



U.S. Citizenship
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FILE: [REDACTED]
EAC 06 009 52231

Office: VERMONT SERVICE CENTER

Date: NOV 29 2006

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

➤ Robert P. Wiemann, Chief
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 (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. 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 argues the petitioner has submitted extensive evidence demonstrating that he has fulfilled the requirements for classification as an alien with extraordinary ability in Business Administration.

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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 September 30, 2005, seeks to classify the petitioner as an alien with extraordinary ability in “Business Administration.” In a February 22, 2006 letter responding to the director’s notice of intent to deny, counsel states that the petitioner has been the Chief Executive Officer (CEO) and Vice Chairman of the Board of Directors of the Guangming Paper Product Corporation in China from May 1995 to present. The record, however, reflects that the petitioner has been residing in the United States since July 14,

2000.¹ The record fails to explain how the petitioner is able to serve as CEO for this corporation in China (which counsel asserts “has the market value of 13,121,740.02 RMB”) while residing in the United States without legal status since August 2000. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. Given the length of time between the petitioner’s arrival in the United States and the petition’s filing date (more than five years), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a business executive in this country.

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

The petitioner submitted the following:

1. Certificate issued by the “Liaoning Provincial Authority for Building Materials” stating that the petitioner’s paper entitled “The Knowledge and Practice in Management” won the “First Prize for Distinguished Paper” (March 10, 1993)
2. Certificate issued by the “Liaoning Provincial Authority for Building Materials” stating that the petitioner’s paper entitled “Strategy in the Story of Long Zhong Countermeasure” won the “First Prize for Distinguished Paper” (September 3, 1994)
3. Certificate issued by the “Government of Tieling City” stating that the petitioner received a “1993 Citywide Distinguished Personnel in Business Administration” award (February 20, 1994)
4. Certificate issued by the “Government of Tieling City” stating that the petitioner received a “Citywide Award of ‘Distinguished Entrepreneur’ in 1993” (June 9, 1994)
5. Certificate issued by the Tieling City Labor Union stating that the petitioner received a “Labor Union’s Distinguished Youth” award (June 1994)
6. Certificate issued by the “Government of Tieling City” stating that the petitioner received a “Citywide Award of ‘Distinguished Personnel in Business Administration’ in 1993” (February 1994)

¹ According to Part 3 of the Form I-140 petition, the petitioner lists his “Date of Arrival” in the United States as July 14, 2000 and his “Current Nonimmigrant Status” as “None.” The petitioner’s Form G-325A, Biographic Information, reflects that he has been residing at his present address in Flushing, New York since August 2000.

7. Certificate issued by the "Government of Tieling City" stating that the petitioner received a "Citywide Award of 'Distinguished Personnel in Business Administration' in 1991" (February 1992)
8. Certificate issued by the "Government of Tieling City" stating that the petitioner received a "Citywide Award of 'Distinguished Entrepreneur' in 1993" (January 1994)
9. Certificate issued by the "Government of Tieling City" stating that the petitioner received a "Citywide Award of 'Model Worker' of year 1991" (May 1992)
10. Certificate issued by the "Government of Tieling City" stating that the petitioner received a "Citywide Award of 'Model Worker' of year 1990" (May 1991)
11. Certificate issued by the "Government of Tieling City" stating that the petitioner received a "Citywide Award of 'Model Worker' of year 1992" (May 1993)
12. Certificate issued by the "Government of Tieling City" stating that the petitioner received a "1989 Citywide Distinguished Personnel in Business Administration" award (February 1990)
13. Certificate issued by the "Tieling City Labor Union" stating that the petitioner received a "Distinguished Personnel in Business Administration" award (June 1994)
14. Certificate issued by the "Liaoning Construction Department" stating that the petitioner received a "'1993 Distinguished Worker' of the Construction System of Liaoning Province" award (April 5, 1994)
15. Certificate issued by the Tieling Cement Product Plant stating that the petitioner received a "1993 Distinguished Personnel" award (March 1994)
16. Certificate issued by the "Tieling Labor Union" stating that the petitioner received a "1993 Distinguished Worker" award (January 10, 1994)
17. Certificate issued by the "Tieling Labor Union" stating that the petitioner received a "1993 Youth Model" award (January 10, 1994)
18. Certificate issued by the "Liaoning Construction Department" stating that the petitioner received a "'1992 Distinguished Worker' of the Construction System of Liaoning Province" award (April 8, 1993)
19. Certificate issued by the "Liaoning Construction Department" stating that the petitioner received a "'1992 Distinguished Personnel' of the Construction System of Liaoning Province" award (March 21, 1993)
20. Certificate issued by the Tieling Cement Product Plant stating that the petitioner received a "1992 Distinguished Personnel" award (February 1993)
21. Certificate issued by the "Tieling Labor Union" stating that the petitioner received a "1991 Youth Model" award (March 15, 1992)
22. Certificate issued by the Tieling Cement Product Plant stating that the petitioner received a "1991 Distinguished Worker" award (March 1992)
23. Certificate issued by the "Government of Tieling City" stating that the petitioner received a "1989 Citywide Model of Business Administration" award (February 16, 1992)
24. Certificate issued by the Tieling Cement Product Plant stating that the petitioner received a "1990 Distinguished Worker" award (February 1991)

The preceding award certificates reflect local or provincial recognition rather than national or international recognition. There is no evidence of contemporaneous publicity surrounding these awards or evidence showing that they command a substantial level of recognition. Further, the record includes no evidence that would demonstrate the number of recipients, the criteria for granting the awards, the level of expertise of

those considered, and the number of individuals eligible to compete. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence showing that the awards presented under this criterion enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or print media to establish that the preceding awards are nationally or internationally recognized.

