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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **APR 22 2008**  
LIN 06 146 50616

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability” in business, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established that the beneficiary enjoys the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not overcome the director’s valid concerns.

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 into 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 (Nov. 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a director of business strategy and development. 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 that, it claims, meets the following criteria.<sup>1</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

Initially, counsel asserts that the "brands" developed by the beneficiary "have won numerous awards." In response to the director's request for additional evidence, counsel reiterated that the "products and brands" launched or marketed by the beneficiary "have won numerous awards in the beauty, apparel and luxury goods industries." The director concluded that the award certificates submitted, which will be discussed in detail below, "have not been shown to recognize [the beneficiary] individually for excellence in brand management at the national or international level." On appeal, counsel asserts that the awards submitted recognized the beneficiary's strategic brand management.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of the *alien's* receipt of lesser nationally or internationally recognized prizes or award for excellence *in the field of endeavor*. Thus, in addition to establishing that the awards or prizes are nationally or internationally recognized, the petitioner must also demonstrate that the beneficiary is the recipient of the awards and that they are awards in the beneficiary's field of endeavor, in this case business strategy and development.

Counsel has asserted that all of the awards recognize the beneficiary's work for Bumble and Bumble. The petitioner submitted a 2004 American Institute of Graphic Arts (AIGA) "Certificate of Excellence" issued in recognition of "excellence in design for Model Project series" at the 365: AIGA Annual Design Competitions. The certificate does not list a recipient. The petitioner submitted materials about AIGA, which indicate that it is a professional association for design. Under "Honors and awards," the materials indicate that AIGA has "a long tradition of recognizing individuals for their outstanding achievements in the profession." The record contains no evidence that the AIGA certificate recognizes the beneficiary individually or even Bumble and Bumble as a company. As stated above, the certificate does not list a recipient.

The petitioner also submitted what appears to be a form letter that is not addressed to any particular individual or company. The letter, from the American Inhouse Design Awards, begins: "Congratulations!" The letter indicates that an award certificate is enclosed for each winning entry and that, "for a processing fee," additional award certificates are available. The letter concludes: "For the

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

fee shown, your award winning piece will be published in the June '05 Awards issue distributed to Graphic Design USA's national audience of leading design professionals." The fee also includes extra copies of the awards issue. Given the fees involved, it would appear that this recognition is more akin to a promotion. The most prestigious awards do not generally require payment of a fee for publication as an awardee. Regardless, the award certificates submitted reflect that Bumble and Bumble received the awards, not the beneficiary individually.

The petitioner also submitted evidence that *Allure* readers chose Bumble and Bumble thickening spray as the best volumizer. In addition, *BeautyBiz* listed Bumble and Bumble Bb Treatment as a "breakthrough product of the year" in 2004. Bumble and Bumble Bb Treatment Damage Therapy Masque received a CEW Beauty Award in 2005. The Internet materials about this award submitted by the petitioner reflect that experts in the field of beauty, not business strategy and development, select the awardees. Another Bumble and Bumble product received an HBA International Package Design Award. The petitioner has not established that the beneficiary received these awards or that they are awards in business strategy and development.

The petitioner also submitted several published award-winning designs from Bumble and Bumble. It is noted that the magazines publishing these designs list the designer and, in some cases, the art director, photographer, silkscreener and illustrator. The beneficiary is not the named recipient of any of these awards. Moreover, these awards are all clearly design awards.

We concur with the director that the petitioner has not demonstrated that the beneficiary individually is the recipient of any awards. Moreover, the awards documented appear to all be beauty or design awards. Counsel has asserted that the products being recognized are ones launched or marketed by the beneficiary. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record includes three letters from current or former Bumble and Bumble employees. Not one of these employees confirms which products the beneficiary launched or marketed, although [REDACTED] the former Vice President of Marketing at Bumble and Bumble references their collaborative "launch of award winning products." Even if the awards recognize products launched or marketed by the beneficiary, the awards themselves recognize the design of the promotional material or quality of the product itself. The beneficiary is not a chemist and did not develop any of these products. Moreover, he is not a graphic designer and did not personally design the promotional materials. Thus, the awards do not appear to recognize his achievements and are clearly not awards in his field of business strategy and development.

In light of the above, we concur with the director's conclusion that the beneficiary is not the recipient of the awards submitted and that they are not in the beneficiary's field of endeavor.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

Initially, counsel asserted that the beneficiary “has been interview[ed] regarding his work many times and has 100s of press mentions and accolades for products he launched and/or marketed.” The initial submission included a Stanford University student newspaper article mentioning the beneficiary as a candidate for class president, numerous mentions of Bumble and Bumble products in various publications and a list of media coverage of Bumble and Bumble products prepared by that company. The petitioner has not submitted evidence that the Stanford University student newspaper is nationally circulated beyond Stanford students, parents and alumni or other evidence indicative of major media status. None of the various publications covering Bumble and Bumble products mention the beneficiary by name or quote him. Finally, the list of media coverage prepared by Bumble and Bumble includes any employee mentioned or quoted in the coverage. The list does not include the beneficiary’s name.

