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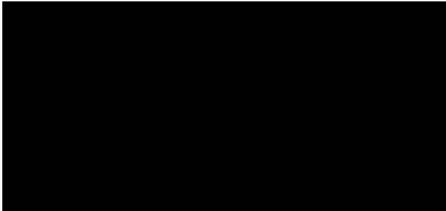
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U.S. Citizenship
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Services

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FILE: LIN 06 201 52008 Office: NEBRASKA SERVICE CENTER Date: **MAY 28 2008**

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:

SELF-REPRESENTED

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 classification 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 he was coming to the United States to continue in his alleged area of expertise or that he had sustained the national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a personal statement and business plan. For the reasons discussed below, while the petitioner may seek to continue employment relating generally to his alleged area of expertise, he has not demonstrated that he has any prior experience with a project like the one he plans to pursue. More significantly, the petitioner has not overcome the director’s valid concerns regarding the lack of evidence that the petitioner has sustained national or international acclaim.

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 he has sustained national or international acclaim at the very top level.

The petitioner did not complete Part 6 of the petition, which requests basic information about the proposed employment. The petitioner did indicate in Part 5 that he was currently a “lecturer/researcher.” In support of the petition, the petitioner submitted a letter in which he summarized his prior visits to the United States, the completion of his distance-learning Ph.D. from 2000 to 2004 and his employment in England since 2004. Specifically, in England, the petitioner asserts that he worked for Barclays Bank, taught accounting for Coventry University, performed research for the College for Practical Homeopathy and prepared a proposal for the distance learning institution where he got his Ph.D., Bircham International University. He then asserts that the university accepted his proposed courses. Finally, the petitioner asserts that he wishes to “generate income through my First Profession.” (Emphasis in original.) Specifically, the petitioner expressed an interest in rendering business and financial consulting services and providing business and financial seminars to individuals or groups. The petitioner also expressed an interest in pursuing, time permitting, his “Alternative Professions,” tennis coaching and soft tissue release therapy. In addition to the evidence of the petitioner’s education and experience as an accountant, the petitioner also submitted his credentials as a tennis coach and massage therapist.

On March 14, 2007, the director requested evidence that the petitioner was coming to the United States to continue in his area of expertise. In response, the petitioner asserted that accounting and finance was his primary profession and that his other “professions are of personal interest.” He then discusses his “project” that he would like to “launch” in the United States. Specifically, the petitioner proposes to promote his distance learning courses to improve financial independence and literacy in the United States and internationally.

The petitioner submitted his course model, business plan, a letter from Coventry University’s School of Lifelong Learning confirming the petitioner’s employment as an hourly part-time tutor, letters affirming that the petitioner’s books had been “prescribed” by technical institutions in South Africa in the 1990’s and letters from Bircham International University confirming their approval of a course developed by the petitioner.

The director determined that the record lacked evidence as to how the petitioner would finance his project or that the petitioner’s courses have a market value in the United States. The director concluded: “The lack of a specific plan for the accounting projects and the undetermined nature of [the] petitioner’s other interests do not establish clear evidence that the petitioner is coming to the United States to continue in his area of expertise.”

On appeal, the petitioner reiterates his interest in addressing the lack of financial literacy in the United States. He asserts that his interest in soft tissue release therapy is personal and that he has not coached tennis since 1998.

We are satisfied that the petitioner intends to launch an accounting and financial literacy course in the United States. Thus, he intends to continue working in his alleged area of expertise generally, as opposed to the completely unrelated areas of soft tissue release therapy or tennis coaching. Nevertheless, beyond the decision of the director, we are not satisfied that the petitioner has demonstrated that his intended employment will benefit prospectively the United States as required under Section 203(b)(1)(A)(iii) of the Act.¹ While there are no specific evidentiary requirements to meet this provision in the pertinent regulation at 8 C.F.R. § 204.5(h), we cannot ignore this statutory requirement.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Specifically, while the petitioner claims expertise in accounting generally, the record lacks any evidence that the petitioner has successfully launched a financial literacy course designed for purchase by individuals rather than for use in traditional universities. The petitioner asserts that there is a lack of financial literacy among the general populace in the United States but submits no documentation to support that assertion. 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 (Regl. Commr. 1972)).

Regardless, as stated by the director, the petitioner has not demonstrated that there is a market for his courses or that he has obtained any venture capital to market his course. Notably, Bircham International University, the questionable entity² that has accredited the petitioner’s courses, specifically advises that the petitioner is responsible for marketing the course, including the costs of such marketing. As will be discussed in more detail below, the petitioner has never successfully marketed this course. Rather, the petitioner’s proposal appears highly speculative. The speculative and unproven nature of the petitioner’s business plan raises serious concerns as to whether the petitioner will substantially benefit prospectively the United States as required under section 203(b)(1)(A)(iii) of the Act.

