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U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: WAC-01-242-55393 Office: CALIFORNIA SERVICE CENTER Date: JAN 21 2004

IN RE: Petitioner: [redacted]
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:

[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

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the CIS 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a businessman. 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, he claims, meets 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 initially submitted a 1984 local award from the Chendu City Science and Technology Commission, a 1988 provincial award from the Sichuan People's Government, and a 1997 provincial award from the Sichuan Province Government Administration Office. According to the General Manager of the company the petitioner

founded and managed until 1998, the petitioner received another honor from the Sichuan provincial government in 1997. The petitioner also submitted a 1993 certificate honoring the petitioner as a "Role Model in the National Light Industry" from the China Ministry of Light Industry and the China Ministry of Human Resources. The petitioner also submitted a booklet entitled "Model Foreign-invested Enterprises Sichuan" that includes an article on the petitioner's company, Chuan Lu Plastic Rubber Company, Ltd. and a photograph of the petitioner identified as the president of the company.

In his request for additional documentation, the director noted that the petitioner's awards appeared local and requested additional evidence of their significance. In response, counsel asserted that between 1983 and 1997, the petitioner won one national award, two provincial awards, and seven "county" awards. The petitioner provides a list of those awards and a letter from Xiaochuan Zhang, former Bureau Chief of the Plastics Bureau of the Light Industry Ministry. Mr. Zhang asserts that the selection for the 1993 "labor model" award is made every three to five years. Mr. Zhang further explains that the petitioner received this honor "because of his major contributions in the field of importing and publicizing the advanced technology to the country and to Sichuan province." Specifically, the petitioner arranged the import of complex-sheet-packaging production equipment and used that technology to create "many new 2 layers, 3 layers and 4 layers complex-sheet-packaging materials."

The director concluded that the translation of Mr. Zhang's statement was not certified as required by 8 C.F.R. § 103.2(b)(3) and questioned the significance of an award for importing the technology developed by another country. On appeal, counsel asserts that the petitioner did not simply import technology, but created new materials using that technology.

The petitioner resubmits Mr. Zhang's statement, accompanied by a certified translation. The petitioner submits a new letter from Jing Wei Shen, Vice President of the High Polymer Material Engineering Institute and a former intern in the petitioner's workshop, detailing the new innovations developed by the petitioner. Finally, the petitioner submits a 1994 patent certificate for an innovation he designed. Mr. Shen asserts that these innovations were the basis for the 1993 award.

Regardless of the size of Sichuan Province, the only national award is the 1993 award. The record does not contain any objective evidence regarding the significance of the 1993 award, such as national media coverage of the announcement of the awardees either in 1993 or any other year. Nor does Mr. Zhang indicate how many such awards are issued.

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.

The petitioner submitted a certificate verifying his membership on the standing committee of the China Plastics Processing Industry Association. The petitioner also submitted evidence that he served as Vice Director of the Association. Huang Rui, Executive Director of the China Plastics Manufacture Association asserts that the petitioner was Executive Director of the first council of the association and Vice-president of the second and third councils. Mr. Rui asserts that the association "is a national highest plastic industry organization in charge of the development, guideline and research of Chinese plastics industry," and that it is responsible for developing and guiding the Chinese plastic industry and planning development within that industry.

In his request for additional documentation, the director requested the membership requirements for the China Plastics Processing Industry Association. In response, the petitioner submitted a partial translation of an unidentified document indicating that the association has 650 members and that a "council meeting is consisted [sic] of 206 persons, which counted for 1/3 of all members." The petitioner also submitted a partial translation of a list of "directors, deputy directors and general secretary of [the] 3rd Council Meeting of China Plastic Processing Industry Association." The petitioner's name is highlighted as one of 20 names under the second category, presumably deputy directors.

The petitioner also submitted a letter from Xiaochuan Zhang, founder of the China Plastic Processing Industry Association. Mr. Zhang provides the history of the association, the number of its members and its function. He asserts that membership must be approved by the standing committee of the association and that council members are elected but fails to provide the membership requirements.

The director concluded that the record did not establish that the China Plastics Processing Industry Association requires outstanding achievements of its members. On appeal, counsel asserts that leadership positions with the association require executive qualifications. We find that this evidence relates to whether the petitioner has held a leading or critical role for an organization with a distinguished reputation pursuant to 8 C.F.R. § 204.5(h)(3)(viii), discussed below. It remains, the record does not reflect that either the China Plastics Processing Industry Association or the China Plastics Manufacture Association require outstanding achievements for admission to their general membership. Thus, the petitioner does not meet 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.

While the petitioner did not claim to meet this criterion previously, the petitioner did submit the aforementioned booklet entitled "Model Foreign-invested Enterprises Sichuan" that includes an article on the petitioner's company, [redacted] Ltd. and a photograph of the petitioner identified as the president of the company. In response to the director's request for additional documentation, the petitioner submitted a letter from [redacted] former Deputy Director of Sichuan Foreign Economic and Trade Committee. Mr. Ren states that the booklet was published for promotional purposes during a 1994 trade seminar, at which time the petitioner's business "was then one of the 5 most successful foreign invested enterprises in Sichuan." The director concluded without discussion that this criterion had not been met.