The petitioner did submit an article in *Harvard Business School Working Knowledge* reporting on a panel at the Harvard Business School Retail and Luxury Goods Conference. The two-page article includes two sentences summarizing the beneficiary’s statements on the panel and a subsequent third sentence noting that the beneficiary repeated a well-known axiom in the field.

In response to the director’s request for additional evidence, which noted that the record did not contain the interviews referenced initially by counsel, counsel asserts that the beneficiary “has been interviewed regarding his expertise and his products have received 100s of press mentions.” The petitioner submitted additional media coverage and promotions of products from Express and the petitioner, the beneficiary’s employers after Bumble and Bumble.

The director concluded that the petitioner had failed to submit published materials about the beneficiary’s achievements and career in brand management. On appeal, counsel reasserts that the beneficiary “has been “interview[ed] regarding his work many times and has 100s of press mentions and accolades for products that he launched or marketed.” Counsel asserts that the beneficiary was “interviewed” in the *Harvard Business School Working Knowledge* and was asked to speak at the school’s Retail and Luxury Goods Conference “as a recognized and well-known expert on marketing Luxury Goods.”

As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record does not contain hundreds of published articles that mention the beneficiary or even a selection of articles that mention the beneficiary. Rather, the petitioner submitted numerous promotions of products the beneficiary is alleged to have launched or marketed in fashion and entertainment magazines. None of these materials mention the beneficiary by name. It cannot credibly be asserted that articles that do not even mention the beneficiary by name are “about” him.

We acknowledge that the beneficiary was referenced in *Harvard Business School Working Knowledge* but he was not specifically interviewed for the article. Rather, the article reported on a panel at a conference and included a two-sentence summary of his statements and later recounted his repetition of an industry axiom while a member of that panel. This article cannot be said to be “about” the beneficiary. Moreover, the petitioner has not established that *Harvard Business School Working Knowledge* is a nationally circulated publication rather than an internal student publication.

While the beneficiary was a panel member at a Harvard Business School Conference, evidence that he served as a panel member is not published material about him in major media. At best, conference presentations by an alien can carry similar weight to evidence of articles authored by an alien and will be considered below under that more appropriate criterion.

In light of the above, we concur with the director that the petitioner did not submit any evidence that meets the plain language requirements of this criterion.

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

Initially, counsel asserts that the beneficiary’s contributions to the field are evidenced by his recognition among experts in his field. In response to the director’s request for additional evidence, counsel reiterates that the beneficiary’s contributions are evident from the reference letters from “experts familiar with strategic brand management and peers who have recognized [the beneficiary’s] contributions in strategic brand management and have acknowledged that his professional skills and abilities are extraordinary.” The director concluded that the evidence does not establish that the beneficiary is recognized for original contributions of major significance to his field. On appeal, counsel asserts that the petitioner “submitted numerous recommendation letters, all of which conclude that [the beneficiary] is an extraordinary professional and is one of that small percentage who has risen to the very top of the field of strategic brand management.”

We will address the letters below. The letters submitted, however, are all similar and we need only discuss a representative selection of those letters.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be both original and of major significance. We must presume that the word “original” and the phrase “major significance” are not superfluous and, thus, that they have some meaning. To be considered an original contribution of major significance in the field of marketing, it can be expected that the contribution will not only successfully promote the employer’s products (the entire purpose of marketing) but also be both novel and influential on the field as a whole.

As noted by counsel, the petitioner submitted several letters from members of the beneficiary’s field. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration

Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing vague assertions of notoriety, talent and contributions to the beneficiary's current and past employers are less persuasive than letters that specifically identify contributions, explain how those contributions are unique or novel and provide specific examples of how those contributions have influenced the field of marketing overall. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have been influenced by him are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

██████████ a fund manager who met the beneficiary while they were both Master of Business Administration (MBA) students at Stanford University, asserts that he relies on the beneficiary when investigating potential deals involving retail, fashion or beauty. He further asserts that the beneficiary is talented and successful. He does not explain how the beneficiary has changed or otherwise influenced the field of marketing as a whole.

██████████ and Director of the MBA Career Management Center at the Stanford Graduate School of Business, expresses his favorable impression of the beneficiary's academic abilities and his work as Student Body President. ██████████ notes that the beneficiary agrees to speak with Stanford students interested in his area of marketing. ██████████ Director of MBA Admissions at Stanford, discusses the beneficiary's participation in Stanford's recruiting efforts. We are not persuaded that the beneficiary's participation in mentoring and recruitment efforts on behalf of his alma mater are indicative of his original contributions to the field of marketing as a whole.