Even if we were not concerned about the highly speculative nature of the petitioner’s business plan, the petitioner has not demonstrated that he has sustained national or international acclaim in accounting or finance.

¹ While the director did not specifically raise section 203(b)(1)(A)(iii) of the Act, the director did express a concern that the petitioner had failed to demonstrate that there is a market value for the petitioner’s proposed courses in the United States.

² Our concerns regarding this distance learning entity that grants credit for life experience and offers no coursework other than assigning reports on assigned texts will be discussed in more detail below.

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 criteria follow.

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

The petitioner does not claim to meet this criterion and the record contains no evidence relating to it.

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.

On his curriculum vitae, the petitioner lists "Fellow Membership" in the Institute of Administration and Commerce and the Institute of Certified Bookkeepers. The petitioner submitted a 1992 certificate from the Institute of Administration and Commerce of Southern Africa confirming that the petitioner is a Registered Accounting Officer for Close Corporations. The petitioner renewed this registration through 1998. The petitioner submitted a foreign language "Diploma Van Volle Lidnaatsrap" from the Institute of Administration and Commerce, with the handwritten translation "Fellow." The petitioner did not submit a complete certified translation of this diploma as required under 8 C.F.R. § 103.2(b)(3). Finally, the petitioner submitted his 1977 Certificate of Membership as a Fellow of the Institute of Certified Bookkeepers. The petitioner's remaining memberships do not relate to his claimed field of expertise, accounting.

In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED], President of the Institute of Administration and Commerce in South Africa, confirming that the petitioner was a registered member of the institute from 1977 through 1998. [REDACTED] affirms that membership in the institute "requires completion of an appropriate tertiary education qualification and relevant experience." The institute also requires character references. [REDACTED] further discusses the qualifications for examiners and moderators, but does not affirm that the petitioner was either.

While the petitioner was admitted as a Fellow of the Institute of Certified Bookkeepers, the record lacks evidence confirming the membership requirements for that institute. Thus, the petitioner has not demonstrated that this institute requires outstanding achievements of its fellows. Regardless, the petitioner was an elected fellow in 1977, 29 years before the petition was filed. Thus, this membership cannot be considered evidence of *sustained* acclaim when the petition was filed.

The requirements for membership in the Institute of Administration and Commerce include only education and experience, neither of which are outstanding achievements. The petitioner has not

demonstrated that he was an examiner or moderator for the institute. Regardless, these appear to be more akin to appointments than memberships. Moreover, the requirements for examiners and moderators are limited to integrity, experience and knowledge rather than outstanding achievements in accounting or finance. Finally, the petitioner has not been a member of the institute since 1998, eight years before the petition was filed. Thus, this membership cannot be considered evidence of *sustained* acclaim.

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

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.

The petitioner does not claim to meet this criterion and the record contains no evidence relating to it.

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's initial filing did not address this criterion. In response to the director's request for additional evidence the petitioner submitted a signed letter from ██████████ Director of Faculty Administration at the University of Johannesburg affirming that external assessors, moderators and examiners must be fully qualified and be an expert on the topic. A second letter purportedly from Ms. ██████████ confirms that the petitioner was an external moderator for Master of Commerce short dissertations during an unspecified period. This letter, however, is unsigned and, thus, has no evidentiary value.

In light of the above, the record lacks credible verification of the petitioner's duties as an external moderator or that he performed these duties recently enough to be probative of the necessary *sustained* national or international acclaim. Thus, the petitioner has not demonstrated that he meets this criterion.

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

The petitioner claims to have developed a model for teaching accounting and financial literacy that he desires to market and popularize in the United States. The petitioner, however, must establish that he was already nationally or internationally acclaimed in this area 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 classification the petitioner seeks was created for aliens who are already acclaimed in their fields, not for aliens who propose to initiate an as of yet untested project even if related to their current field.

The record does not suggest that the petitioner has revolutionized or even significantly impacted the teaching of accounting. The petitioner submitted course texts and computer software. As will be

discussed in more detail below, the petitioner has not demonstrated that any other professor has adopted his texts for use in their own courses. Rather, in the 1990's, institutions in South Africa permitted the petitioner to use his own texts as part of his course.

More recently, the petitioner has promoted his texts and computer courses with very limited results. [REDACTED], Member of the South African Parliament, asserts in his 2007 letter that the petitioner designed accounting models to combat the problem of students abandoning accounting studies at Technikon of the Witwatersrand, later merged into Johannesburg University. While [REDACTED] praises the model and asserts that the course "has been submitted to the South African Minister of Education for her Department's consideration of its use in South Africa." The record contains no evidence, however, that the Minister of Education approved the use of the petitioner's model or that it has been widely adopted in South Africa.

