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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUL 08 2009
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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:

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 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 the arts, 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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the petitioner submitted sufficient evidence. For the reasons discussed below, counsel has not sufficiently addressed the director's valid concerns. We uphold the director's finding that the petitioner has not established his eligibility for the exclusive classification sought.

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, 60898-9 (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 while several references have been made to the petitioner's notoriety "throughout the Bay Area," he 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 musician. 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. The petitioner has submitted evidence that, he claims, meets the following criteria.¹

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 director's request for additional evidence advised the petitioner that it was his burden to demonstrate that a particular publication meets this criterion through submission of articles that include the name and date of the publication as well as evidence of the distribution and circulation of each publication.

The record, including the response to the director's request for additional evidence, contains an undated article in the *Oakland Tribune* about the petitioner. A handwritten notation on the photocopy asserts that the publication is a "widely circulated newspaper of major circulation in The Bay Area." (Emphasis in original.) 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'l. Comm'r. 1972)). The record also includes an undated issue of an unidentified newspaper that includes a photograph of the petitioner as part of coverage of a local Kwanzaa celebration. The petitioner also submitted a promotion of "A Musical Night in Africa" in *East Bay Express* which mentions the petitioner's band but not him. The record also contains an undated review in *Diaspora* of a compact disc (CD) by the petitioner's band but the review does not mention the petitioner by name. Finally, the petitioner submitted a May 7, 2008 issue of the *San Francisco Chronicle*. A photograph of the petitioner's band appears in the "Today" section promoting their local concert.

The director, relying on the regulation at 8 C.F.R. §§ 103.2(b)(12) and *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971), concluded that the photograph in the "Today" section of the *San Francisco Chronicle* postdates the filing of the petition and, thus, cannot be considered. The director also concluded that the newspaper was "regional." In addition, the director noted the lack of evidence of the circulation or distribution of the *Oakland Tribune* and concluded that the paper is a local newspaper.

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

On appeal, counsel asserts that the petitioner submitted "numerous" articles about himself in "several major Bay Area newspapers" including the *Oakland Tribune* and the *San Francisco Chronicle*, which counsel asserts are newspapers that enjoy "MAJOR circulation." The unsupported assertions of counsel do not constitute evidence. *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).

The director advised the petitioner that it was his burden to provide evidence that the newspapers constitute major media. Handwritten notations and the assertions of counsel do not constitute evidence. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190; *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. While we recognize that the *San Francisco Chronicle* is not a small town newspaper, it is the petitioner's burden to demonstrate that it has a significant national distribution or otherwise constitutes major media such that coverage in the newspaper is indicative of or consistent with national or international acclaim. The petitioner has not submitted such evidence. Similarly, the record contains no evidence of the circulation or distribution of the *Oakland Tribune*, *East Bay Express* or *Diaspora* or other evidence suggesting that they constitute major media despite the director's specific request for such evidence.

Moreover, the photograph in the *San Francisco Chronicle* postdates the filing of the petition. We concur with the director that evidence postdating the filing of the petition cannot establish the petitioner's eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Finally, the caption for the photograph does not mention the petitioner by name and we are not persuaded that a single photograph in the "Today" section promoting an upcoming concert is the type of journalistic coverage about the petitioner contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Notably, the regulation requires the "author of the material," which is not applicable to a single photograph with no accompanying story.

Finally, the review in *Diaspora*, the article about the Kwanzaa celebration in the unidentified newspaper and the article about an event where the petitioner performed in *East Bay Express* are not "about" the petitioner and do not even mention him by name.²

In light of the above, 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 primarily relies on numerous letters from his employers, close colleagues and students to meet this criterion. While we will consider the relevant assertions in these letters below, we note at the

² While the director suggested the published material could be about the petitioner or his work, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) explicitly requires evidence of published material about the alien relating to his work. Thus, the material must be about the alien.

outset that all of these letters are from individuals in California and cannot demonstrate the petitioner's recognition outside of California. We reiterate that the petitioner must demonstrate sustained national or international acclaim. Recognition in the greater San Francisco area or even the entire State of California is insufficient. The petitioner also relies on his teaching experiences and his recordings.

