U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 0 4 2009
SRC 08 019 53942

IN RE: Petitioner:
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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

for Perry Rhew
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 (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

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 in business. The director determined the petitioner had not established that he qualifies for classification as an alien of extraordinary ability. More specifically, the director found that the petition did not include "any supporting evidence."

On appeal, counsel states: "The Texas Service Center's denial is erroneous because it was based on the factually incorrect allegation that no supporting evidence was submitted with the I-140 petition. The self-petitioner did, in fact, submit plenty of supporting evidence with the I-140 petition." We agree with counsel. The record reflects that the petitioner submitted evidence in support of his petition which was ignored by the director. While the petitioner has overcome the director's finding regarding the absence of supporting evidence, he has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director's decision fails to explain the deficiencies in the evidence submitted consistent with the regulations such that the petitioner could file a meaningful appeal addressing those deficiencies. For instance, the director's decision did not specifically address the deficiencies in the evidence in relation to the relevant regulatory criteria at 8 C.F.R. § 204.5(h)(3). Thus, we must remand the matter to the director for issuance of a new decision that properly addresses the deficiencies in the record. We provide the following guidance in complying with this remand order.

Counsel further argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that he submitted comparable evidence his extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4).

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.

U.S. Citizenship and Immigration Services (USCIS) 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, 60898-99 (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.

This petition, filed on October 23, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an executive in the automotive industry. At the time of filing, the petitioner was working as President of [redacted] Tennessee. Previously, the petitioner was President and Chief Executive Officer of W.E.T. [redacted]

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[1]

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

The petitioner submitted evidence showing that "W.E.T. Automotive Systems" was among numerous companies that received [redacted] of Johnson Controls in 2001, 2002, 2003, and 2004. The petitioner also submitted photographs of additional awards presented to '[redacted]ncluding its "2005 Innovation Leadership Award." The petitioner's initial submission also included photographs

[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

of two award plaques presented to "W.E.T. Automotive Systems" in recognition of "Excellence in Quality, Cost and Delivery" at [redacted] in 2000 and 2001. The preceding documentation indicates that "[redacted]" received the preceding honors rather than the petitioner. The plain language of this regulatory criterion, however, requires "documentation of the *alien's receipt* of lesser nationally or internationally recognized prizes or awards." [Emphasis added.] It cannot suffice that the petitioner was one member of a large group that earned collective recognition. Further, there is no evidence showing that the preceding honors equate to "nationally or internationally recognized prizes or awards for excellence in the field of endeavor" rather than forms of institutional recognition bestowed by W.E.T. Automotive Systems' customers.

The petitioner submitted a photograph of a trophy indicating that "W.E.T. Automotive Systems Ltd." was a "Finalist" in the 2001 *Automotive News* [redacted] Contributions to Excellence) Award competition. The trophy identifies [redacted] as the finalist rather than the petitioner. Further, while it is certainly an honor to be chosen as a finalist, the plain language of this regulatory criterion requires evidence of the petitioner's receipt of "nationally or internationally recognized prizes or awards." In this instance, there is no evidence from the competition's organizer showing that [redacted] or the petitioner ultimately received a [redacted] Moreover, the petitioner has not established that his company's selection as one of the multiple [redacted] finalists is commensurate with his receipt of a nationally or internationally recognized prize or award for excellence.

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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[2]

The petitioner submitted an August 17, 2004 article in the Automotive section of the *Windsor Star* entitled "Cool seats a hot item." The petitioner also submitted two articles in *The Drive* entitled "From cool ideas to hot products, W.E.T. Automotive designs with comfort in mind" and "When Cool is Hot, It's Probably W.E.T.," but the author and date of the articles were not provided as

[2] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

required by the plain language of this regulatory criterion. The preceding articles in *The Drive* and the *Windsor Star* discuss [redacted]nd quote the petitioner, but the articles are not about him. Further, there is no evidence (such as circulation statistics) showing that these publications qualify as professional or major trade publications or other major media. Accordingly, the petitioner has not established 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 submitted three letters of support from former coworkers discussing his work for [redacted]

[redacted] states:

