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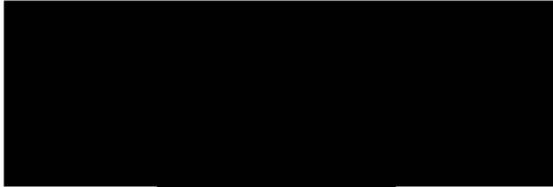
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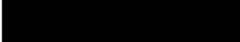
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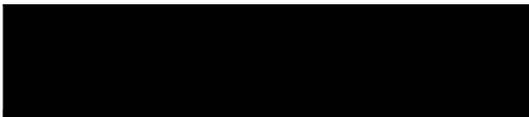
Office: TEXAS SERVICE CENTER

Date: OCT 10 2006

SRC 05 187 51235

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, Texas 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.

On appeal, counsel argues that the petitioner "meets the definition 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):

Initial evidence: 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. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

- (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;
- (iii) 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;
- (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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This petition, filed on June 21, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a trade consultant.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner claims to meet the following criteria.

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

The petitioner submitted letters of support from a current subordinate and two former governmental colleagues.

[REDACTED], Vice President,
of his career in the private sector. He further states:

states that he has known [the petitioner] for most

I was a Vice President of [REDACTED] from 1998 to the present under [the petitioner], who was the President. . . . Currently I am a safety, health and environmental consultant for a number of construction firms in the U.S.

I can support everything that [the petitioner] has stated in his resume for the period 1998 to the present. He is an outstanding professional with unique ability to define major trade barriers; figuring out how to meet the administrative requirements of any given trade restriction (even when it is in another language); and ultimately succeeding in successfully representing our clients while achieving legally a minimal fiscal impact for the client.

I was impressed with his ability to take arcane bureaucratic procedures/administrative practices and articulate them into something that was understandable to corporate professionals. On more than one occasion, he collected up to 42 different documents for 6 different Brazilian government bodies, coordinated each submission some on a parallel basis, most sequentially. In one case, which I remember well he successfully cleared customs, with the assistance of an associate of his in Brazil, for an oil field drilling vessel in three business days, despite the fact that the Brazilian customs officials were on strike (i.e. a work slow down). The client was a major oil field supply company (OSCA). Further complicating the case was the fact that the vessel was brought into Brazil under REPETRO (a taxes and duties exemption program for oil field equipment), which made the paperwork and approvals even more onerous. This saved the client \$8,500,000.00 in taxes and duties and was done completely legally. As [the petitioner] always says trade practices are in "mastering the details."

[The petitioner] I am certain was a superior "trade law and policy expert" in the public sector. It is a credit to his ability that he was able to re-engineer himself such that he became an expert consultant to the private sector looking as it were "through the other end of the telescope" at other countries "border barriers" and "bureaucratic procedures and administrative practices" which affect the movement of oil and gas exploration and production equipment as well as the technicians who operate the equipment. He is a superior asset to the oil and gas industry in the U.S. – an expert with "extraordinary abilities."

[REDACTED] states that he "can support everything that [the petitioner] has stated in his resume for the period 1998 to the present," but the record includes no copy of the petitioner's resume. While the petitioner may have performed admirably on projects undertaken by [REDACTED] his ability to significantly impact the field beyond his company's immediate projects has not been demonstrated. [REDACTED] further states that the petitioner "is a superior asset to the oil and gas industry in the U.S.," but the record includes no letters of support from U.S. officials to corroborate his assertion. We accept that the petitioner has earned the respect of his subordinate, but the letter from [REDACTED] is not adequate to demonstrate that the petitioner's past accomplishments rise to the level of a contribution of major significance in his field.

states that she knew [the petitioner] for most of his career in Canadian Public Service. She further states:

I was his immediate supervisor from 1982 to 1985 while I was a Director in the Department of Finance.

* * *

I can support everything that [the petitioner] has put in his resume for the period 1974 to 1987. He was an outstanding professional with a unique ability to isolate and define major economic problems facing Canada, subsequently arguing for policy corrections and pursuing and supporting those corrections through to their implementation (e.g. the Canada/U.S.A. Free Trade Agreement).

* * *

[The petitioner's] analytical skills and his ability as an advocate were borne out in the context of the Cabinet debate surrounding ratification of the Law of the Sea Treaty in 1984. Once again, in the face of formidable opposition, [the petitioner] persuaded then Minister of Finance, [redacted] to oppose ratification by Canada on the basis of the interventionist nature of the treaty's resource exploitation provisions and its extraterritorial taxation provisions. [The petitioner] stood alone among colleagues and Ministers from other departments in his opposition to the treaty but was strongly supported by [redacted] then Associate Deputy Minister of Finance. After the Minister of Finance's intervention in Cabinet, based on [the petitioner's] brief, Canada declined to ratify the Law of the Sea treaty. Moreover, Canada did not ratify the treaty until November 7, 2003 after major changes consistent with the advice previously offered by [the petitioner] had been made.

