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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 15 2009

SRC 07 090 51180

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

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

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, 60898-99 (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 she has sustained national or international acclaim at the very top level.

This petition, filed on January 26, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an attorney. The petitioner submitted supporting evidence both with her initial application and in response to a Request for Evidence dated May 31, 2007 including her university degrees, her bar admissions, letters of

recommendation, news articles, and copies of judicial decisions for cases where she represented one of the parties involved.

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 a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. We address the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not addressed below.

> *(iii) 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 regulation, 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.[1]

In counsel's statement dated January 25, 2007, he cited two documents that he felt demonstrated the petitioner's eligibility under this criterion. The first document is an article from the South African version of *Marie-Claire* which contains statements from five different attorneys, of which the petitioner was one. The *Marie-Claire* article, however, is primarily about the television show *Ally McBeal* and the content consists of five attorneys discussing the show's message and themes as they relate to real world law practice. As such, the article is not primarily about the petitioner. On appeal, counsel states that the *Marie-Claire* article is major media material about the petitioner's work in the field and that the letter from *Marie-Claire's* editor, [redacted], demonstrates that the petitioner is renowned for her work and that she would not have been chosen for such an article if she were not at the top of her field. That letter, however, states that [redacted] knew the petitioner "as a litigation lawyer of extraordinary ability and one of the rare females who had been admitted to partnership of a South African law firm, and at an exceptionally young age." Regardless of the reason for selection, the article was not primarily about the petitioner as it devotes equal space to all five attorneys and does not focus on the work or acclaim of the petitioner. We also note that the article was dated 1998, almost nine years before this petition was filed and is not consistent with sustained acclaim.

The second document, a photograph of the petitioner and several dignitaries, contains no evidence that it was published or that it otherwise appeared in major media. In a January 25, 2007 letter, counsel states that the picture exists in the "official South African archives," however, no evidence in support of that statement appears

[1] 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.

in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *See Matter of Obaigbena*, 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). With no such published material about the petitioner relating to her work as an attorney appearing in the record, she does not meet this criterion.

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

In his January 27, 2007 letter, counsel asserted that the petitioner made a major contribution to the practice of law by being named partner in a major South African law firm at an early age and by representing "prestigious and prominent . . . corporations and individuals." In support of her claims, the petitioner submitted various judicial decisions where she represented one of the parties in litigation. In his appellate brief, counsel stated that the petitioner's role in cases which resulted in published decisions "determines the manner in which the law will be applied" and evidences the petitioner's "leading role and critical influence on the law." In support of this position, counsel explained that the petitioner either did not act as part of a team of lawyers for the litigant or that the petitioner was otherwise singled out for her contribution to the team of lawyers in shaping South African law through her representation of a client whose case resulted in a published decision. In support of her petition, the petitioner submitted the published cases of *Durban Add-Ventures Ltd v. Premier, Kwazulu-Natal, et al*, 2001 (1) SA 389 (N); and *First National Bank of Southern Africa Ltd v. Commissioner for Inland Revenue*, 2002 (3) SA 375 (SCA). The petitioner also submitted a series of unpublished decisions, all captioned *Bacon v. Tucker,* and an unpublished decision captioned *Hyprop Investments Ltd v. Le Jazz Hot-Les Cafes.*

Duties or activities which nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the occupation itself. We take administrative notice of the fact that as part of their representation of clients, litigation attorneys are expected to prepare documents in court proceedings, engage in court proceedings, and develop strategies inuring to the benefit of their clients in court. Although most judicial decisions are unpublished, published judicial decision of a case in which an attorney is involved cannot alone succeed in meeting this criterion. Instead, the petitioner must further demonstrate that the decision made a contribution of major significance in her field. Such a demonstration may be made through other evidence such as, for example, national media discussions of the case's impact, letters attesting to the importance of the cases to the development of the law, evidence of the citation of the case in other cases, or other evidence that the cases attracted significant attention in the particular field of law.

The petitioner, through counsel, identified three letters in the record purportedly supportive of her claim of eligibility under this criterion. While letters such as these provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in her field beyond the limited number of individuals with whom she has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

In a December 6, 2006 letter, [redacted] described the petitioner's involvement with litigation involving the deregulation and legalization of gambling in South Africa and stated that the petitioner served as "lead attorney" in securing gambling licenses for [redacted] company, Sun International. He stated that the company's success in the litigation was due to the petitioner's "phenomenal mastery of the legal issues, her sustained capacity for hard work, and her remarkably innovative manner of thinking." [redacted] does not identify any of the published judicial decisions as the means by which Sun International secured the licenses (although we note that the *Durban Add-Ventures* case involves gambling) nor does he indicate how the acquisition of the gambling licenses amounts to a contribution of major significance to the petitioner's field of law. In the brief on appeal, the petitioner, through counsel, asserts that the gambling cases were "precedent-setting" in her discussion of the applicability of [redacted] letter, however, [redacted] letter does not state the judicial impact of the decisions and instead focuses on the economic impact of the decisions on his business. A December 15, 2006 letter authored by [redacted] references the gambling licenses and several other cases handled by the petitioner, but it too neglects to mention the effect of these cases on the petitioner's field of law. A December 12, 2006 letter from [redacted] affirmed that the award of gambling licenses benefited Sun International economically. He stated that the licenses were awarded "after a series of protracted and complex litigation in which our legal team excelled itself, under the brilliant direction of [the petitioner]." [redacted]'s letter makes clear that the actions of the petitioner enabled Sun International to succeed in business, but includes no information as to how the litigation constituted a contribution of major significance to the petitioner's field of law.

