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U.S. Citizenship
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 03 2005
WAC 01 201 51874

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:
[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

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title.” A director may revoke the approval of a petition on notice “when the necessity for the revocation comes to the attention of this Service.” For the reasons discussed below, we find that the visa petition was initially approved in error and we uphold the director’s revocation of that approval.

The director’s revocation notice stated that the petitioner did not respond to the notice of intent to revoke (NOIR). On appeal, counsel submits evidence suggesting that a response was timely delivered by an express courier service. The response included a ten-page cover letter and 12 exhibits. Counsel submits a copy of that response on appeal. We will discuss the response and additional evidence submitted in this decision.

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 as an alien with extraordinary ability in business. The petition was accompanied by 20 exhibits documenting the petitioner’s business activities in China and the United States. On appeal, the petitioner submitted the aforementioned brief and 12 exhibits. Much of the evidence submitted arose after the petition was filed. Counsel asserts that we should consider this evidence in light of the regulation at 8 C.F.R. § 205.2(b) which states that the petitioner “must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.” Counsel misinterprets the clear language of the regulation. The regulation allows the petitioner to offer evidence in support of the petition and in opposition to revocation. It does not allow us to consider evidence that arose after the petition was filed. The petitioner must still establish his eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12). A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The evidence submitted, counsel’s contentions and the director’s determinations 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.

The director correctly determined that the petitioner had not met this criterion. The petitioner submitted evidence that a factory he managed, Shenyang Iron Cast Pot Factory, was awarded a gold medal at an exhibition celebrating the tenth anniversary of the Chinese patent law in 1995. This factory was also granted a “Golden Cup” award at the 1994 Liaoning National Patent Technology and Products Exhibition for its “luxury health enhanced finely cast iron cookery series.” As the director stated, these awards are not in the petitioner’s current field of business and counsel does not contest that conclusion on appeal. The petitioner also submitted evidence that his company and factory earned five additional awards granted by various Shenyang municipal entities and a Liaoning provincial exhibition. The director correctly concluded that these regional awards did not meet this criterion and counsel does not contest that determination on appeal.

Counsel maintains that the petitioner meets this criterion by virtue of his receipt of honorary citizenship granted by the City of Harrisburg, Pennsylvania in 1997. The certificate states that the petitioner was granted honorary citizenship “[i]n recognition of [his] friendship, cooperation and dedication to exemplary civic service.” The director found that this award was not related to the petitioner’s field. On appeal, counsel claims that the phrase “friendship, cooperation and dedication to exemplary civic service” is a “broad term covering endeavors from all walks of life – business in the instance of Mr. [REDACTED].” Counsel’s claim is unsupported by the record. Besides the certificate of honorary citizenship, the record is devoid of any evidence that would explain the significance of the honor or why it was granted to the petitioner. On page three of counsel’s cover letter accompanying the response to the NOIR, counsel states that “other publications” praise the petitioner for “establishing business relationship[s] with out-of-China firms including the Toba architectural firm from Harrisburg, Pennsylvania.” The only evidence in the record that mentions the petitioner’s dealings with Harrisburg is a short article from the *Shenyang Daily* that states “Vice Mayor Xiangjian Sun held a meeting with Mr. [REDACTED] the Chief Engineer of Roba architectural firm in Harrisburg, Pennsylvania Mr. [REDACTED] was invited to [REDACTED] by [REDACTED] Ltd. to discuss economic and technological cooperation projects related to Shenyang’s construction market.” Petitioner’s Exhibit 12 (I-140 packet). Although the petitioner was then president of the [REDACTED] he does not offer evidence that any cooperative projects actually resulted from the meeting.

Without additional evidence, we cannot determine that the award was granted to the petitioner for his excellent business endeavors, rather than, for example, his service as a cultural liaison between Harrisburg and Shenyang officials. The evidence regarding this honor is thus insufficient to 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 initially submitted evidence that he was one of 69 members of the economic division of the Shenyang City Tenth Committee of the Chinese People's Political Consultative Conference (CPPCC) and that he was appointed to the Shenyang Developing Preschool, Elementary and Middle School Education Foundation. The director determined that these positions did not establish the petitioner's eligibility under this criterion because there was no evidence that the positions were in the petitioner's field or that outstanding achievements were requisite to membership in these organizations. Counsel submits additional evidence on appeal, but these documents are insufficient to establish the petitioner's eligibility under this criterion.

