiary's

wife is the Vice President of the petitioner and is centrally involved in the petitioner's business. However, the submitted letter and certificate from the NRCC do not name the petitioner. Hence, her honors cannot be attributed to the petitioner or the beneficiary.

On appeal, the petitioner claims that the beneficiary now qualifies under this criterion because the petitioner "has been selected to participate in a program by the City of Phoenix, Community Development Block Grant," as evidenced by the petitioner's proposal: [REDACTED] Comprehensive Action Plan, Venancio and [REDACTED] prepared by Maricopa Community Colleges Small Business Development Center, January 2005. In cooperation with The City of Phoenix Community Development Block Grant." This proposal was written seven months after the petition was filed and consequently cannot be considered. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Even if it had arisen before the petition was filed, this evidence would not meet this criterion. First, the petitioner submitted an "Action Plan," not documentation that the company actually received a community development block grant. Second, the record does not establish that such grants constitute prizes or awards under this criterion. On page three of its appellate brief, the petitioner claims "[t]his award by the Small Business Association is only given to a few select businesses who show promises that they will have continued development in the community. It is a great honor to be selected for this program." The record is devoid of any evidence that the block grants are awarded by the "Small Business Association" or that receipt of a grant is a "great honor." Yet simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record thus contains no evidence that the beneficiary has won any prizes or awards for business excellence. Consequently, he does not meet this criterion.

*(ii) 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.*

The petitioner did not initially claim that the beneficiary was eligible under this category. On appeal, the petitioner claims that the beneficiary meets this criterion because the petitioner has been a member of the Hispanic Chamber of Commerce since 1997 and a member of the BBB since 1997. The record contains no evidence of the petitioner's membership in the Hispanic Chamber of Commerce. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Id.*

The BBB report submitted on appeal states that the petitioner has been a BBB member since July 2000, not 1997 as claimed by the petitioner. The report affirms that the company "has a satisfactory record with the Bureau. The Bureau has processed no customer complaints on this company in its three-year reporting period." The report also explains that a "satisfactory record" will be earned by a company if it has been "in business for at least 12 months, properly and promptly address matters referred to it by the Bureau, and [is] free from an unusual volume or pattern of complaints and law enforcement action involving its marketplace conduct. In addition, the Bureau must have a clear understanding of the company's business and no concerns about its industry." These criteria appear to apply to any reputable and successful business and the record contains no evidence that satisfaction of these criteria by the petitioner constitutes an outstanding achievement. Moreover,

the BBB report lists the company's "Principal" as the beneficiary's wife, not the beneficiary. Consequently, the petitioner's BBB membership does not demonstrate the beneficiary's eligibility under this criterion.

*(iii) Published material 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 submitted a copy of a newspaper article published in 2002 the *Arizona Business Gazette* and an undated copy of the same article published in the *Arizona Republic* that discuss the business of the beneficiary and his wife. The director correctly stated that these articles appeared in regional publications, not major media. On appeal, the petitioner submits a printout from the website of the *Arizona Republic* which states that the publication "is Arizona's leading provider of news and information" and the "state's largest newspaper." A document entitled "Media Kit" also submitted on appeal states that the *Arizona Business Gazette* is a weekly business newspaper that has a circulation of "[a]bout 3,000 primarily in the metropolitan Phoenix area." These documents indicate that both publications are limited to the Phoenix metropolitan area or Arizona state and do not establish that the newspapers have national circulation. Consequently, the newspapers do not constitute professional, major trade publications or other major media, publication in which would reflect national acclaim.

The petitioner also submitted articles purportedly about the petitioner and the beneficiary from Spanish language publications, and a copy of an interview with the beneficiary and his wife broadcast on *Univision*. Both the articles and the transcript of the interview were submitted without certified English translations as required by 8 C.F.R. § 103.2(b)(3). Without certified translations, we cannot determine whether this evidence supports the beneficiary's claimed eligibility under this criterion. *Id.* We note, however, that materials about an alien published in the United States in a language which the majority of the population does not speak rarely demonstrate national acclaim.

On appeal, the petitioner submitted two additional newspaper articles from the *Arizona Republic* and the *Arizona Business Gazette* that were published in 2004. We cannot consider these articles because they were published after the petition was filed. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. In sum, the record contains no published material about the beneficiary that meets this criterion.

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

The petitioner did not originally claim or submit evidence relating to the beneficiary's eligibility under this category. On appeal, the petitioner claims that the beneficiary meets this criterion because the beneficiary and his wife "are leaders in growth in the emerging Hispanic market in Arizona," who have "developed their own advertising agency to assist other Hispanic retailers," and "have achieved the second highest rating from Dun & Bradstreet." The petitioner also cites the recommendation letters and newspaper articles submitted on appeal as additional evidence of the beneficiary's eligibility under this criterion. We address each claim in turn.

First, the record demonstrates that the petitioner is a successful and financially sound company, but it does not establish that the company leads "in growth in the emerging Hispanic market in Arizona" or that the company's

growth is attributable to the beneficiary in a manner consistent with sustained national or international acclaim. The D&B reports and the company's financial statements indicate that it is a profitable and financially sound business. The 2002 article from the *Arizona Business Gazette* submitted with the petition discuss the petitioner's growth from one to three stores in seven years and the company's financing services which allow their Spanish-speaking customers to establish good credit. The article features a photograph of the beneficiary and his wife. The beneficiary is identified as a co-owner of the company, but only his wife is quoted and referenced in the text of the articles.