> While heading [redacted] [the petitioner] was primarily responsible for the exceptional growth of the company and establishing it as a leader in the industry. The contributions [the petitioner] made our company and to the industry at large were of tremendous significance. For example, he led the development of a highly innovative ventilated seat system with competitive installation features. This new ventilation system is currently the benchmark system throughout the whole automotive industry and has resulted in a significant revenue increase for the company. . . . We also developed the North America headquarters to become the competency center for [redacted] for the entire [redacted] with several new electronic control modules supporting our [redacted] as well as our Aftermarket business worldwide. All of these have pushed W.E.T. at the forefront of the industry by increasing its revenues by potentially $500 million, which represents a fivefold increase, and continuously maintaining an exceptional 20+% profit margin . . . . Not surprisingly, [the petitioner's] key leadership was the principal driving force behind our company capturing an unprecedented 60% market share of the entire North American market, while facing intense competition from Japanese, South Korean, Chinese, and U.S. companies.
>
> Clearly, [the petitioner] spearheaded intensive new developments of our products, thereby crowning [redacted] as an industry leader and setting the bar in technological innovation. I can confirm that only an executive of the highest caliber can accomplish such impressive results. More importantly, [the petitioner's] leadership role had a direct influence not only on W.E.T. becoming a world leader in its field, but also on the entire automotive components industry as a whole.
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> * * *
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> Further, [the petitioner] landed [redacted]ith major seat suppliers. PSC strengthened our market position and provided us a significant competitive advantage by securing current and future business for [redacted]

In sum, [the petitioner] is one of the leading business executives in the automotive field. He has been the driving force behind the V[redacted]xpansion to become one of the leading automotive components manufacturers in the U.S. He has made significant contributions to the automotive industry at large by leading the development of highly innovative technologies that have become automotive benchmarks.

[redacted], Canada, states:

[The petitioner] was chosen as the executive in charge to reorganize newly established Hungarian division and improved its operation. [The petitioner] was primarily responsible for the Hungarian division achieving 141% revenue increase during its first year of operations. For the second year, he increased its revenues by 42% and reduced defects incidence by 52%. [The petitioner's] leadership resulted in the capture of a new automotive cable business, which generated 15% of [redacted]s total European sales.

* * *

[redacted] recognized [the petitioner's] huge potential and rapidly promoted him to progressively more responsible executive positions with the organization. By the time he left the Company in 2007, he was already serving as the [redacted] During his time at [redacted] [the petitioner] oversaw an increase in Gross Profit by 37.4% and a holding of 60% of the market share in North America. [redacted] enjoyed an astounding 26% profit margin under [the petitioner's] leadership. Indeed, this is quite an accomplishment as the industry average is in the single-digits. . . . [The petitioner] is one of the few top executives who possess the rare talent to create a reorganize completely a whole company's operations, train and motivate its managerial and executive staff, and implement a dramatically improved organizational structure that works like a clock.

[redacted], states:

[The petitioner] was the principal driving engine behind the tremendous growth and development of [redacted]nada. Under his skillful leadership, the company's profit and revenue situation improved significantly and the new module introduction represented a revenue increase potential by five times in excess of $500 million. [The petitioner] was primarily responsible for pioneering and introducing the revolutionary ventilated seat concept, which is currently widely used throughout the automotive industry worldwide! I have been an executive in the automotive field for many years and I can attest that such a dramatic growth is very rarely observed in an industry where profit margins are extremely low. Indeed, the average profit margin in automotive industry usually does not exceed 10% and [the petitioner's] extraordinary business talent secured the W.E.T. a 26% profit margin not for just a single year but over the course of five years in a row! This is more than twice in excess of the average automotive component company's profit margins and is a prime testament to the fact that [the petitioner] is one of the few business executives who have reached the top of their field.