The petitioner also submitted a newspaper article appearing in *Northern Liaoning Economy Daily* naming the petitioner a "Top Ten Entrepreneur of Liaoning Province." The plain language of this criterion, however, requires the petitioner's receipt of "nationally or internationally recognized prizes or awards for excellence in the field of endeavor." While the petitioner may have been featured in this regional publication, there is no evidence of his receipt of a prize or award. The petitioner's inclusion in this publication is far more relevant to the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii) and will be further addressed below. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and published materials about the alien, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

In addition to the preceding deficiencies, the record includes no evidence showing that the petitioner has won any significant awards in China or the United States subsequent to 1995. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned in China during the early 1990's.

In light of the above, the petitioner has not established that he meets this criterion.

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 what is alleged to be his membership card for Entrepreneurs Association of Tieling (EAT). This is a local entrepreneurial association rather than a national or international association. Further, the record does not include the membership bylaws or the official admission requirements for the EAT. There is no evidence showing that admission to membership in this organization required outstanding

achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets 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 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 or from a publication in a language that most of the population cannot comprehend. 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

As stated previously, the petitioner submitted an article appearing in *Northern Liaoning Economy Daily* naming him a "Top Ten Entrepreneur of Liaoning Province." The author of this material, however, was not identified as required by this criterion. Nor has the petitioner submitted evidence showing that this publication qualifies as major media. Thus, the petitioner has not established that he meets this criterion.

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 submitted a certificate allegedly issued by the Chinese Import and Export Product Quality Certification Center stating that he "finished his study in the courses of ISO9000 Quality Management System Auditor and passed the exam." This document includes, no address, phone number, or any other information through which an official at this organization may be contacted. The plain wording of this criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." The record, however, includes no evidence of the petitioner's activities as a Quality Management System Auditor. For example, the record lacks information regarding the nature of his duties in this capacity, the projects he audited, the names of individuals whose work he reviewed, and their level of expertise. We do not find that serving as a Quality Management System Auditor constitutes judging the work of others for purposes of this criterion. Without evidence showing that the petitioner participated in evaluating established business professionals at the national or international level, we cannot conclude he meets this criterion.

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 photocopies of what are alleged to be papers he authored entitled "The Knowledge and Practice in Management" and "Strategy in the Story of Long Zhong Countermeasure." Pursuant to 8 C.F.R.

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.

§ 103.2(b)(3), any document containing foreign language submitted to 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 preceding papers were not accompanied by certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence identifying the name of the publication in which these papers appeared or evidence showing that the papers had substantial national or international readership. The petitioner also submitted two certificates allegedly issued by the "Liaoning Provincial Authority for Building Materials" reflecting that each paper was awarded a "First Prize for Distinguished Paper," but, as stated previously, such awards reflect provincial recognition rather than national or international recognition. There is no evidence of the greater field's reaction to these papers at the national or international level.

In light of the above, the petitioner has not established that he meets this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a document entitled "Certification of Incorporation and Ownership of Shares" stating:

This is to certify that:

1. [The petitioner] incorporated Guangming Paper Product Corp., Ltd. in May 1995
2. [The petitioner] has been the CEO and Vice Chairman of the Board of Director of Guangming Paper Product Corp., Ltd.
3. The company's total market value is 13,121,740.02 RMB. And [the petitioner] owns 49% of the shares
4. The company's after-tax profit in 2005 was 154,269.90 RMB. [The petitioner] was distributed 75,592.25 RMB

(Attached is a certified copy of the company's financial statement in 2005)

Seal: 
02/06/2006

The preceding document includes, no address, phone number, or any other information through which an official at this corporation may be contacted. Although this document states "Attached is a certified copy of the company's financial statement in 2005," the record includes no such evidence. The "Certification of Incorporation and Ownership of Shares" document further states that the petitioner "has been the CEO and Vice Chairman of the Board of Director of Guangming Paper Product Corp.," but there is no supporting evidence showing that this company has earned a distinguished national or international reputation.

As stated previously, the petitioner submitted an article appearing in *Northern Liaoning Economy Daily* naming him a “Top Ten Entrepreneur of Liaoning Province.” This article states: “During [the petitioner’s] employment as CEO of the Tieling Cement Products Plant in 1994, this plant had the highest income of 900,000,000.00 RMB.” On appeal, counsel asserts that the Tieling Cement Products Plant is “the largest state-owned cement plant in China and one of the largest construction material companies in Asia.” The record, however, includes no evidence to support these assertions. 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).

Section 203(b)(1)(A) of the Act requires “extensive documentation” of sustained national or international acclaim. Neither the article appearing in *Northern Liaoning Economy Daily* or the “Certification of Incorporation and Ownership of Shares” document is adequate to demonstrate that the petitioner has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim. Thus, the petitioner has not established that he meets 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.

The aforementioned “Certification of Incorporation and Ownership of Shares” document states that the petitioner “was distributed 75,592.25 RMB” of the company’s “after-tax profit in 2005.” The record, however, includes no supporting financial documentation (such as payroll records or income tax forms) to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the plain wording of this criterion requires the petitioner to submit evidence of high remuneration “in relation to others in the field.” The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner earns a level of compensation that places him among the highest paid business executives in the United States or China. Thus, the petitioner has not established that he meets this criterion.

In conclusion, we find that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. Further, the record does not establish that whatever acclaim the petitioner had in China in the early 1990’s has been sustained since his entry into the United States in 2000.

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.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” The record includes no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.