letter also includes information about a second lawsuit involving the custody arrangement for his stepchildren. He again praises the petitioner for winning the case as he had been "cautioned . . . of the improbability of success." As noted earlier, the series of cases captioned *Bacon v. Tucker* are all marked "unpublished." In the appellate brief, counsel for the petitioner asserts that this series of cases "established the law in South Africa regarding a mother's right to remove a child from one jurisdiction . . . to another." However, counsel fails to show how an unpublished decision could establish the law in South Africa as by its definition "unpublished" would seem to mean that the decision would not be widely available for citation in later cases and therefore could not "establish" the law. Counsel states that these decisions were published, but provides no evidence to counter the opinions provided which state that they are unpublished. 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 petitioner submitted two news articles reporting about the case, however, the petitioner's name is not mentioned in either article nor do the articles state that the case significantly impacted the relevant field of law.

Counsel's January 25, 2007 letter points to a December 3, 2006 letter from [redacted] as evidence of the petitioner's "pioneering stature, and pivotal assignments." That letter states that the petitioner was recruited "as an observer of the freedom and fairness of South Africa's first democratic election, and also assisted in the counting of the votes, under the auspices of one of South Africa's Constitutional Court Justices." We first note that this activity occurred in 1994, 12 years prior to the filing of the petition and does not demonstrate sustained acclaim. Second, this role as an observer is not otherwise documented in the evidence presented nor was any evidence presented to show that her activities as an observer made a contribution of major significance to the petitioner's field of law.

The last evidence cited by counsel in her appellate brief of the petitioner's contribution of major significance in the field of law is the case of *Hyprop Investments Ltd v. Le Jazz Hot-Les Cafes*. Not only is the case unpublished, but the petitioner is not listed as a participating attorney even though according to counsel's appellate brief, the petitioner "was the sole attorney" in the case. Counsel attempts to explain why the petitioner is not listed as a participating attorney in the appellate brief, stating that the petitioner, as is common in the South African legal system, served as an attorney who prepared an independent advocate to go to court on behalf of her client. Even accepting this explanation as true, the petitioner did not provide any evidence to support counsel's representations of her involvement in this case. Counsel also asserts that the case "changed the law" to "permit the enforcement of specific performance in contracts requiring personal performance." Once again, we note that the petitioner has failed to introduce evidence that this case changed the law as it is marked unpublished and would not be considered precedential. Counsel states that this case was published, but has provided no evidence to support his statement. 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.

Although not specifically referenced by the petitioner, the July 24, 2007 letter written by [redacted] falls into the same category as those letters cited by the petitioner as support under this criterion. Specifically, Mr. [redacted] relates the petitioner's involvement with a series of cases captioned *Elida Gibbs Ltd. v. Colgate-Palmolive Ltd.* as viewed by him as the opposing attorney. cited the petitioner's selection for representation and the complexity of the litigation as reasons behind his statement that the petitioner enjoys "acclaim on both a national and an international level." As with the above referenced letters, Mr. letter speaks highly of the petitioner and her skill as an attorney, but it does not state how the petitioner has made a contribution of major significance to her field of law.

Without evidence of a contribution of major significance to her field of law, the petitioner does not meet this criterion.

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

In order to meet this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Counsel claimed that the petitioner met this criterion through her work as an attorney for several large companies and as a partner at a law firm in South Africa. The petitioner submitted no evidence to establish that Unilever or Sun International Group of Companies, the only companies referenced by name in the petitioner's submissions, have a distinguished reputation. No evidence was included regarding the companies' backgrounds, standing in the community or world, or any other aspect of their reputations. In addition, the petitioner failed to submit evidence showing that she played a leading or critical role for the companies. For example, the petitioner submitted no letter from anyone at Unilever attesting to her role or contribution to the company. The letters submitted from [redacted], representing [redacted], state that the petitioner directed a legal team, but fail to indicate how the petitioner performed in a leading or critical role for the company overall instead of in a leading or critical role in the litigation. On appeal, counsel argues that the petitioner's role as an attorney for the companies in litigation leading to published judicial decisions alone demonstrates her leading or critical role for

those companies. The petitioner fails to show how that litigation constituted the same entity as the company so that her role in the litigation would constitute a leading or critical role for the company as a whole.