On appeal, the petitioner submits a brief overview of the CPPCC in the form of a printout from the China Internet Information Center. The document explains that the CPPCC is the principal official organization outside of the Chinese Communist Party that is consulted by the government on "significant issues relating to major state policies, the people's livelihood and united front work." The CPPCC consists of "a National Committee and provincial (autonomous regional and municipal) and county level (city) local committees." The National Committee holds an annual plenary session once a year and is invited to attend the National People's Congress as "non-voting delegates." The document does not explain the activities of the provincial and local CPPCC committees. It also does not describe the selection process for members or the CPPCC membership criteria. While membership in the CPPCC National Committee may be a considerable honor, the petitioner's membership is apparently less significant. The petitioner's membership card was issued by the CPPCC Shenyang Municipal Committee and expired in February 1998. A newspaper article states that the petitioner was one of 69 members of the economic division of this regional committee. Counsel asserts that "[o]nly the most accomplished individuals are selected from each field" and that the petitioner "would not have been selected but for his outstanding achievements in business." Yet the record contains no supporting evidence of the CPPCC selection criteria or other materials that would establish that the petitioner was selected based on his outstanding business achievements as recognized by national – not regional – experts.

The documents regarding the petitioner's position on the Shenyang Education Foundation are also insufficient to meet this criterion. The petitioner initially submitted an Executive Certificate issued to the petitioner in 1997 by the Foundation stating that the petitioner was appointed Vice Chief Executive "[b]ased on the by-laws of [the Foundation] and your concern and support of education." A copy of the Foundation's by-laws is not included. Petitioner's exact position is also unclear. While the Executive Certificate states that the petitioner was appointed Vice Chief Executive of the entire Foundation, another document states that the petitioner was appointed "Vice Chief Executive of the Third Executive Committee" of the Foundation. The petitioner does not explain this discrepancy. Regardless of the petitioner's exact title, the record contains no evidence of the substance of his work for the Foundation that would show that he was appointed based on his business expertise. On appeal, the petitioner submits a "Certification" from the "Shenyang Education Trust Fund" stating that the petitioner "is a famous entrepreneur from Shenyang" who, since 1995, "has been acting as the vice chief of Shenyang Education Trust Fund." Counsel claims that this document is sufficient proof that the petitioner was appointed based on his outstanding business achievements because "[d]ecisions regarding fund

management is [sic] an essential component of business and business management.” However, the Chinese name of the Foundation is the same in all three documents relating to the petitioner’s position. The fact that it is translated as a “Trust Fund” in one document submitted on appeal does not change the fact that it is the same organization that issued the previous documents, namely the Shenyang Education Foundation. We cannot accept counsel’s unsupported implication that a variant translation of the Foundation’s name changes the nature of the petitioner’s role within the organization.

Contrary to counsel’s claim, the evidence actually suggests that the petitioner was appointed to the Foundation primarily in recognition of his charitable contributions rather than his business expertise. Included with the petition were three articles from the *Shenyang Daily* reporting that the petitioner donated 100,000 *yuan* to the Foundation on behalf of his company, Shenyang Tonglian Group, and that he pledged to provide 250,000 *yuan* annually to the Foundation’s “Support Poor Student Grant.” The certification document submitted on appeal also states that the petitioner “contributed over a million *yuan* without return, to help thousands of poor students and to build schools, contributing outstandingly to our education development.” These documents evidence the petitioner’s generous and commendable philanthropy, but do not establish his 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 director found that the petitioner did not meet this criterion because the submitted publications “were all over four years old” and did not reflect sustained national or international acclaim. The director incorrectly calculated the age of the articles and we find the evidence sufficient to meet this criterion. The petitioner submitted 20 newspaper articles about him and his business ventures. Most of these articles were published in local or provincial newspapers that do not qualify as major media. However, five articles were published in major national newspapers or trade publications. A June 15, 1998 article published in *Nikkei Business* describes the petitioner’s purchase and dramatic revitalization of previously government owned factories in China. The article is a full-page cover story and features a photograph of the petitioner at his company. The record also contains documentation that *Nikkei Business* is “the world’s largest-selling business daily.” Another cover story article about the petitioner was published in the May 26, 1998 edition of *Financial Times*, a “world business newspaper.” This article chronicles the petitioner’s success in turning around bankrupt companies and quotes his analysis of the economic climate in China and obstacles that foreign investors will face. A 1994 article from *Labor News*, a nationally circulated newspaper in China, describes the petitioner’s successful turnaround of the Shenyang Cast Iron Pot Factory. Two articles from the *People’s Daily*, a major national newspaper in China, also report the petitioner’s success in turning formerly bankrupt factories into profitable enterprises.