██████████ Vice President of the Bank of Montreal, asserts that he and the beneficiary collaborated on creating a new business, SkuLogix, and that the beneficiary's knowledge of the apparel, beauty and retail industries "was unrivaled." ██████████ concludes that the beneficiary was instrumental to the success of that company, including signing the company's first customer. ██████████ does not assert that SkuLogix has become a recognized model for start up companies or otherwise explain how the beneficiary's work for that company was either novel or influential in the field. The former president of SkuLogix, ██████████, affirms the beneficiary's "unique and varied professional background." Assuming the beneficiary's MBA and marketing experience are unique, ██████████ does not explain how

the beneficiary's combination of education and experience has resulted in an original contribution that is recognized as having major significance in the field.

Director of Marketing for RonHerman, Inc., asserts that stores operated by [REDACTED] Inc. have carried Bumble and Bumble products for years. [REDACTED] credits the beneficiary for Bumble and Bumble being a top producer in their category. She provides no examples of original marketing strategies employed by the beneficiary or examples of how Bumble and Bumble marketing has become a widely used model within the field.

[REDACTED], Vice President for Brand Development at Express, praises the beneficiary's work at that company and asserts that it impacted the entire company, including the parent company. Specifically, the beneficiary performed a "phenomenal study on our top customers" that was "leveraged" by employees of the entire organization in their day-to-day roles. [REDACTED] also discusses new ideas the beneficiary introduced to the company. [REDACTED] does not, however, assert that these new ideas are original within the entire field of marketing or assert that they have become models in the field or have otherwise influenced the field as a whole.

[REDACTED] Senior Operating Officer at Bumble and Bumble, asserts that the beneficiary developed a new way to educate stylists, launched two sub-brands and built out a talented marketing team. [REDACTED] former Vice President of Marketing at Bumble and Bumble, asserts that she and the beneficiary "worked on many initiatives that were recognized in the industry including the launch of award winning products, the sourcing and development of an outstanding marketing team and the development of a strategic vision in a company that previously had relied on gut feel." Once again, while the beneficiary's initiatives may have been "new" to Bumble and Bumble, the petitioner has not demonstrated that his initiatives were original in the field or that they have been widely adopted beyond Bumble and Bumble or otherwise recognized as models in the field. For example, while Bumble and Bumble products themselves receive attention in the fashion and entertainment media, the record contains no studies of Bumble and Bumble marketing strategies in major marketing journals or business newspapers. The beneficiary's single appearance at an internal conference at the Harvard Business School cannot demonstrate that the beneficiary's marketing strategies for Bumble and Bumble are widely emulated or otherwise influential.

[REDACTED] General Manager of Bourjois Cosmetics USA, asserts that she has discussed the beauty industry with the beneficiary "over the years." She affirms her respect of the beneficiary's thoughts and states that she has "taken them into account when making decisions for my own brand." This single testimonial from a peer who finds the beneficiary's thoughts worth taking into account cannot demonstrate that the beneficiary strategies are original or that he is widely influential in the field of marketing.

Clearly, the beneficiary has garnered the respect of his immediate circle of colleagues and is successful in his career. The petitioner has not demonstrated, however, that the beneficiary's strategies are either original or influential. Specifically, the record lacks evidence that novel strategies developed by

beneficiary are recognized models in the field, such as for example (1) evidence that the beneficiary's employers have been recognized in the general or trade media for their marketing strategies rather than the quality of the products being marketed, (2) evidence that the beneficiary is routinely invited to speak at distinguished professional conferences attended by marketing executives nationally or (3) well-received articles by the beneficiary reporting on novel marketing strategies he has developed. Without such evidence or evidence of a similar nature demonstrating the beneficiary's influence in the field, we cannot conclude 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.*

While counsel has never asserted that the beneficiary meets this criterion, the petitioner did submit evidence that the beneficiary served as a member of a panel at a conference at the Harvard Business School. In order to meet this criterion, an article authored by an alien must appear in professional or major trade publications or other major media. If a conference presentation by an alien is to carry similar weight, it must be at a "major" conference. In other words, it must be a presentation with a national or international audience. We note that the program for the conference reflects that all of the panel moderators are Harvard professors. According to a letter in the record, a former student at Harvard, who met the beneficiary while looking for a summer internship, invited the beneficiary to participate in the conference. The evidence suggests that this was a local conference aimed at Harvard students, professors and alumni. Moreover, we typically look for evidence as to the impact of a given article or presentation. The record contains no evidence that the beneficiary's contribution as a panel member was recorded in published proceedings or otherwise widely distributed. The record lacks letters from attendees explaining the impact of the beneficiary's presentation on their own strategies.