In a letter submitted on appeal [REDACTED] General Manager of Radio Campesina, a non-profit organization owned by the National Farm Workers Service Center, affirms that the beneficiary and his wife "have had the ability to aid [the petitioner] to continue to grow without losing the focus of the Hispanic Community, by offering the American credit system that is in need of growth and development." [REDACTED] Diversity Programs Coordinator and Business Analyst for the Maricopa Small Business Development Center, also states that his Center "is working with [the petitioner]. After recognizing their work and effort in helping the Hispanic community by offering great quality products and credit services, realizing a double contribution to our society [sic]." A letter from [REDACTED] International Business Development Director of the Mexican company Grupo Famsa, explains that his company chose the petitioner as their representative in Arizona due to its "tremendous business and personal reputation." [REDACTED] explains that "[w]hile [the petitioner] is the official representative of our merchandise in the United States, we deliver the sold merchandise throughout Mexico. This creates an absolute alliance between the Latin consumers, who securely disburse for the commodities in the United States while their families enjoys [sic] the convenience of new possessions in Mexico." The evidence does not show that the petitioner is the only company or the leading company in the United States which provides its customers with financing and credit services or the ability to purchase furniture for their relatives in Mexico. Moreover, the record only documents the petitioner's regional financial strength and local business reputation. The D&B reports compare the petitioner to companies in the same industry in the "Mountain" or "West" region of the United States. Similarly, the newspaper articles only reflect the petitioner's business reputation in Phoenix and Arizona. Even if we assumed that the petitioner's accomplishments can be attributed to the beneficiary as an individual, the record does not demonstrate that the petitioner's growth and contributions to its field have gained recognition outside of Arizona. Hence, the company's contributions do not demonstrate the beneficiary's national or international acclaim.

Second, the evidence submitted on appeal indicates [REDACTED] the company owned by the beneficiary and his wife, was established after the petition was filed. No evidence of the advertising company was submitted with the petition and the newspaper articles submitted on appeal indicate that the company was established in the Fall of 2004. On appeal, the petitioner also submitted a media card containing a promotional presentation of [REDACTED] that is dated 2005. The petitioner submitted no evidence that the company was created prior to the filing of this petition. Consequently, we cannot consider the beneficiary's advertising company as evidence under this criterion. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Moreover, the record contains no evidence (in existence prior to filing) which indicates that [REDACTED] Advertising has been recognized by other business leaders as making a major contribution to the beneficiary's field.

Finally, the D&B reports also do not meet this criterion. As discussed above and under the first criterion, these reports evidence the petitioner's favorable financial standing and credit rating. Yet the petitioner submitted no

evidence that obtaining such favorable reports show that a company had made major contributions to the beneficiary's field. Accordingly, the beneficiary does not meet this criterion.

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

The record indicates that the beneficiary is the president and CEO of the petitioner, a successful retail furniture company with a good regional reputation in Arizona. The record does not, however, persuasively establish that the petitioner's success and reputation is largely attributable to the beneficiary. In fact, the evidence submitted suggests that the beneficiary's wife is largely responsible for the petitioner's good public relations. The English newspaper articles submitted with the petition quote the beneficiary's wife and she has been recognized by the NRCC as a "Businesswoman of the Year." The record is devoid of any similar evidence that the beneficiary has been publicly recognized and honored for his leading or critical role for the petitioner or for his business accomplishments in that role. Moreover, the petitioner's reputation is regional and the record contains no evidence that the company has a national reputation in which the beneficiary's role would reflect the requisite sustained acclaim. Accordingly, the beneficiary does not meet this criterion.

*(ix) 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 did not initially claim that the beneficiary was eligible under this criterion. On appeal, the petitioner contends that the beneficiary meets this criterion by virtue of a U.S. Small Business Administration Personal Financial Statement of the beneficiary and his wife that was submitted on appeal. The statement lists the couple's net worth as \$3,236,570 as of December 31, 2004. Yet the petitioner submitted no documentation of how much of this net worth was acquired by the beneficiary at the time of filing in June 2004. The record is also devoid of any evidence that the beneficiary's income is significantly higher than other CEOs in the retail furniture business or comparable to the incomes of CEOs at the very top of his field. Accordingly, the beneficiary does not meet this criterion.

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

Despite this criterion's clear explicit limitation to the performing arts, the petitioner claimed in its initial brief that "[t]he tax returns and the [redacted] rating show that [the beneficiary] has enjoyed great commercial success. He has developed a three million dollar business which employees [sic] over thirty people and has created job opportunity for many Americans." Even if we consider evidence of the petitioner's commercial success as comparable evidence of the beneficiary's eligibility under this category pursuant to 8 C.F.R. § 204.5(h)(4), he does not meet this criterion. The petitioner's federal tax returns list a total income of \$1,249,408 in 2001; \$1,758,439 in 2002; and \$2,223,585 in 2003. The petitioner's 2003 profit and loss statement lists a gross profit of \$2,267,574.13 and a net profit of \$231,816.09. The payroll statements indicate that the petitioner employed 32 people as of January, 2004. The D&B BusinessScope report states the petitioner's net profit after tax of \$137,518, or 4%, which "compared favorably to the average net profit after tax of 2.9% for other firms in this line of business." The report also states that the "number of firms are compiled and based on regional data. The region for your company is WEST." The record thus shows that the petitioner is a growing and profitable company, yet the petitioner provided no evidence that its commercial success is directly attributable to the beneficiary or that its profits were consistently higher than that of other retail

furniture businesses in a manner consistent with the requisite sustained national acclaim. Accordingly, the beneficiary does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the beneficiary is the president and CEO of a successful retail furniture business with a good reputation in Arizona. However, the record does not establish that the beneficiary has achieved sustained national or international acclaim as a businessman placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), 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.