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FILE: EAC 03 090 52020 Office: VERMONT SERVICE CENTER Date: JUN 16 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, Director
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his 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 earned sustained national or international acclaim at the very top level.

This petition, filed on January 27, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Financial Investment Advisor." At the time of filing, the petitioner was working as a Financial Advisor for [REDACTED]

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).

On appeal, the petitioner states: "The Mombusho Scholarship Award, by Japan's Ministry of Education for four year scholarship for outstanding scholars is most decisively a well known internationally recognized award. The MBA from a prestigious Japanese university is an internationally recognized achievement."

The regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Examples of one-time awards which enjoy truly international recognition include the Nobel Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are “household names,” recognized immediately even among the general public as being the highest possible honors in their respective fields. The petitioner’s Master of Business Administration degree and Mombusho scholarship, which relate to academic training for future employment in the business field, do not meet this standard. These items will be further addressed below as lesser nationally or internationally recognized prizes or awards.

Barring the alien’s receipt of a major, internationally recognized 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 claims eligibility under the following criteria.

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

The petitioner submitted a letter indicating that his annual gross production as a financial advisor in 2001 qualified him for the President’s Club award at Morgan Stanley. According to information submitted by the petitioner, an individual must “be one of the Firm’s 800 top-performing Financial Advisors in annual gross production” to receive this award. We note that, above and beyond the President’s Club award, there exists the Chairman’s Club award, which requires that an individual “be one of the firm’s top 175 performers in annual gross production.” The record contains no evidence showing that the petitioner’s has achieved this level of recognition at Morgan Stanley.

The petitioner also submitted a Certificate of Excellence declaring the petitioner “Top Producer” in the Fixed Income Division of Morgan Stanley in 2001.

The petitioner also submitted a letter from [REDACTED] Vice President, Global Assignment Services, [REDACTED] who states:

[The petitioner] received the prestigious Falcon Award for Performance Excellence for three consecutive years. Recipients of the Falcon Award must be in the top five percent of [REDACTED] producers in their first three years of service. In addition to the Falcon Award, [the petitioner] has won the Chairman’s Award for the last two years. This award is given to those who are among the top five percent of [REDACTED] producers after having received the Falcon Award.

The preceding awards from the petitioner’s former employer, [REDACTED] and current employer, Morgan Stanley, are representative of institutional recognition, rather than national or international recognition.

On appeal, the petitioner argues that his M.B.A. degree from Sophia University in Japan and his Mombusho Scholarship Award qualify as nationally or internationally recognized prizes or awards for excellence in his field of endeavor. In regard to the petitioner’s M.B.A. degree from Sophia University, we note that university study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. An advanced degree may indicate that the petitioner has fulfilled certain academic requirements at a given

university, but it does not constitute a nationally or internationally recognized prize or award for excellence in the business field. In regard to the petitioner's Mombusho scholarship, we note that the record lacks supporting evidence regarding the exclusive nature of this fellowship. We note here that scholarships are generally presented for scholastic achievement and the pursuit of further academic study rather than for excellence in one's field. The most established and experienced businesspeople, who are employed in their own right and do not apply for academic scholarships, are ineligible for consideration for such awards and therefore we cannot conclude that an individual selected for a graduate scholarship stands at the very top of his field. Nor are we persuaded that obtaining financial support for one's studies is a rare mark of acclaim or extraordinary ability.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the Japan Society of New York and the Argentine Management Development Institute. There is no evidence to establish that the petitioner's membership in these organizations required "outstanding achievements" in business or that his admission to membership was evaluated by financial experts at the national or international level.

On appeal, the petitioner states that he "recognizes that there is no requirement of being brilliant in his field for being a member" of the preceding organizations.

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.

In general, in order for published material to meet this criterion, it must be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution.

The petitioner submitted four articles appearing in *El Cronista Economia*, *On Wall Street*, *Securities Week*, and *Wall Street Letter*. The documentation submitted by the petitioner, however, did not include the volume of these publications' readership. Without evidence of their significant national distribution, the petitioner has

failed to show that the preceding publications qualify as major media. Furthermore, according to the material presented, the petitioner himself was clearly not the primary subject of the articles in *El Cronista Economia* and *On Wall Street*. In regard to the brief pieces appearing in *Securities Week* and *Wall Street Letter*, we note that neither of these pieces devoted more than five sentences to the petitioner.

We find that the evidence presented by the petitioner is not adequate to show that he has been the primary subject of sustained national or international media attention.

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.

On appeal, the petitioner states: "It is not in the business field of the applicant to act as a judge of the work of others or to participate in any panel to that end."

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

The petitioner provided letters of support from several clients who affirm that the petitioner is an expert in international finance. We cite representative examples here.