For the reasons discussed above, we are not persuaded that the beneficiary's one-time participation on a panel at an internal university conference can serve to meet this criterion.

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

According to the pay statements submitted, the beneficiary is employed as the director of marketing for a successful product line at the petitioning company. The director concluded that the beneficiary meets this criterion and we concur with the director. For the reasons discussed above and below, however, the record falls far short of demonstrating that the beneficiary meets an additional two criteria.

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

Counsel initially asserted that the beneficiary meets this criterion based on his annual remuneration of \$173,000 but the initial submission did not include any evidence to support this assertion. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N

Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In response to the director's request for additional evidence, the petitioner submitted evidence of the beneficiary's wages over the past several years. This evidence reflects that when the beneficiary began working for the petitioner in December 2005, his biweekly pay rate was \$6,269.23, which annualizes to \$162,999.98. On March 26, 2006, just a few weeks before the petition was filed, the beneficiary's biweekly pay rate increased to \$6,653.84, which annualizes to \$172,999.84. The beneficiary's biweekly gross earnings, however, remained \$6,269.23 until May 21, 2006, after the petition was filed.

The petitioner must establish the beneficiary's eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires evidence that the beneficiary *has* commanded a high salary or other significantly high remuneration for services, not that he *will* do so.

The director concluded that the petitioner had not submitted evidence that would demonstrate that the beneficiary's wages place him in the "top tier" of his field. On appeal, the petitioner submits evidence from the Department of Labor's Occupational Outlook Handbook. The handbook provides that the median annual earnings in 2004 was \$63,610 for advertising and promotions managers, \$87,640 for marketing managers, \$84,220 for sales managers and \$70,000 for public relations managers. The median annual earnings for advertising and promotions managers in 2004 within the advertising and related services industry were \$89,570. The handbook further provides that the median annual earnings of general and operations managers in 2004 was \$77,420, with the middle 50 percent earning between \$52,420 and \$118,310. Counsel provides no explanation for providing 2004 data to support the assertion that the beneficiary earned a high remuneration in 2006, when he apparently began earning close to \$173,000 annually. The record reflects that in August 2004, the beneficiary was earning \$5,260.42 biweekly, which annualizes to \$136,770.92.

The petitioner has now established that in 2004, the beneficiary earned more than the median wage for his overall field. In order to meet this criterion, however, the petitioner must demonstrate that the beneficiary's remuneration compares with the most experienced and renowned directors of marketing nationwide. The petitioner has not submitted data that would allow us to reach that conclusion.

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

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The regulation at 8 C.F.R. § 204.5(h)(3)(x) expressly applies only to the performing arts and requires very specific evidence such as box office receipts and the sales data of media featuring the alien's performances. The beneficiary in this matter is not a performing artist and the evidence submitted to meet this criterion, therefore, does not include box office receipts or sales data of media featuring the

beneficiary. Rather, the petitioner submits evidence that sales of the product line the beneficiary manages for the petitioner have continued to climb.

Given the very specific language at 8 C.F.R. § 204.5(h)(3)(x), we are not persuaded that this criterion can apply to any field other than the performing arts. Moreover, given the very specific types of evidence required to meet this criterion, we are not persuaded that the regulation leaves open the possibility that other evidence might be comparable.

Beyond the plain language of the regulation, the evidence submitted in this case cannot be considered comparable to evidence of personal commercial success enjoyed by an acclaimed performing artist. While a good agent may play a role in a performing artist's commercial success, the regulation at 8 C.F.R. § 204.5(h)(3)(x) only contemplates evidence of commercial success as evidence of the performing artist's acclaim, not the agent's acclaim. Similarly, while we do not discount the role of a good marketing director, the "commercial success" of a product line is not evidence of the marketing director's acclaim. Thus, even if we were to conclude that the plain language of the regulation does not preclude the possibility of comparable evidence to meet this criterion, we are not persuaded that the "commercial success" of a product line marketed by the beneficiary is remotely comparable to the personal commercial success enjoyed by an acclaimed performing artist.

In this matter, the beneficiary's job is to oversee the marketing of a product line that was introduced by the petitioner before he started with that company.<sup>2</sup> The fact that the sales of this product line have continued to grow indicates only that the beneficiary is doing the job he was hired to do, not that he personally enjoys commercial success, the ultimate standard for the criterion set forth at 8 C.F.R. § 204.5(h)(3)(x).

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a business strategist and developer 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 indicates that the petitioner shows talent as a business strategist and developer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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<sup>2</sup> According to the annual reports submitted, the petitioner introduced the product line on which the beneficiary works in January 2005. It was already seeing increased awareness and sales during that year, especially during the fourth quarter. According to the pay statements submitted, the beneficiary joined the petitioner in late December 2005.

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.