The director concluded that an original contribution of major significance must be both original and have demonstrable influence on the field or set a standard to which others aspire. We concur. We must presume that the phrase "major significance" in the regulation at 8 C.F.R. § 204.5(h)(3)(v) is not superfluous and, thus, that it has some meaning. Ultimately, the director concluded that the record lacked objective evidence demonstrating that the petitioner meets this criterion.

On appeal, counsel asserts that the petitioner submitted letters from "high-ranking professors, teachers and industry leaders in the field . . . attesting to the significance of [the petitioner's] music and work." Counsel further asserts that the significance of the petitioner's work is evidenced by the invitations to teach and perform at "prestigious institutions and organizations."

Counsel's characterization of the letters submitted in this matter does not apply to the vast majority of the letters. First, the petitioner submitted several letters from young students he has taught. The fact that the petitioner may be liked by his young students has no bearing on the petitioner's acclaim in his field and counsel provides no explanation for the submission of these letters. The petitioner also submits letters from Parent Teacher Association (PTA) members, coordinators of after-school enrichment programs and administrators at local elementary schools where he has taught. These letters demonstrate that the petitioner is appreciated among the local elementary schools where he works, but cannot demonstrate a wider acclaim in the music industry. Similarly, the petitioner submits a letter from YMCA administrators discussing the petitioner's performance as a YMCA camp counselor and youth leader and a letter from a local church where the petitioner built the youth program. Once again, these letters cannot demonstrate the petitioner's acclaim in the music industry. The petitioner also submits a letter from a global account manager. The record does not establish this author's expertise to evaluate a musician.

The remaining letters will be considered insofar as they address the petitioner's contributions to the field. We note at the outset, however, that subjective opinions regarding talent, an ability to work well with dancers and young children and the petitioner's professionalism do not address the issue of how the petitioner has made contributions of major significance.

In response to the director's request for additional evidence, counsel cites one sentence out of context from a non-precedent decision issued by this office regarding the esteem of the witnesses in that matter. Counsel asserts that "the very fact that the petitioner is close to several ranking figures lends circumstantial support to the petitioner's claim of eligibility." While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. We will not infer acclaim from association. It is the petitioner's burden to demonstrate his personal acclaim at the national or international level.

While the petitioner's references in this case may be from prestigious institutions such as the University of California (UC) Berkeley, the petitioner's own association with that institution cannot be ignored in considering whether these letters demonstrate the petitioner's national or international acclaim in the field, which necessarily implies recognition beyond his employers and collaborators.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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 (Comm'r. 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 from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

In evaluating the reference letters, we note that letters containing mere assertions of talent or widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field at the national level. In addition, letters from independent references in the field who were previously aware of the petitioner through his reputation and who have been demonstrably influenced by his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

[REDACTED], Professor and Chair of UC Berkeley's Theater, Dance and Performance Studies, asserts that the petitioner has worked as a musical accompanist in the department since 1998 and "makes an extraordinary contribution to the Department." Specifically, the petitioner is one of only a few accompanists using percussion to propel dance students, teaching rhythm to those students. The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't of Transp*, 22 I&N Dec. 215, 221 (Comm'r. 1998). The petitioner's "contributions" to his employer are not contributions of major significance to the field.

[REDACTED], a dance lecturer at UC Berkeley, asserts that the petitioner is one of the few accompanists capable of matching "the power" of the well-known Martha Graham technique and is able to "propel it to new and greater magnitudes." [REDACTED] asserts that the petitioner composed the percussion for one of [REDACTED]'s most successful dances. The record contains no published material in musical trade journals noting the petitioner as having set a new standard for the Martha Graham technique or other objective evidence that could demonstrate the petitioner's national

recognition for his expansion of this technique. The record also lacks evidence that dance is nationally recognized for its percussion.

a senior musician at UC Berkeley, asserts she met the petitioner in 1986 when they both worked on "a nationally cited YMCA cultural after school program known as 'Social Awareness Via the Arts.'" According to the program became the first working model of a peace education curriculum of the international non-governmental organization Pathways to Peace. explains that the petitioner provided African rhythms. The music was recorded and performed at events in 1987 and 1988. does not explain how this program has influenced the field of music since that time.

