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U.S. Citizenship
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FILE: EAC 04 010 51841 Office: VERMONT SERVICE CENTER Date: **SEP 07 2005**

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.

Maie Johnson

S 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 to classify 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 of extraordinary ability in business. The director determined the petitioner had not established that the beneficiary has earned 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 the beneficiary has earned sustained national or international acclaim at the very top level.

On appeal, counsel cites the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii), however, these criteria relate to the "nonimmigrant" extraordinary ability classification. The appropriate citation of the corresponding regulation for extraordinary ability classification pursuant to section 203(b)(1)(A) of the Act is 8 C.F.R. § 204.5(h)(3).

This petition, filed on October 14, 2003, seeks to classify the beneficiary as an alien with extraordinary ability as the president of a company that distributes air-fresheners and other automotive accessories to car washes, detailing operations, lube centers, convenience stores, gas stations, and auto parts stores.

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 has submitted evidence pertaining to the following criteria.

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.

The director's decision stated:

The record contains evidence to establish that the beneficiary and his company have appeared in various publications, including *Modern Car Care* and *America's Car Care Business*. However, the articles are about selling and marketing car care products, and none of the articles are specifically about [the beneficiary] or the company. While he is quoted in several of the articles, they are not about his success and do not support the claim that he is an alien of extraordinary ability in business.

In order for published material to meet this criterion, it must be primarily about the beneficiary 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. An alien would not earn acclaim at the national or international level from a local publication or from a publication with limited distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted articles of which the beneficiary was the author such as "[REDACTED]" (*Modern Car Care*, June 2000) and "[REDACTED]" (*Modern Car Care*, December 2001). The beneficiary's authorship of articles or promotional materials will be addressed under a subsequent criterion.

The following evidence submitted by the petitioner represents paid advertisements or promotional pieces rather than published material about the alien:

1. Page 94 of the April 2001 issue of *Professional Car Washing and Detailing* (author not provided)
2. Pages 92 and 95 of the May 2001 issue of *America's Car Care Business* (author not provided)
3. February 2002 issue of *Modern Car Care* (page number and author not provided)
4. Page 90 of the March 2002 issue of *CSP Convenience Store / Petroleum*² (author not provided)
5. Page 37 of the October 2002 issue of *CSP Convenience Store / Petroleum* (author not provided)

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county. Furthermore, a petitioner cannot satisfy this criterion merely by purchasing an advertisement in a trade publication.

² *CSP Convenience Store / Petroleum* identifies itself as a "SUPPLIER SOURCEBOOK."

Items 1 through 5 above reflect promotional exposure rather than national or international acclaim.

The petitioner submitted only the first page of an article entitled "Pina Colada or New Car Smell? Follow your nose to air freshener success" in the September 2000 issue of *Modern Car Care*. The incomplete portion of the article that was submitted devotes 15 sentences to the beneficiary. From the limited material presented, we are unable to determine if the beneficiary and his company were the main subject of this article.

An article entitled "Using the EXPRESS Lane: What your express detailing package should include and how to market it" in the April 2001 issue of *America's Car Care Business* offers quoted advice from the beneficiary but it is not about him or his company. The petitioner did not provide the name of the author of this article as required by the regulation.

A newsletter entitled *Northeast Carwasher* includes a brief article about the New England Carwash Association's (NECA) Annual Spring Table Top Show and an upcoming NECA golf outing (the beneficiary is not mentioned in the article). Four photographs of individuals attending the Spring Table Top Show appear below the article, one of which pictures the beneficiary. The photograph picturing the beneficiary, however, is not qualifying published material about the alien.

The petitioner submitted a portion of an article "continued from page 20" of the March 2002 issue of *Professional Car Washing and Detailing*. The incomplete article lists multiple vending products becoming available in 2002. Six sentences about the beneficiary's fuzzy bear and rabbit air fresheners appear on page 22 along with information about products from at least four other different companies. From the limited material presented, it is apparent that the beneficiary and his company were not the main subject of this promotional piece.

A three-page article entitled "The Best Buys Come to Those Who Wait: Capitalize on customer wait time with strong lobby sales" in the April 2002 issue of *Modern Car Care* devotes only eight sentences to the beneficiary. Several other individuals are named in this article and they receive equal or greater attention.