[The petitioner] worked closely with the Right Honourable [redacted] early in his career in the Department of Finance, before [redacted] succeeded Prime Minister Trudeau. Shortly thereafter, [redacted] was defeated in a general election by the Right Honourable [redacted] who appointed Michael Wilson as his Finance Minister. [The petitioner's] impressive abilities as a policy analyst and as an advocate were once again proven when [redacted] and his Cabinet colleagues adopted [the petitioner's] mantra on "forcing business to compete" and "getting bureaucrats out of the business of trying to do business." This approach was set out in the official government document entitled *A New Direction for Canada: An Agenda for Economic Renewal*. This in turn led to Canadian Government support for a Canada/U.S.A. Free Trade Agreement in spite of huge opposition at all levels in Canada.

It is a credit to [the petitioner's] ability, not only as a "policy wonk" but also as an expert advisor that he was always able to accomplish what he set out to change. He was, and was seen to be, a superior asset to the Canadian Government - a true professional with "extraordinary abilities."

In the same manner as [redacted] states that she "can support everything that [the petitioner] has put in his resume," but, as stated previously, the record includes no copy of the petitioner's resume. Regarding [redacted] assertion that the petitioner's brief resulted in Canada's

decision not to ratify the Law of the Sea treaty, there is no evidence of the brief to which she refers, nor is there supporting evidence demonstrating that the petitioner, rather than [REDACTED] was the driving force behind Canada's opposition to the treaty. Further, it has not been established that the petitioner was the primary architect of Canadian trade policy as set forth in *A New Direction for Canada: An Agenda for Economic Renewal*. We note that this document bears the name of [REDACTED] of Finance, rather than the petitioner's name. The record includes no contemporaneous evidence (such as media reports or policy memoranda) acknowledging the petitioner's individual contribution to this document or to Canadian trade policy in general. Section 203(b)(1)(A) of the Act, however, requires "extensive documentation" of sustained national acclaim.

Thomas Shenstone, Director-General, Policy Planning and Integration, Agriculture and Agri-food Canada, states:

I have known [the petitioner] since 1980 and was a colleague of his in the Department of Finance in Canada until his departure from Canada in 1987.

I knew [the petitioner] from the time I joined the International Economic Relations Division of the Department of Finance (Canada's equivalent to the U.S. Treasury Department). He was already the Department's expert on International Commodity Agreements, and the Department led Canada's position on this issue (having successfully regained predominance over these issues). He also directed and managed Finance's input (critically important from a fiscal point of view at the time) into the determination of Defense, External Affairs, Trade Promotion and Aid funding levels.

[The petitioner] was instrumental in persuading the Minister of Finance, [REDACTED] to block Canada's ratification of the Law of the Sea Treaty because of its seabed mining provisions and other extra-territorial provisions. He did an in-depth analysis, and then had the will, courage, judgment and persuasive skill to put his view into the mainstream and have it prevail. He did all this without losing the respect of his colleagues, some of whom had strong initial objections. Canada did not ratify the Agreement until, many years later, after the flaws that [the petitioner] had pointed out had been re-negotiated and corrected.

His work on "The Obstacles to Growth" and "A New Direction for Canada: An Agenda for Economic Renewal" prepared the way for Canada's support for the Canada-U.S. Free Trade Agreement, the most important economic initiative in Canada in the past fifty years. This led to the end of the National Energy Policy (NEP) and the Foreign Investment Review Agency (FIRA) as well as tariffs going to zero over time between the U.S.A. and Canada and it ultimately led to NAFTA.

[The petitioner's] contributions as Head of Section/Chief were outstanding. His staff included two persons who later became directors-generals [REDACTED] now Director-General for Labor Market Policy in Human Resources and Skills Development Canada, and myself, currently Director-General, Policy in Agriculture and Agri-food Canada).

I can confirm [the petitioner's] account of his activities during the time that I knew him. In my view, he is a person of "extraordinary ability with world class skills" and will make a huge contribution to

the corporate world in the United States, especially when it comes to addressing regulatory issues associated with the exploration and production of oil and gas.

Thomas Shenstone asserts that the petitioner "will make a huge contribution to the corporate world," but he does not address how the petitioner's past accomplishments in the private sector rise to the level of a contribution of major significance in his field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. See *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971).