, a lecturer at UC Berkeley, asserts that the petitioner has performed with him "for established presenters with distinguished reputations" and lists examples both inside and outside California. The record lacks programs for these events. also asserts that the petitioner appears on commercial DVD, but does not provide any sales figures for the DVD. Being able to secure employment in one's field, including performances as a performing artist, is not a contribution of major significance that impacts the field as a whole.

Director of the African Music Program at UC Berkeley, discusses the petitioner's previous work in Ghana. We note that the petitioner indicates on the petition that he has resided in the United States since 1986, 21 years before the petition was filed. Thus, any influence he may have had in Ghana prior to 1986 has little relevance to the requirement that the petitioner demonstrate sustained national or international acclaim in 2007 when the petition was filed. Regardless, who does not explain his own basis of knowledge about the petitioner's history in Ghana, provides assertions that are general and vague. For example, he asserts that the petitioner "helped created [sic] a revolution and advanced the popularity of the West African highlife music." He then discusses Ghana's political history and concludes that the petitioner "taught many how to develop a heightened sense of pride in their culture and their place in the world we share." The letter lacks specific examples of the petitioner's influence in Ghana or the United States.

Chair of the Performing Arts Department of Saint Mary's College of California, asserts that she originally hired the petitioner to accompany her dance class and subsequently as a dance teacher. She asserts that the petitioner has contributed to an increase in involvement in the school's dance program. She further indicates that he composed a score for one of her works but does not suggest that it was performed beyond the Bay Area. While the petitioner has contributed to the dance program at this college, there is no evidence that his influence extends beyond the Bay Area.

, Director of African Music Source in Oakland, California, asserts that the petitioner is one of a small number of West African musicians in the Bay Area capable of sharing this heritage and is thus an essential and irreplaceable member of the group. While he asserts that the petitioner first came to "international prominence as the leader of a seminal and renowned

Ghanaian highlife band," the record contains no objective evidence supporting this assertion, such as, for example, extensive media coverage of the group. [REDACTED] provides no examples of the petitioner's influence on the field at the national or international level.

[REDACTED], Artistic Director for Opera Piccola in Oakland, California, asserts that the petitioner preformed in the "World Premier of The Stolen Aroma in 1993 and subsequently toured with that show for over 3 years, throughout the greater Bay Area." [REDACTED] explains that she has worked with a wide range of famous musicians and compares the petitioner with those musicians. [REDACTED] does not, however, explain how the petitioner has influenced the field. For example, she does not assert that "The Stolen Aroma" is nationally known and influential for its percussion. Notably, according to Ms. [REDACTED] the show toured only within the greater Bay Area.

An unsigned document on Akwaaba Performing Arts letterhead asserts that the petitioner served as the Dance Director for the Caribbean Cultural Association (CCA) since 1990, during which time he developed and executed classes and workshops for elementary and junior high schools. The petitioner also directed the CCA dance troupe Akwaaba. While the document asserts that the troupe "has received numerous acclaims locally and nationally," the notable performances by this troupe listed on the document are all in California. The document also lists "notable performances" by the petitioner. While the first one, from 1987, was in New York, the remainder are all in California. Without a signature, however, this document has no evidentiary value.

[REDACTED], a music educator and composer/pianist in California, asserts that she met the petitioner while he was teaching at an elementary school. She asserts that she began utilizing him in her own programs as a teacher, singer, master drummer, facilitator and African historian and helped him secure engagements "all over the Bay Area." While we do not doubt the sincerity of Ms. [REDACTED]'s enthusiastic endorsement, we must reiterate that subjective evaluations of talent are not the standard used for the classification sought. The alien must be nationally or internationally acclaimed in the field. [REDACTED] does not assert that the petitioner is known outside of California. More pertinent to this criterion, she does not provide any examples of how the petitioner has impacted the field at the national level.

[REDACTED], President and Co-founder of Friends of Negro Spirituals, asserts that the petitioner makes the group's program "more emotionally and culturally meaningful by ceremonially opening them honoring African and African-American ancestors with African drum ceremonies." [REDACTED] however, asserts only that the group attracts audiences from the wider Bay Area and the concerts listed as those where the petitioner performed are all in California.

[REDACTED] a professor in the Music Department of the City College of San Francisco, characterizes the petitioner as an "extremely gifted Master Drummer and dance instructor." Once again, these highly general accolades cannot serve to meet this criterion.