On appeal, counsel notes the large size of Sichuan Province and asserts that the booklet is sufficient to meet this criterion. Regardless of the size of Sichuan Province, we cannot conclude that a booklet prepared as promotional materials for a single trade show and that did not have a national or international distribution beyond the attendees of the trade show can be considered major media.

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 1994 employment certificate appointing him "a member of the Second Session of the Editing Committee of the Editorial Department of the <Plastics Industry>." [redacted] a member of the editorial board of *Plastics Industry* and other magazines asserts that he worked with the petitioner on the editorial board. In response to the director's request for additional documentation, the petitioner submitted a letter from the

Editing Department of *Plastics Industry* indicating that they are including articles reviewed and revised by the petitioner as well as a 1985 article authored by the petitioner. The attached issue does not credit individual editors and indicates that the magazine is based in Chendu, the petitioner's hometown in China.

The director concluded without discussion that this criterion had not been met. Counsel does not challenge that determination on appeal. We find that the record does not establish that the petitioner's work on a single issue of a magazine published in the same city where he resides is consistent with or indicative of national or international acclaim.

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

Sheng Puzheng, General Manager of Chuanlu Plastics Company, Ltd., asserts that the petitioner founded the company in 1988 and was the legal representative of the company until 1998. Mr. Puzheng further asserts that under the petitioner's leadership the business grew to a market value of $3,000,000 and that the company has been ranked number one in the plastics industry since 1989. According to Mr. Puzheng, in 1994, Chuanlu Plastics formed three joint ventures with Austria's second largest company, Wienerberger. The joint ventures included [redacted] which, according to Mr. Puzheng, "developed the three layers PVC pipe utilized [sic] a patent technology from France" and modified that technology, setting "the new impact test standard for this type of products [sic]." Jing Wei Shen, an engineer who conducted his student training in the petitioner's workshop, asserts that in 1995, Sanjing Petroleum Chemicals, a top Japanese company, "would like to work together with inland Sichuan plastics colleague, mostly because of [the petitioner's] personal significant experience in plastics manufacture and outstanding management ability."

[redacted] former Bureau Chief of the Plastics Bureau of the Light Industry Ministry, asserts that the petitioner was responsible for importing Japanese packaging equipment that his company used to create new multi-layer packaging materials that reduces damages and costs.

In response to the director's request for additional documentation, the petitioner submitted a letter from Theodore Anvick, President and Chief Executive Officer for American Rapid Transport, LLC, asserting that the petitioner has a five percent ownership interest in the company and "is vital in the preparation of the first phase of our magnetically levitated train model." Mr. Anvick explains that the petitioner "deals with magnetic materials such as La-R6-Fe-B permanent magnets, ferritic permanent magnets, and rare earth permanent metal magnets." The petitioner submitted materials regarding the significance of a magnetically levitated train, but no evidence that he is personally responsible for any technology being developed for this innovation other than by making a relatively passive financial investment in a company developing such technology.

The director concluded that while the petitioner had made contributions to the plastics industry, that was "only one type of business." The director concluded that the petitioner's work on the magnetically levitated train had not yet been proven to be an important contribution.

On appeal, counsel references the letter from Jing Wei Shen and asserts that the magnetically levitated train is not simply a plan on paper but an ongoing project.

The petitioner resubmits the letter from Mr. Zhang with a certified translation. The petitioner also submits a new letter from Mr. Shen who asserts that in the early 1990's the petitioner used new technologies in his innovations

and used imported technologies in ways not previously used. Attached to the letter from Mr. Shen are documents regarding materials developed by the Chuan Lu Plastic Company, Ltd., and a 1994 patent certificate for a "noise-reducing swirler for sewerage system" designed by the petitioner.

The petitioner also submits a new letter from Mr. Anvick indicating that the Darrel G. Blomberg Foundation is investing in the magnetically levitated train program and asserting that the petitioner "will be especially helpful with the development of rare earth metals as permanent magnet materials for magnetrains." The petitioner also submits a new letter from Mr. Berge Tossounian of the Darrel G. Blomberg Foundation International (DGBFI). We note that the body of the letter includes a misspelling of Mr. Tossounian's first name. In the letter, Mr. Tossounian asserts that DGBFI has committed to invest in the magnetrain.

The record suggests that the petitioner's work with plastics in the early 1990's was significant. Not only did the petitioner patent a device, which is not in and of itself a contribution of major significance, the record suggests that this device was successfully marketed and drew the attention of local and central government entities.

We concur with the director, however, that the petitioner's contribution to the magnetrain technology (other than a passive financial investment) is not clearly documented and the record does not satisfactorily establish that, at the time of filing, the petitioner's personal contribution to that technology was considered a contribution of major significance to the field by independent experts in the field. Specifically, the record does not demonstrate that the petitioner's contribution to the magnetrain program was other than a passive financial investment.