In this case, the petitioner's three witnesses consist entirely of his current and former coworkers. With regard to the personal recommendation of those who have worked closely with the petitioner, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of his affiliated institutions. The statutory requirement that an alien have "sustained national or international acclaim," necessitates evidence of recognition beyond close acquaintances of the petitioner. While such evidence need not be in the form of letters from independent experts (the regulation at 8 C.F.R. § 204.5(h)(3) provides ten types of evidence), the opinions of close colleagues alone cannot form the cornerstone of a successful claim of national or international acclaim.

We accept that the petitioner played a role in contributing to the formulation of Canadian trade policy in the early to mid-1980s, but the level of impact specifically attributable to the petitioner has not been adequately demonstrated. Further, we cannot ignore that the statute and regulations require the petitioner's acclaim to be sustained. There is no evidence showing that the petitioner, who resigned from government service in 1987, has been active in formulating national trade policy subsequent to the late 1980's. The absence of evidence of such activity indicates that the petitioner has not sustained whatever acclaim he may have earned while working for the Canadian Department of Finance. Without extensive documentation (beyond mere testimony) showing that the petitioner's work has been unusually influential or highly acclaimed at the national or international level, we cannot conclude that it constitutes a contribution of major significance. Thus, the petitioner has not established that 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 a November 8, 1984 document (115 pages) entitled "A New Direction for Canada." As stated previously, this document bears the name of [REDACTED] rather than the petitioner's name. There is no evidence showing the specific sections of this document authored by the petitioner. Further, the plain language of this criterion requires the petitioner's work to appear "in professional or major trade publications or other major media." The petitioner's evidence has not been shown to meet this requirement. Nor is there evidence showing that this document had substantial national or international readership or that the document was widely disseminated outside of Canada's Department of Finance.

On appeal, counsel asserts that the petitioner wrote an internal government paper on the economic effects of international commodity agreements, contributed to an Organization for Economic Co-operation and Development study, and prepared a policy paper on the funding of Free Trade Zones in Latin America and the Caribbean. The record, however, includes no evidence of this material. Without documentary evidence to

support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

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. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

The aforementioned letter of support from [REDACTED] notes that the petitioner has served as President of Astec Partners Inc. during the last several years, but there is no supporting documentary evidence showing that this company has earned a distinguished national or international reputation.

The aforementioned letters of support from [REDACTED] indicate that the petitioner performed admirably as Head of Section/Chief in the International Economic Relations Division of the Canadian Department of Finance. The record, however, includes no supporting documentary evidence (such as media reports or scholarly articles) showing that the International Economic Relations Division had earned a distinguished reputation during the petitioner's tenure. Nor has the petitioner submitted evidence showing that his role was more important than that of the other Heads of Section/Chiefs employed in the International Economic Relations Division. It is further noted that the petitioner's position was subordinate to that of [REDACTED]. In this case, the petitioner's evidence is not adequate to demonstrate that he has performed in a leading or critical role for a distinguished organization, or that he has sustained whatever acclaim he may have earned while working for the Canadian Department of Finance during the early to mid-1980's.

In light of the above, 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.

On appeal, counsel asserts that the petitioner meets this criterion. The record, however, includes no supporting evidence (such as payroll records or income tax forms) showing the petitioner's actual earnings for any specific period of time. As stated previously, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena* at 533, 534; *Matter of Laureano* at 1; and *Matter of Ramirez-Sanchez* at 503, 506. Further, the plain language of this criterion requires the petitioner to submit evidence of a high salary "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. Thus, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). We find that the petitioner's reliance on three witness letters prepared in support of the petition rather than contemporaneous evidence of his achievements and recognition is misplaced. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. See section 203(b)(1)(A)(i) of the Act. Further, the regulation at 8 C.F.R. § 204.5(h)(3) requires documentary evidence that the petitioner "has sustained national or international acclaim and that his . . . achievements have been recognized in the field of expertise." This regulation provides that eligibility may be established through a one-time achievement or through documentation meeting at least three of ten criteria. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The regulatory criteria require specific documentation beyond mere testimony, such as awards, published material about the alien, and evidence of a high salary. In the present matter, the petitioner cannot arbitrarily replace such evidence with attestations from the petitioner's current and former coworkers, who assert that they find his abilities to be extraordinary. While letters of support from one's associates may place the evidence for the regulatory criteria in context, they cannot serve as primary evidence of the specific achievements required by the regulatory criteria. Further, while the regulation at 8 C.F.R. § 204.5(h)(4) permits "comparable evidence" where the ten criteria do not "readily apply" to the alien's occupation, the regulation neither states nor implies that letters of support attesting to the alien's accomplishments are "comparable" to the strict documentation requirements in the regulations setting forth the ten criteria.¹ Evidence in existence prior to the preparation of the petition carries greater weight than letters of support prepared especially for submission with the petition.

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 a 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.

¹ In the present case, there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation.

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.

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.