The director found the articles insufficient to meet this criterion because they “were all over four years old.” However, the most recent articles were published less than three years prior to the date of filing. Although the petitioner’s Form G-325A states that he moved to the United States in 1996, several articles indicate that the petitioner continued to work and garner national media coverage for his business successes in China as late as June, 1998. Published by major newspapers, the five articles discussed above feature the petitioner and herald his successful business ventures. They also reflect the petitioner’s national acclaim up to a time sufficiently close to the filing of his petition. Accordingly, the petitioner meets this criterion.

(iv) 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.

The petitioner did not originally claim eligibility under this criterion. On appeal, he submits excerpts from a book entitled "Sino-Foreign Modern Enterprise System and Innovation of Chinese Enterprises" that was published by the Enterprise Management Publishing House in Beijing in January, 1998. The book lists the petitioner as a Vice Director and member of the Editorial Committee. Counsel states that the editorial panel was "headed by the Minister of Economics of China" and that "148 persons with outstanding achievement in the field of business and business law were invited from all over China to complete the three-volume book." The record contains no corroborative evidence of these claims. The book names two individuals as chief editors: [REDACTED] and [REDACTED]. The excerpts submitted also do not state that only persons with "outstanding achievement" were invited to work on the treatise. Even if we accept that the petitioner's role was prestigious, it does not in and of itself meet this criterion. Rather, the evidence shows only that the petitioner once judged the work of others in his field in China and does not reflect sustained national acclaim. Accordingly, the petitioner does not meet this criterion.

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

The director erroneously stated that no evidence was submitted for this criterion. In fact, the petitioner submitted numerous documents relevant to this category that warrant discussion. On appeal, counsel lists five documents that were originally submitted and includes six additional exhibits. Although these materials show the petitioner's success as a businessman, they are insufficient to establish that he has made original contributions of major significance in his field.

Counsel first points to the business license of [REDACTED] Group, certification that the petitioner is the legal representative of this company, and the company's business catalogue listing its various subsidiaries. Counsel then cites three publications about the petitioner's company. The first is a newspaper article from the April 20, 1998 edition of the *Liaoning Daily* that lists the petitioner and his company as the fourth-ranked among the "top 100 private enterprises of Liaoning province in terms of overall strength." The second document is an article from the November 10, 2000 edition of the *Shenyang Daily* stating that the petitioner's company was ranked 335th in a list of the top 500 private enterprises as ranked by the National Association of Industry and Commerce. The article explains that the ranking was "based on each enterprise's total revenue." Counsel also points to an article published in the January 4, 1998 edition of the *Shenyang Daily* stating that the petitioner's company was granted a "AAA" credit ranking by the Shenyang Branch of the China Construction Bank. These documents indicate that the petitioner headed a financially successful and reputable company in China, but do not establish that his successful ventures constituted original contributions of major significance to his field.

On appeal, the petitioner submits two documents issued in 2003 regarding the ownership of the Tonglian Group and listing the company's assets. These documents were issued two years after the petition was filed and consequently cannot be considered as evidence of the petitioner's eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner also submits a partial copy of a catalogue for one of his subsidiaries, Shenyang Antibiotic Manufacturer. Articles submitted with the petition reported that the petitioner took over this failing company and turned it into a successful manufacturer. The petitioner also submits an undated brochure for a three-dimensional surface shape measurement system of one of the petitioner's companies, a purported receipt of a patent application for this system and an electronic mail message from [REDACTED] of Honeywell

Aerospace Electronic Systems, stating that his company is “reviewing [the system] for potential use.” This message and the patent application receipt are dated years after the petition was filed and consequently cannot be considered. The petitioner must establish his eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

On appeal, the petitioner includes a document issued by the Shenyang Municipal Government that ranks the petitioner’s company as 14th among the city’s top 30 private enterprises and another article from the *Shenyang Daily* supporting the petitioner’s successful revitalization of the Shenyang Antibiotic Manufacturer. Both of these documents were issued in 2002, a year after the petition was filed and consequently cannot be considered. The petitioner must establish his eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. Finally, counsel submits a 2001 publication by the National Bureau of Taxation ranking the Shenyang Antibiotic Manufacturer as 49th among the “top 100 tax payers of private businesses in China.”