The petitioner submitted only the first page of an article entitled "Follow the Latest Trends in Vending: Operators are having success with non-traditional vending products" in the August 2002 issue of *Modern Car Care*. The incomplete portion of the article devotes less than ten sentences to the beneficiary.

The petitioner submitted a portion of an article from the January 6, 2003 issue of *Convenience Store News*. The incomplete portion of the article devotes only eight sentences to the beneficiary. Furthermore, the title and author of the article are not visible on the two pages that were provided. We also note that an advertisement for the beneficiary's company appears on the bottom of the second page. From the limited material presented, it is apparent that the beneficiary and his company were not the main subject of this article.

A two-page article entitled "Freshen Up Sales: Air fresheners drive self-serve vending" in the February 2003 issue of *Modern Car Care* devotes thirteen sentences to the beneficiary. Several other individuals are named in this article and they receive equal or greater attention.

A two-page article entitled “Lobbying for Business: Are lobby sales right for your carwash?” in the April 2003 issue of *Modern Car Care* devotes less than ten sentences to the beneficiary. Several other individuals are named in this article and they receive equal or greater attention.

The plain wording of this criterion requires “published materials about the alien.” If the beneficiary himself is not the primary subject of the preceding articles, then such articles fail to demonstrate his individual acclaim. Furthermore, the petitioner has not provided evidence regarding the volume of distribution of the preceding publications. Without quantitative data showing their significant national or international distribution, we cannot conclude that the preceding publications qualify as “major trade publications.”

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

The petitioner submitted several letters of support, the majority of which are from individuals with whom the beneficiary has had a business relationship.

An exception is the letter from [REDACTED] Professor of Management and International Business at Pace University, who states:

I am submitting this opinion in support of [the beneficiary’s] application for an O-1 visa, as an individual of outstanding and exceptional ability in the field of business.

* * *

[The beneficiary’s] company distributes what is basically a commodity product in one segment of the automotive industry – that is, accessories such as air fresheners for commercial vehicles. His clients are carwashes, gas stations, convenience stores and similar distribution points.

* * *

What is interesting about the case is the evidence of [the beneficiary’s] entrepreneurial skills and determination. A newcomer to the United States, beginning with no resources, [the beneficiary] built a remarkable business – now one of the top five firms in this specialty field – and won a fine reputation in the community at the same time.

The letters of support for [the beneficiary’s] petition as a businessman of outstanding and exceptional capacity all underline his business skills, which is to be expected, but also attest to his personal qualities as well – diligent, determined, and hard-working. To this I would add innovation. The materials I have reviewed strongly indicate a keen sense of marketing innovation and intelligence and an ability to redefine a product and introduce it into new markets.

Dr. Blank does not state that he was aware of the beneficiary’s standing in the business field prior to being requested to review the documentation supporting this petition. Dr. [REDACTED] asserts that the beneficiary is a skilled businessman, but he does not specifically identify or address the beneficiary’s “business-related

contributions of major significance in the field.” Nor does Dr. [REDACTED] state that the beneficiary is nationally or internationally acclaimed in the automotive accessory distribution industry. An opinion from an expert who was not previously aware of the alien, and is simply reviewing testimonials or a 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 nonimmigrant O-1 petition, but is not required in this proceeding.

[REDACTED], Key Accounts Executive, Car-Freshner Corporation, states:

[The beneficiary] has been a customer of Car-Freshner Corporation since the inception of his distributorship (well over 5 years). [The beneficiary] is a highly motivated and productive person.

During the period that [the beneficiary] has been our customer, I have had the pleasure of seeing his company start from the beginning to a very successful operation today. This could not have been accomplished without a lot of hard work and dedication.

[REDACTED], National Sales Manager, [REDACTED] Molded Products, Inc., states that she has known the beneficiary for five years as a business partner. She further states:

[The beneficiary] is well known in this business. . . . He has built his company into one of the most successful businesses in our industry. [REDACTED] is one of the top (5) companies in the United States in this specialty field, and this is all due to the hard work, talent and extraordinary business sense of [the beneficiary]. He is the company. He has clearly risen to the very top of his field.