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 a reference to a 1985 article authored by the petitioner. The director concluded without discussion that the petitioner did not meet this criterion. Counsel does not challenge this conclusion on appeal and we concur with the director. A 1985 article cannot establish the petitioner's alleged sustained national or international acclaim at the time of filing. Moreover, it is not unusual for an engineer to publish his work. The record does not establish that the 1985 article was particularly influential in the field.

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

The petitioner submitted a document entitled "Instructions of Qualification of Committee Member of China Plastics Industry Association" listing the petitioner as the Vice-Director of the association and General Manager of Sichuan Province Plastics Industry General Company. In addition, as stated above [redacted] Executive Director of the China Plastics Manufacture Association asserts that the petitioner was an Executive Director of the first council of the association and a Vice-president of the second and third councils.

In response to the director's request for additional documentation, the petitioner submitted a partial translation of "Instructions of Qualification of Committee Member of China Plastics Industry Association," listing the petitioner as the Vice-director of the third council. Mr. Rui asserts that the association "is a national highest plastic industry organization in charge of the development, guideline and research of Chinese plastics industry, it has function of develop and guide the Chinese plastic industry, assist state department and national planning commission to plan the development of Chinese plastic industry." Finally, Mr. Rui asserts that the petitioner was "the director of Sichuan Plastic College high position evaluation commission in 1993."

As evidence that the petitioner served as "Chairman of the Advisory Board for Southeast and Central Asia" for DGBFI, the petitioner submitted a letter from Berge Tossounian, President of the foundation. Mr. Tossounian asserts that DGBFI "is undertaking giant steps toward the clean-up and regulate [sic] environmental necessities" in the former Soviet Union and other South East Asian developing countries and that the petitioner was selected as Chairman of this program based on "his knowledge in the environmental field backed by his technical and chemical experience."

The director concluded without discussion that the petitioner did not meet this criterion. Counsel does not challenge this conclusion on appeal. The record contains no evidence regarding the national reputation of DGBFI. We find, however, the record sufficiently demonstrates that the petitioner played a leading role both for his own company and for professional associations. The petitioner's company was recognized by Sichuan Province and the central government as a highly successful company. The record also suggests that the professional associations for which the petitioner played a leading role were nationally significant. As such, we find that the petitioner has submitted sufficient evidence to meet this criterion. We note, however, that the petitioner entered the United States in March 1998, more than three years prior to filing the petition. The record does not reflect that the petitioner has played a leading or critical role for any organization with a distinguished reputation nationally in the United States.

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 submitted several "rewards" issued to the petitioner from local government entities regarding cash and housing benefits between 1993 and 1995. The petitioner also submitted a letter from Synplus, Inc. offering him a position with an annual salary of between $80,000 and $100,000 and three percent of profits.

In response to the director's request for additional documentation, the petitioner submitted evidence that he had begun working part-time for Synplus, Inc. as of January 2002 for an annual salary of $40,000.

The director determined that the petitioner's salary for Synplus was not especially high for an executive and concluded that the petitioner had not established that his salary is significantly higher than other business leaders.

On appeal, counsel notes that the petitioner only works part-time for Synplus. Counsel further asserts that the petitioner is submitting a February 1996 "Record of Payroll" demonstrating that the petitioner received the highest salary "in his organization." Further, counsel asserts that the petitioner earns RMB 400 more than Mr. Shen, "an established state expert with state allowance." Finally, counsel asserts that the petitioner's income is the "equivalent" of the Minister of Light Industry.

The petitioner submits what purports to be payroll records. They are not translated other than that the petitioner's name is handwritten on the form and the final column is labeled "monthly salary." According to these records, the petitioner was the highest paid employee on the page, earning RMB 16,493.76 annually. In the letter submitted on appeal, Mr. Shen asserts that his salary as Vice President of High Polymer Material Engineering Institute, including an expert subsidy, was RMB 14,160 and that the Minister of Light earned RMB 19,200.

At best, the petitioner has demonstrated that he was the highest paid employee at a single organization in 1996, may have received slightly more income than an academician and slightly less than a government minister. The

petitioner has not demonstrated that his salary is notably high as compared with other senior executives in the plastics industry.

Regardless of whether the petitioner's salary at Synplus is significant, and we concur with the director that it does not appear to be a particularly notable in comparison with other well-known executives in the United States, he did not earn that salary prior to the date of filing. Thus, it is not evidence of his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971)

In summary, the petitioner has submitted evidence of a 1993 national award, contributions to the plastics industry in the early 1990's, and leading roles in the plastics industry in China. Even if we were to conclude that such evidence were minimally sufficient to meet the relevant criteria, the only evidence relating to the above criteria after 1994 involves the petitioner's leading and critical roles in the industry. Even that evidence ends in 1998 with the petitioner's entry into the United States. The record does not establish a pattern of sustained national or international acclaim up until the date of filing in July 2001.

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 businessman 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 businessman, 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.

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.