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FILE:



Office: CALIFORNIA SERVICE CENTER

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IN RE:

Petitioner:

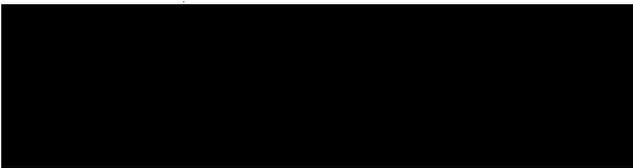


Beneficiary:

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:



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 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.

On appeal, counsel asserts that the director erred by failing to issue a request for evidence in accordance with 8 C.F.R. § 103.2(b)(8). At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence which the petitioner would have submitted in response to such a request.

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 April 2, 2004, seeks to classify the petitioner as an alien with extraordinary ability as an "Inventor and Consultant in the Packaging and High Speed Industrial Machines Industries."

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 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 received a 1993 [REDACTED] for Packaging from the World Packaging Organization for his "Wrappie" and "Magic Bag" designs. In that same year, the petitioner also received an "Oscar for Packaging" from the French Institute for Packaging and Conditioning. Documentation in the record adequately demonstrates the national and international significance of these awards.¹ We withdraw the director's finding that the petitioner's evidence is not adequate to satisfy this criterion.

Subsequent to 1993, however, there is no indication that the petitioner has received any nationally or internationally recognized awards.

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.

On appeal, counsel states: "The director ignored evidence of the petitioner's memberships in Marquis' *Who's Who in Science and Engineering*, *Who's Who in America*, and *Who's Who in the World*." Information from the editor of *Who's Who in America* states: "In this 56th edition, Marquis' Who's Who proudly presents the biographies of over 129,000 outstanding individuals. . . . The majority of Biographees qualify for admission on the basis of . . . a specific position of responsibility."

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. Holding "a specific position of responsibility" is not tantamount to outstanding achievement. Furthermore, there is no indication that having a brief biographical sketch included in a voluminous directory of thousands of professionals from multiple fields constitutes membership in an association in the petitioner's field. Finally, the evidence of record fails to demonstrate that the petitioner's admission was evaluated "by recognized national or international experts" in his field.

The record contains no evidence to establish that the petitioner holds membership in an association that requires outstanding achievement of its members in the same manner as highly exclusive associations such as the U.S. National Academy of Sciences.

¹ We acknowledge the director's observation that from 1998 through 2004 there have been scores of annual WorldStar Award recipients. While this fact somewhat diminishes the weight of the evidence, we find that the supporting evidence accompanying the petitioner's WorldStar Award is adequate to demonstrate a level of recognition sufficient to minimally satisfy this criterion.

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 order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major media*. To qualify as major media, the publication should have significant national or international distribution. The petitioner submitted sixteen articles, but only one of these articles mentions the petitioner by name (in a single sentence).² The plain wording of the regulation, however, requires “published materials about the alien.” If the petitioner himself is not the primary subject of these articles, then such articles fail to demonstrate his individual acclaim. We further note that all but one of these articles were published prior to 1995 (at least 11 of these articles were published in 1993 alone) and there is no evidence of any articles published subsequent to the 1990’s. The statute and regulations, however, require the petitioner’s acclaim to be *sustained*. 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 original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

On appeal, counsel states:

The petitioner . . . is an internationally renowned inventor in the field of Packaging Design. Specifically, as the Chairman and Chief Executive Officer of [redacted] [the petitioner] invented highly successful packaging products that have revolutionized the fast-food industry. [The petitioner] has authored nearly 200 patents that are registered in numerous countries around the world. His most acclaimed inventions are the [redacted] (also known as [redacted] and the [redacted]

* * *

Counsel concedes that not every patented invention would satisfy the regulatory criterion of “original contributions of major significance” because not every patent has major significance to its field.

We concur with counsel’s preceding observation. The granting of a patent documents only that an innovation is original. It does not necessarily follow that an approved patent represents a contribution of “major significance” in the petitioner’s field. Therefore, far more important than the number of approved patents held by the petitioner is their significance to the greater field. In this case, the burden is on the petitioner to demonstrate that his [redacted] and [redacted] inventions (or any other of his inventions) represent a contribution of “major significance” in the field of packaging design.

² This 1993 article, appearing under the heading [redacted] being tested in 3 states,” states: “Fast-food businesses were selected for the U.S. launch of the product because the [redacted] solves many of the problems pervasive throughout that industry, according to [the petitioner], chairman of [redacted] and one of the wrappers inventors. . . . The idea for the wrap-around package came from [redacted] French engineer inventor.”