The petitioner submitted additional letters of support from [REDACTED] of [REDACTED], Inc., [REDACTED] of The Penray Companies, Inc, [REDACTED] of KAM Marketing, Lou Ball of Lou Ball & Associates, and [REDACTED] and [REDACTED] of [REDACTED] Associates, Inc. These individuals all state that they are business associates of the beneficiary or that they have worked with him on projects of “mutual benefit.” Each of their letters includes the exact same observations as cited above in [REDACTED] letter. It is not clear who is the actual author of their common statements, but it is highly improbable that all six of these individuals independently formulated the exact same wording. It is acknowledged that these individuals have lent their support to this petition, but it remains that at least six of them did not fully prepare their own observations. We further note that none of these letters specifically identify or discuss any of the beneficiary’s original business contributions that have had a lasting or wide-ranging impact in the automotive accessory distribution industry.

Many of the individuals offering letters of support state that [REDACTED] Corp. is “one of the top (5) companies” in its specialty field. The record, however, includes no quantitative evidence to support their assertion. For example, the petitioner has not provided comparative sales revenue figures or market share data for [REDACTED] Corporation in relation to the top companies in its industry. We cannot ignore the statute’s demand for “extensive documentation” of sustained national or international acclaim.

Aside from the advisory opinion letter from Dr. [REDACTED] the remaining letters of support were all written by individuals who have had a business relationship with the beneficiary. With regard to the personal recommendation of individuals with direct ties to the beneficiary, the source of the recommendations is a highly relevant consideration. Such letters are not first-hand evidence that the beneficiary has earned sustained acclaim for his contributions beyond his professional contacts. If the beneficiary's reputation is primarily limited to his immediate business acquaintances, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

While the beneficiary has performed admirably as business owner and marketer of automobile accessories such as air fresheners, simply running a successful company does not rise to the level of contribution of major significance in business. The beneficiary engages in what is, inherently, a business endeavor involving yearly sales of perhaps a few million dollars. There is no quantitative evidence showing that the beneficiary's company enjoys a greater market share or has been significantly more successful at the national level or international level than other businesses that distribute automobile accessories. In conclusion, we find that the evidence presented in regard to this criterion is not adequate to support a finding that the beneficiary's work is nationally or internationally recognized throughout his industry as a major contribution.

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 articles of which the beneficiary was the author such as "Go On, Be a Sell-Out!" (*Modern Car Care*, June 2000) and "R.R. Lalena Corporation" (*Modern Car Care*, December 2001). The latter article appeared under the heading "COMPANY PROFILE" and listed contact information for the beneficiary's company. It is unclear as to whether the company profile of [REDACTED] Corporation appearing in the December 2001 issue of *Modern Car Care* was a paid promotional advertisement. The petitioner submitted another company profile of [REDACTED] Corporation appearing on page 37 of the October 2002 issue of *CSP Convenience Store / Petroleum*. As noted previously, *CSP* identifies itself as a "SUPPLIER SOURCEBOOK," therefore it is rather likely that the beneficiary paid for his company's profile to be included in the *CSP* issue. The remaining articles from the April and August 2002 issues of *Modern Car Care* quote the beneficiary, but these articles were clearly authored by [REDACTED] and Tracy Charuhas rather than the beneficiary.

Therefore, the only substantive article submitted under this criterion is the one-page article in *Modern Car Care* entitled "Go On, Be a Sell-Out!" There is no evidence of the industry's reaction to this article, nor any indication that it was viewed as significantly influential. Furthermore, without quantitative data showing that *Modern Car Care* has significant national or international readership volume, we cannot conclude that it qualifies as a "major trade publication."

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 beneficiary serves in a leading role for his company, but the record lacks adequate documentation (such as comparative market share data or sales figures) showing that [REDACTED] enjoys a distinguished national or international reputation in its industry. The beneficiary,

like any other company president, plays a significant role in directing the activities of his company. While the record portrays the beneficiary as starting and running a successful business operation, it does not establish that the beneficiary exhibits a degree of expertise that places him above most other company executives (including those who run publicly traded companies) at the national or international level. We find that the petitioner's evidence is not adequate to demonstrate that the beneficiary has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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 the beneficiary 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 beneficiary 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 beneficiary'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.