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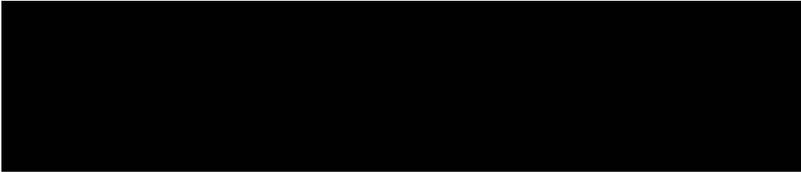


FILE: WAC 05 027 53067 Office: CALIFORNIA SERVICE CENTER Date: **MAY 09 2006**

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, Chief
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. 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 or her 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 November 9, 2004, seeks to classify the petitioner as an alien with extraordinary ability as an "energy transmission, water and power generation, and oil and pipeline expert."

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.

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. 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 letters dated July 22, 2005 and August 2, 2005 from [REDACTED] Deputy Secretary General, Turkish Contractors Association (TCA). These letters confirm the petitioner's membership status and vice-chairmanship in the TCA and discuss the construction volume dollar amounts necessary for construction companies to be admitted to the TCA. The record, however, does not include the membership bylaws or official admission requirements for individuals. While the dollar amounts listed reflect that member companies have been involved in a large volume of construction projects, we do not find that past work experience or construction volume previously undertaken by one's company constitutes an individual alien's outstanding achievement for purposes of this criterion.¹ There is no indication that admission to membership in the TCA required outstanding individual achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

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 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. An alien would not earn acclaim at the national or international level from a local publication. 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.²

¹ For example, according to the criteria cited in the July 22, 2005 letter, a company could completely replace its executive leadership, but its membership in the TCA would continue based on prior business volume. The argument that the company's newly appointed executive leadership (now holding TCA membership) had demonstrated outstanding achievement through construction volume achieved under the company's prior executives would be without merit.

² 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.

The petitioner submitted a ranking chart and an accompanying article from the October 1999 issue of *Capita Magazine* indicating that the petitioner's company, NTF, ranked third among the largest dam construction companies for completed contract operations between 1994 and 1998. The petitioner also submitted a ranking chart and an accompany article from the newspaper *Hurriyet* indicating that he ranked ninth among "tax payment record holders" (1999). The petitioner, however, was not the primary subject of these articles, the authors of these articles were not identified as required by this criterion, and it has not been established that these publications qualify as major media. Further, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a "full" English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The incomplete English language translations accompanying the material from *Capita Magazine* and *Hurriyet* were not in compliance with the regulation.

The petitioner also submitted an article relating to an interview he gave for the July 13, 1999 issue of *Guney Hakimiyet*. The petitioner, however, has not established that this publication qualifies as major media. Further, we note we note that the statute and regulations required the petitioner's acclaim to be sustained. The record, however, includes no evidence showing that the petitioner has been the subject of major media coverage subsequent to 1999.

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 regulation at 8 C.F.R. § 204.5(h)(3) provides that a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, evaluating the work of established professionals as a member on a national panel of experts is of far greater probative value than evaluating the work of one's subordinates.

On appeal, counsel states:

On June 2, 2005 we have submitted alien's extraordinary work containing photos and contracts showing the amounts, timing and project started and completed which uprise the billion dollars contracts and profits to his country where holds him rank 9th TAXPAYER as well as Vice Chair of Board of Directors of the TCA all of which are available for a person with extraordinary judgment of work of others in his field [sic]. [The petitioner] has judged and managed and evaluated as many as billion dollars contracts which seek his the JUDGEMENT OF WORKS OF OTHERS otherwise he would not be able to earn the TITLE OF VICE CHAR [sic] AND CHAIR ADVISOR for International Contracts with Board of Directors of an organization whose members are the TURKISH TOP 140 CONTRACTING COMPANIES [sic].

Contrary to counsel's claim, the June 2, 2005 submission did not include the actual contracts, but rather photographs and accompanying data pertaining to various projects undertaken by the petitioner's company. The plain wording of this criterion, however, requires "[e]vidence of the alien's participation . . . as a judge of

the work of others.” In this instance, there is no evidence of the petitioner’s specific activities in which he evaluated the work of others. For example, the record lacks information regarding the names of the individuals he evaluated. We cannot ignore that the statute and regulations require “extensive documentation” of sustained national or international acclaim. Without evidence showing that the petitioner’s activities involved evaluating established professionals at the national or international level, we cannot conclude he meets this criterion.

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 has invented the AUTOMATION SYSTEM which is the most sophisticated construction technology in the world where you can monitor all the construction fields [sic] activities from wherever in the world your are live [sic].” Counsel, however, fails to identify specific evidence in the record that supports this claim. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without extensive documentation showing that the petitioner’s work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of a contribution of major significance.

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

As Vice Chairman of the Board of Director’s of the Turkish Contractors Association and as Chairman of the Board of Director’s and President of Eren Construction Trade and Industry Company, Ltd., the petitioner appears to satisfy this criterion.

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

In response to the director’s request for evidence, the petitioner submitted a letter from ██████████ General Manager, Eren Group of Companies, Ltd., dated April 22, 2005, stating: “This is to advise that as President and Chairman of Board of Directors of EREN CONSTRUCTION AND TRADE COMPANY AND NTF COMPANY, [the petitioner] receives an annual salary of U.S. \$2,500,000.00 paid to him in three installments at the end of each quarter.” The petitioner also submitted certificates and an October 1999 newspaper article relating to tax amounts paid by the petitioner’s company, but these amounts do not relate to the petitioner’s individual compensation. Regarding the salary installments cited in ██████████ April 22, 2005 letter, we note that the record lacks supporting financial documentation (such as payroll records, bank transactions, or income tax forms) to support his claim regarding the petitioner’s compensation. Nor is there evidence showing the petitioner’s actual earnings for any specific period of time prior to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971).

In this case, we concur with the director's finding that the petitioner has failed to demonstrate that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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.