[REDACTED], President of Bircham International University, asserts that the university has approved and accepted two courses developed by the petitioner. [REDACTED] Director of Bircham International University Africa, asserts that the university has accredited and approved three courses developed by the petitioner. Both [REDACTED] and [REDACTED] indicated that the petitioner will be responsible for marketing and the costs of marketing these courses as well as the presentation thereof. Once the petitioner evaluates and assesses any students who have paid the necessary fees and met all conditions rules and regulations, the university will issue appropriate certificates.

The record, however, raises concerns regarding the significance of course approval by Bircham International University. The materials about the university submitted by the petitioner indicate that it is an "alternative to traditional education" where "prior knowledge is taken into account." While several "accreditations" are listed, the record lacks evidence demonstrating the standards of these accrediting entities. The materials acknowledge: "Some schools are reluctant to accept credits obtained at a distance learning institution." Unlike some reputable distance-learning institutions that offer online courses, the program at Bircham International University appears to consist of writing a 15-35-page report on each textbook assigned or "full validation" based on prior experience. The materials acknowledge that up to 75 percent or even 100 percent of the total credits required can come from past work experience. The petitioner's own Ph.D. was earned based on the "transfer credits" of his previous diplomas (including his Master of Business Administration), 24 credits from his work experience and two theses.

[REDACTED] Senior Vice President of Toyota South Africa Motors, advises that in 1991, the petitioner researched the financial advantages of buying versus renting forklifts, demonstrating that ownership costs could be reduced significantly by entering full maintenance lease arrangements, which the company did and still does. While this report may have benefited the petitioner's employer at the time, the record contains no evidence that this report is nationally or internationally influential.

██████████ Director of THEBE Securities, advises that from 1991 through 1996, the petitioner researched investment opportunities as a consultant for the company. The petitioner completed a major report on the tourism sector that the company published in its monthly newsletter. The record lacks evidence that this report was influential in routing investment into the tourism industry.

The record contains no evidence that any independent university has adopted the petitioner's texts or coursework. The record contains no published materials in the trade media or general media noting the significance of the petitioner's texts or coursework. Without objective evidence demonstrating the impact the petitioner has already had on the teaching of accounting, we cannot conclude that the petitioner has made a contribution of major significance to his field.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record contains the petitioner's books, ██████████, ██████████, and ██████████. The books are all "printed" by Henkos Printers and *Accounting: To* ██████████ appears to be published by Rhino Publishers. The books bear ISBN numbers and the insignia ██████████ but no copyright dates. The record lacks evidence that these books were published by a reputable textbook publisher as opposed to a vanity press that prints work for a fee. The petitioner did not submit any published reviews of these books or sales data. The second edition of *Accounting: ██████████* bears a handwritten notation that it is out of print. The record contains no evidence that any of the petitioner's books are still in print.

The petitioner did submit letters purporting to affirm the acceptance of these texts for coursework. ██████████ HOD Taxation at the Durban Institute of Technology, asserts that the texts listed above, as well as three other texts not included in the record were used by the institute's School of Accounting from 1991 through 1998. ██████████, HOD of Cost and Management Accounting at the University of Johannesburg, affirms that the petitioner's four textbooks were "prescribed to various learners at the Technikon Witwatersrand, now renamed as University of Johannesburg." ██████████ asserts that the books were published between 1986 and 1998, but does not indicate whether the books were used after 1998.

██████████ affirms that three of the petitioner's texts "have been accepted and approved" by Bircham International University. ██████████, a principal lecturer at the Coventry University's School of Lifelong Learning, affirms that the petitioner used "a publication of his own, 'Accounting for All Students,' which was accepted as a suitable textbook for this course." As stated above, the petitioner was a part-time "tutor" at this university. Moreover, the record contains no evidence that this "School of Lifelong Learning" is accredited by a reputable entity.

The record contains no evidence that the petitioner has published any books or articles after 1998. The record also lacks evidence that any South African university has used his texts after 1998. As discussed above, the record does not establish that Bircham International University or Coventry University are distinguished academic institutions. Regardless, the record does not establish that any other professor at any institution has ever used the petitioner's texts as course material. The petitioner's personal use of his own texts cannot establish their influence.

In light of the above, the petitioner's publication record has been shown to be indicative of or consistent with sustained national or international acclaim in 2006 when the petition was filed.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner does not claim to meet this criterion and the record contains no evidence relating to it. Moreover, this criterion relates to the visual arts, which is not the petitioner's field.

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

The petitioner does not claim to meet this criterion and the record contains no evidence relating to it.

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

The petitioner does not claim to meet this criterion and the record contains no evidence relating to it. Moreover, the petitioner's field is not the performing arts.

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 designer and marketer of financial literacy courses 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 experience as an accountant and lecturer, most recently at institutions of undocumented repute, 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.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.