> It should come as no surprise that under [the petitioner's] leadership, the [redacted]group captured 60% of the North American automotive market, which is the most competitive automotive market in the world. This is another business feat that very few business executives, not only in the automotive industry but in any industry, could possibly match. In sum, maintaining gross profit margins of 26% for five years in a row when the industry on average was struggling with single digit profit margins, increasing revenues, spearheading the introduction of a revolutionary seat heating system that is a benchmark for today's automotive industry, and capturing 60% of the North American automotive components market – these are the business feats that firmly position [the petitioner] at the top of the field. I have not doubt in saying that he is one of the top automotive executives who has made substantial contributions to the field and has set standards that very few can march.

Talent and success for a particular company, however, are not necessarily indicative of original business-related contributions of major significance in the field. The record lacks evidence showing that the petitioner has made *original* contributions that have significantly influenced or impacted the automotive industry. For example, there is no evidence identifying the petitioner as the original inventor of [redacted]ventilated seat system concept. Further, with regard to the market share, sales revenue, and profit margin improvements attributed to the petitioner, the record lacks contemporaneous financial reports or other independent data for [redacted] Canadian and Hungarian locations to corroborate [redacted] claims regarding the petitioner's business accomplishments. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). We acknowledge that the petitioner has helped contribute to the success of his locations' business operations, but there is no evidence demonstrating that his work constitutes original business-related contributions of major significance in the field. Regarding the petitioner's coworkers' comments about his leading role with W.E.T. Automotive Systems, this information will be addressed under the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has earned the admiration of his former coworkers from [redacted] there is no evidence demonstrating that his specific work has significantly impacted the automotive industry beyond his former employer in a manner consistent with sustained national or international acclaim. For example, the record does not indicate the extent to which his work has impacted others in his field nationally or internationally, nor does it show that the automotive industry has significantly changed as a result of his original work.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS 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, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's former coworkers is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an executive in the automotive industry who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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.

The record adequately demonstrates that [redacted] has a distinguished reputation and that the petitioner performed in a leading role for the company as President and Chief Executive Officer. Accordingly, the petitioner has established that he meets this criterion.

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

The petitioner submitted a December 1, 2006 letter from his employer, [redacted] stating:

> Effective January 1, 2007 your annual income will be increased as follows:
>
> 1. **Fixed annual salary (12 equal monthly installments of US$19,600,-)** US$ 235,200,-
> 2. Target bonus (for 100% goal achievement) US$ 100,800,-
> 3. Annual target income (for 100% achievement of goals) US$ 336,000,-

The record, however, does not include evidence (such as payroll records or income tax returns) showing the petitioner's actual earnings for any specific period of time. As previously discussed, 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. at 158, 165.

The petitioner also submitted "Online Wage Library – FLC [Foreign Labor Certification] Wage Search Results" showing the median wages of Chief Executives in the Tennessee, Michigan, and New York regions. For example, the Level 4 Wage (fully competent) for Chief Executives in the New York area was $200,907 per year. The petitioner, however, must submit evidence showing that his salary places him among that small percentage at the very top of the field rather than simply in the top half on a regional basis. *See* 8 C.F.R. § 204.5(h)(2). Median regional wage statistics do not meet this requirement. Accordingly, the petitioner has not established that his salary is significantly high in relation to other executives in the field.

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

In this case, we find that the petitioner meets only one regulatory criterion, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

On appeal, counsel argues that W.E.T. Automotive Systems' selection as a finalist for a PACE Award, the company's supplier awards from Johnson Controls, and the articles about the company in *The Drive* and the *Windsor Star* should be considered as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). This evidence has already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (iii). Further, there is no evidence showing that the documentation counsel requests re-evaluation of as comparable evidence constitutes the petitioner's individual achievements and recognition commensurate with sustained national or international acclaim at the very top of his field. Nevertheless, the regulatory language at 8 C.F.R. § 204.5(h)(4) precludes the consideration of comparable evidence in this case, as 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 at 8 C.F.R. § 204.5(h)(3). We cannot ignore that counsel has specifically argued that the petitioner meets the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v), (viii), and (ix). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

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.

Accordingly, as the petition is not approvable, we must remand the matter to the director for issuance of a new decision that properly addresses the preceding deficiencies in the petitioner's evidence for each of the applicable regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director may also address any further deficiencies found in the petitioner's evidence not included in the AAO's discussion of the regulatory criteria.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the AAO for review.