██████████, CEO, Jermyn Street Capital, Japan, states:

I could choose among a very wide field of bright, successful and creative consultants to manage my personal investment portfolio because I have been so impressed with [the petitioner's] superior knowledge of a wide range of financial products, all emerging markets, securities trading and currency exchange [sic]. The diversity of his abilities in the area of international financial consulting is unsurpassed.

██████████ Managing Director, Axia Asset Management, states:

[The petitioner's] ability and wisdom in the financial industry is well respected and is being very helpful in advising me on personal as well as business related issues, in order to expand my knowledge in emerging and currency markets. His stability and knowledge in combination with years spend [sic] in different part of the world financial markets have been a priceless asset to his clients and me in order to achieve superior management over the years.

The petitioner, however, must demonstrate that his impact on the financial industry extends beyond his immediate employers and clients.

We note that two of the letters provided in support of the petition were from individuals that only became aware of the petitioner's work after interviewing him and reviewing "documentation regarding his experience and professional qualifications." ██████████ Professor of Finance, Northeastern University, states that the basis for his opinion of the petitioner "lies in information provided by representatives of [the petitioner]."

[REDACTED], Assistant Professor of Finance, Yale School of Management, states: “This letter follows my in-depth personal interview of [the petitioner]. His personal interview was supplemented by my review of documents submitted to me by representatives of [the petitioner].” An opinion from a finance expert who was not previously aware of the alien, and is simply reviewing a resume or list of accomplishments, cannot establish national or international acclaim. Such a letter may, in fact, simply reinforce the conclusion that the alien is not well-known in the field, by demonstrating that the alien’s reputation did not precede the specific request for a recommendation. An advisory opinion is required for a non-immigrant O-1 petition, but is not required in this proceeding.¹

We accept that the beneficiary possesses unique skills and knowledge in the fields of asset management, debt instruments, equity sales, and portfolio management. However, the letters of support do not adequately address specific contributions of major significance to the financial services industry directly attributable to the beneficiary. While the beneficiary has certainly enjoyed success as a respected international financial consultant, simply being an effective financial advisor does not constitute an original contribution of *major* significance in the financial industry. The letters of support indicate that the petitioner has provided a valued service to his clients and employers through successful international investing strategies, but his ability to significantly impact the financial industry in general has not been adequately demonstrated.

On appeal, the petitioner asserts that in 2004 he brought in “over \$500 million in investments” to the United States. A petitioner, however, must establish eligibility at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Subsequent developments in the petitioner’s career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. Regardless, the petitioner has not shown that investing such an amount on behalf of his clients would elevate him above almost all others in his field at the national or international level.

Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The letters of support from experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition is of greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. If the petitioner’s reputation is primarily limited to his clients and employers, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. In conclusion, we find that the documentation presented in regard to this criterion is not adequate to support a finding that the petitioner’s work as a financial advisor is nationally or internationally recognized throughout the financial industry as a major contribution.

¹ Documentation accompanying the petition indicates that the petitioner is the beneficiary of an approved O-1 nonimmigrant visa petition. The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel Citizenship and Immigration Services to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or binding precedent that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien already holds an O-1 nonimmigrant visa.

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 a copy of his "1991 School Year Master's Thesis." The record, however, contains no evidence showing that this document was published or that it is widely viewed throughout his field as significantly influential.

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

There is no evidence showing that the petitioner has performed in an executive or managerial role for a distinguished financial institution. Nor has it been adequately shown that the petitioner's position was so critical to attracting unusually large inflows of money from foreign investors to ██████████ or ██████████ that his absence would have had a substantial impact as measured as a percentage of these firms' total revenue.

On appeal, the petitioner has provided comparative data for thirteen other individuals from his office, ██████████ ██████████ "Office 761 – Grand Central." The data shows that another individual in this office (the third person on the list) generated more revenue in 2003 and 2004, outperforming the petitioner in both years. It has not been shown that the petitioner's role is any more leading or critical than the individual from Office 761 who outperformed him, or the thousands of other ██████████ financial advisors from throughout the firm for whom no comparative data was provided. We acknowledge that the petitioner consistently met the production goals for entry into his firms' President's Club or Chairman's Club (groups which included hundreds of other financial advisers, i.e., those in the top 800 at Morgan Stanley or those in the top five percent at Merrill Lynch), but it has not been shown that the percentage of revenue generated by the petitioner was so substantial as to establish that he played a "critical role" in the overall financial success of these firms in the same manner as, for example, their top three revenue producers in the country or company executives at the level of ██████████ Executive Director of Morgan Stanley's Fixed Income Division, or higher.

We find that the petitioner's evidence is not adequate to demonstrate that he performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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

We concur with the director's finding that the petitioner's evidence is adequate to satisfy this criterion.

In this case, we find that the evidence presented satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In a letter accompanying the appeal, the petitioner requests oral argument. The regulations provide, however, that the requesting party must adequately explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and

will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. In fact, he set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

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