Counsel states that the petitioner's "inventions appeared in national and international newspapers . . . and generated enormous interest by the packaging and fast-food industries. In other words, he invented such exceptional and desirable products that they made a lasting influence on the field of food packaging." Counsel asserts that the petitioner's products were "used by such distinguished corporations as Burger King, McDonald's, Pizza Hut, Hardee's, and Denny's." While the record contains evidence showing that Burger King test-marketed the petitioner's inventions in certain regions, there is no indication that the [redacted] or [redacted] were fully implemented at the national level or remained in use at the national level as of this petition's filing date. For example, the petitioner provided letters and memorandums from Burger King Corporation, but none of this documentation establishes that the petitioner's inventions progressed beyond test marketing to actual nationwide implementation.³

On appeal, the petitioner submits a letter from [redacted] now a consultant in the foodservice packaging industry, who identifies himself as a former Director of Packaging Development for Burger King in the early 1990's. He states:

Because of the exceptional nature of [the petitioner's] innovations, I approached him in my capacity as the then Director of Packaging Development of Burger King to negotiate the use of his products by Burger King. I am delighted to report that Burger King has been using [the petitioner's] packaging products since that time in the U.S., Europe and Asia.

The record, however, lacks adequate evidence to support [redacted] latter statement. Without evidence from current company executives at Burger King, McDonald's, Pizza Hut, Hardee's, or Denny's affirming extensive nationwide (rather than regional or test market) use of the petitioner's inventions over a sustained period, the evidence of record is not adequate to show that the petitioner's innovations have had a substantial national impact. The evidence shows that Burger King officials viewed the petitioner's work as innovative and worth further market testing, but not to the extent that it rises to the level of a contribution of major significance to the food packaging industry.

A letter of support from [redacted] Professor and Chair of the Department of Packaging Services at Clemson University, states that the [redacted] and [redacted] made a huge splash in the industry," but there is no solid evidence showing that these items survived regional test marketing and were widely utilized at fast-food chains nationwide.

A letter from [redacted] Professor of Marketing and International Business, Pace University, notes that "Burger King, McDonald's, Pizza Hut, and Hardee's have been using [the petitioner's] innovative products at various locations," but the record contains no quantitative data originating from the companies themselves to confirm their national implementation of the [redacted] over a sustained period.

³ The last correspondence from Burger King to the petitioner, dated September 14, 1995, notes that [redacted] focus groups were conducted "both in California and New York." An April 29, 1996 internal Burger King Memorandum discusses "survey results for the [redacted] Market Test in France."

An opinion from an 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.

While the petitioner has certainly enjoyed a productive career as an inventor, simply developing a useful product does not necessarily rise to the level of contribution of major significance in the packaging industry. The petitioner must show that his products have enjoyed significant success and acclaim at the national or international level. In conclusion, we find that the evidence presented in regard to this criterion is not adequate to support a finding that the petitioner's work is nationally or internationally recognized throughout the packaging or food service industries as a major contribution.

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

The record contains evidence indicating that the petitioner was the Chairman and Chief Executive Officer of [REDACTED] during the 1990's, but there is no evidence of this company's continued success subsequent to 2000.⁴ We find no indication that this company enjoys a distinguished national or international reputation.

On appeal, counsel asserts that the petitioner performed in a leading or critical role for Burger King. We note, however, that the petitioner was never an employee of Burger King, nor did he ever serve in an executive or managerial capacity for that company. Counsel cites the letter from [REDACTED] who asserts that the petitioner's "one-of-a-kind packaging designs . . . significantly expanded [Burger King's] market presence in Europe and Asia" and that "[the petitioner's] products have had a massive effect on the commercial success of Burger King." The record, however, contains no quantitative market data to support these assertions. Nor is there any evidence from current Burger King executives indicating the level of commercial success directly attributable to the petitioner. Nor has it been adequately demonstrated that food packaging (rather than other factors such as an effective marketing campaign, an increase in the number of new restaurants, food quality, or service) was the major reason for Burger King's increased market presence in Europe and Asia.

The petitioner was a supplier of paper products to Burger King, but his position was not tantamount to a leading or critical role for that company. The record contains no evidence showing the extent to which the petitioner exercised substantial control over marketing, financial, personnel, managerial or other business decisions executed on behalf of Burger King. Nor is there any indication of the relative importance of the petitioner's role to that of Burger King's executives, or to that of the numerous suppliers or vendors who provided various

⁴ Exhibit D of the petitioner's appellate submission includes a promotional flyer entitled "A New Way of Eating Fast Food." [REDACTED] At the bottom of this flyer appears a website address for the petitioner's company, [REDACTED]. This website, [REDACTED] (accessed June 23, 2005), is for an Australian supplier of products for hairdressing salons. The website states: "[REDACTED] designs all its products to suit everyone from the crème of Australian salons that indulge their clients in the luxuries of the 21st century to the humble local Barber shop." There is no evidence of [REDACTED] technology's continued existence as a company.

services to Burger King during the same period as the petitioner, particularly those suppliers or vendors whose products were fully utilized on a national basis.

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.

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

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.