The petitioner claimed that she also met this criterion by virtue of her role as equity partner for her law firm, [redacted]c. On appeal, counsel clarified his position, stating that the petitioner performed in a leading or critical role for the law firm by operating as "a rain-maker, personally drawing substantial clients, and leading, controlling, directing and managing these cases herself." The evidence submitted does not indicate that the law firm of [redacted]. has a distinguished reputation. The petitioner submitted letters that refer to the law firm as "one of the leading firms in the country" (December 6, 2006 letter from [redacted]), "one of South Africa's most prestigious firms" (July 24, 2007 letter from [redacted], and "the preeminent South African law firm" (a December 12, 2006 letter from [redacted]. While these letters provide relevant information, they cannot by themselves establish the alien's eligibility under the criterion because they do not demonstrate the authors' knowledge of the firm's reputation independent of their work with the petitioner. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence. The only evidence submitted by the petitioner to support her claim that her law firm has a distinguished reputation are letters written by her clients, professors, and colleagues. The petitioner did not submit any documentation from independent sources regarding the reputation of the firm.

In addition, the petitioner sought to establish her role within the law firm through letters written by people with whom she has worked. A sampling of the effusive complimentary letters include [redacted]s' letter establishing that the petitioner achieved the position as equity partner in the law firm, was a member of the firm for fifteen years, and handled a number of cases important to the firm. Letters from representatives of large companies written by [redacted]p, and [redacted] support the petitioner's claim that she handled litigation for large companies in South Africa. A letter written by [redacted], an Oscar winning director, dated December 26, 2006 states that he selected the petitioner as his attorney because of her abilities and notes that the petitioner's "client list include[es] some of South Africa's most influential corporations and most recognizable celebrities." A letter from [redacted]s, the petitioner's former professor, states that the petitioner "had control of large scale litigation on behalf of some of the major corporations in South Africa." The petitioner's representation of renowned entities does not by itself indicate that she performed a leading or critical role for the law firm. The letter from [redacted] senior partner of the petitioner's law firm, states that the petitioner is a successful attorney but does not establish, for example, that she was the only or one of a select few partners who successfully represented renowned clients. Apart from [redacted] letter, the petitioner submitted no evidence discussing her specific role at the firm.

Even if the petitioner could be said to have performed a leading or critical role for her law firm and had submitted evidence that the law firm enjoys a distinguished reputation, the plain language of this criterion requires that the petitioner show that she performed a leading or critical role for organizations or establishments (plural). As the petitioner failed to show that she performed a leading or critical role for either her law firm or the companies she represented or that any of the entities enjoy a distinguished reputation, she fails to meet this criterion.

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

A December 15, 2006 letter written by states that the petitioner earned ZAR 1,340,753 from January 2000 to July 2001, which he states "placed [the petitioner] in the top .1% of income earners in South Africa." Except for [redacted] letter, no evidence appears in the record as to the petitioner's earnings or the average earnings of litigation attorneys in South Africa. We note that the January 2000 to July 2001 period predates this petition by six years and that the petitioner provided no evidence of her earnings during that intervening time. On appeal, counsel mentions the sale of the petitioner's law firm in 1999 for the first time and the resulting windfall for the partners. Although this transaction may be "easily documented," a 1999 transaction would have occurred almost nine years before the filing of this petition and thus would not accurately reflect the petitioner's salary at the time of filing. Because the petitioner did not submit evidence that her salary at the time of filing was higher than other attorneys' or of her earnings temporally proximate to the filing of her petition, she does not meet this criterion.

The petitioner claims that the Request for Evidence (RFE) dated May 31, 2007 provided insufficient notice to her of required additional evidence to support her claim of high remuneration. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The RFE dated May 31, 2007 stated that the petitioner needed to submit "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." Counsel claims that the RFE should have specifically requested certain documents such as "'tax returns, pay stubs, and the like'" (quoting the director's denial of her petition) as "corroborating evidence could have been obtained" had the need for such evidence been made explicit. 8 C.F.R. § 103.2(b)(8) requires that the RFE specify the "type of evidence required" and does not require that any sort of exact documents be identified. Although counsel on appeal states that "corroborating evidence could have been obtained," no proffer of that evidence was made. Moreover, even if the director committed a procedural error by failing to adequately notify the petitioner, it is not clear what remedy would be appropriate beyond the appeal process itself.

Counsel cited prior USCIS approval of other petitions that had been filed on behalf of South African attorneys. These decisions are not before us and are not binding precedent. Pursuant to 8 C.F.R. § 103.3(c), designated and published decisions of the AAO are binding on all USCIS employees in the administration of the Act. However, unpublished decisions have no such precedential value.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner is a successful attorney in South Africa who performed a leading or critical role for her former law firm. However, the record does not establish that the petitioner achieved sustained national or international acclaim as an attorney so as to place her at the very top of her field. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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.