The evidence submitted on appeal demonstrates the financial success of the petitioner’s business, but does not establish that he has made original contributions of major significance in his field. Many of the articles submitted describe the dramatic changes in China’s economy over the last few decades due to increased privatization. We cannot assume that the petitioner is the only Chinese businessman who has successfully taken over formerly government-run companies. While the petitioner’s business ventures have been successful, the record does not show them to be original or unique. In addition, the majority of the evidence reflects the petitioner’s regional renown in the city of Shenyang and Liaoning province during the 1990s. The record does not demonstrate that the petitioner’s business accomplishments made a significant impact throughout China or in the United States where he had been doing business for over four years prior to filing his petition. For these reasons, the petitioner does not meet this criterion.

We note that the record also contains a letter from Professor [REDACTED] Vice President of Northeastern University in Shenyang. Counsel submitted this letter on appeal requesting that it be considered comparable evidence under the sixth criterion. The letter is more relevant to the present category. Professor [REDACTED] states that the petitioner “is a famous private-business entrepreneur in China, and a hard-to-find business talent” and that the university’s Business Administration Department adopted the petitioner’s “Tonglian Phenomenon” and “Tonglian Model” as teaching materials for graduate students. He adds that the petitioner was invited to lecture at the university on “China Private Business and the Hope for Development.” Professor [REDACTED] also notes that the university’s “economic research center has been following Tonglian Group in the development of the subject ‘The research on the Development of Private Enterprise.’” Professor Lou’s letter is dated March 8, 2003 and does not state the date of the petitioner’s lecture or when the university began using the petitioner’s success as teaching and research subjects. If those contributions occurred prior to the filing of his petition, they might evidence the petitioner’s major contributions to his field although the letter would still only reflect the regional – not national – influence of his accomplishments.

(vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As stated above, counsel requested that we consider Professor Lou’s letter as comparable evidence relevant to this criterion pursuant to 8 C.F.R. § 204.5(4). The regulation clearly mandates that comparable evidence is only considered when the other criteria “do not readily apply to the beneficiary’s occupation.” As the abundant record in this case shows, many of the regulatory criteria readily apply to the field of business.

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

The director incorrectly stated that no evidence was submitted for this criterion. Numerous documents submitted with the petition and on appeal attest to the petitioner's leading role for the Shenyang Tonglian Group which enjoys a distinguished reputation. The director did not consider this evidence in relation to this category and we find the record sufficient to meet this criterion.¹

The petitioner submitted the official registration of the Shenyang Tonglian Group that lists the petitioner as the company's legal representative. The company's catalogue features a picture of the petitioner on the first page as president. Thirteen newspaper articles discuss the success of the petitioner's company or its subsidiaries. Almost all of these articles name the petitioner and identify him with the featured enterprise. Other documents demonstrate that the petitioner's company enjoys a distinguished reputation. The company was rated a "First Grade Enterprise" by the Shenyang Industry and Commerce Administrative Bureau and the Shenyang Private Enterprises Association. The company also received an "AAA" credit ranking by the Shenyang Branch of the China Construction Bank. Other evidence shows that the company's regional renown has garnered limited national regard as well. The Tonglian Group was ranked 335th among China's top 500 private enterprises. National newspapers have praised the company's policies and accomplishments. The record thus establishes the petitioner's eligibility under 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.

Petitioner did not initially claim to meet this criterion and the director stated that no evidence was submitted for this category. On appeal, counsel refers to a document ranking the Tonglian Group among the top 100 private business taxpayers in China. Counsel asserts that this ranking demonstrates that the petitioner's "personal remuneration is among the small percentage in China receiving high financial rewards." Counsel's assertion is unsupported by the record. The petitioner submits no proof of his income in China. In connection with his Form I-485, the petitioner submitted U.S. income tax returns for the years 1996 through 2000 that show that his gross income was \$9,102 in 1996 and increased to only \$39,174 in 2000. By using the present tense, counsel intimates that the petitioner continues to draw a salary from the Tonglian Group in China, but the record contains no evidence of that income. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act 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 petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the petitioner is a successful businessman who led a distinguished company and received significant media coverage in China. However, the record does not establish that he was an alien of extraordinary ability at the time of filing. Accordingly, the appeal will be dismissed.

¹ On appeal, counsel claims that the petitioner also meets this criterion by virtue of his position with the Shenyang Education Foundation and his regional CPPCC membership. As discussed above under the second criterion, the record contains insufficient information regarding the petitioner's role in both of these organizations.

ORDER: The appeal is dismissed.