The fact that the petitioner has taught young students in after school enrichment programs and at the YMCA does not establish his influence on the field at the national level. While we do not question the overall reputation of UC Berkeley, the petitioner has not demonstrated that its dance program enjoys a nationally recognized distinguished reputation. Regardless, the petitioner has not demonstrated that simply providing quality accompaniment for dance students at a distinguished institution constitutes a contribution of major significance to his field as a whole.

We acknowledge the evidence that the petitioner has issued CDs. While these CDs may be original, the petitioner has not demonstrated that they constitute a contribution of major significance. Significantly, the petitioner does not even claim to meet the commercial success criterion set forth at 8 C.F.R. § 204.5(h)(3)(x). Thus, there is no evidence that these CDs have set a sales record to which other members of his field aspire.

While the petitioner has clearly earned the admiration of those with whom he has worked and has garnered a reputation in the greater Bay Area, the record lacks evidence of any notable influence outside of California. Thus, we concur with the director that the record falls far short of demonstrating that the petitioner has made an original contribution of *major significance* to his field. As such, the petitioner has not established that he meets this criterion.

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

Initially and in response to the director's request for additional evidence, counsel asserted that the petitioner had "presented/performed his music at hundreds of venues and academic institutions." The petitioner submitted multiple fliers, all for performances in California. The petitioner also submitted a self-serving list of performances (including at churches and elementary schools), most of which are in California but also including performances in Arizona, Alaska, Oregon and Canada. As stated above, [REDACTED] attests to a small number of performances outside of California. While [REDACTED] characterizes these venues as having enjoying a "distinguished reputation," the record does not support that assertion. The director noted that performing is inherent to the performing arts and concluded that the petitioner had not demonstrated that the venues where he performed were consistent with national or international acclaim. On appeal, counsel asserts that the petitioner has performed at "hundreds of venues throughout the country."

The self-serving list of venues and the assertions of counsel do not constitute evidence. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190; *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. Even if we accepted [REDACTED] assertion that the petitioner has performed with him at a small number of venues outside of California, the record lacks evidence that these performances are consistent with the petitioner's personal national or international acclaim, such as programs confirming his role, promotional material that might confirm that these performances were billed as showcases of the petitioner's work and evidence regarding the significance of the events. It remains that the petitioner has not demonstrated that his work has been showcased at nationally

significant venues indicative of or consistent with national or international acclaim. Thus, the petitioner has not demonstrated 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.

Initially, counsel asserted that the petitioner has performed in a leading or critical role "at each institution where has taught," specifically UC Berkeley and Saint Mary's College of California. The petitioner submitted the letters from faculty at these institutions, discussed above. The director concluded that the petitioner had not demonstrated that an accompanist or part-time teacher is a leading or critical role for these institutions. On appeal, counsel reiterates claims in the letters from UC Berkeley and Saint Mary's College of California faculty.

We have already considered the petitioner's alleged contributions above. We acknowledge the assertions that, while working at these institutions, the petitioner has earned considerable respect. At issue for this criterion, however, are the nature of the role the petitioner was selected to fill and the national reputation of the entity that selected him. In other words, the nature of the role should be such that the mere selection for the role is indicative of or consistent with national or international acclaim.

We concur with the director that an accompanist or part-time teacher is not a leading or critical role for UC Berkeley as a whole or Saint Mary's College of California. Even if we considered an accompanist to be a leading or critical role for UC Berkeley's Department of Theater, Dance and Performance Studies, and we do not, the petitioner has not demonstrated the national reputation of this department. Similarly, the petitioner has not demonstrated that Saint Mary's College of California enjoys a nationally distinguished reputation.

In light of the above, the petitioner has not demonstrated 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 does not claim to meet this criterion. We acknowledge, however, the submission of employment contracts. The record lacks comparative evidence that would allow us to determine whether the petitioner's income compares with the top tier of remuneration nationally in his field. Thus, the petitioner has not submitted the initial evidence required to meet this criterion.

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

The petitioner does not claim to meet this criterion. We acknowledge, however, the submission of evidence that the petitioner has produced CDs. The petitioner, however, submitted no evidence of the

sales of these CDs. Thus, the petitioner has not provided the initial evidence required to meet this criterion.

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 have 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 musician 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 musician, 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.