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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 20 2005

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:

[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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a horizontal line.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 in business. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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

(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.

The applicable regulation defines the statutory term "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in business as a "business professional." The record indicates that the petitioner is the President of the [REDACTED] Electric Appliance Company, Limited in China (hereinafter [REDACTED]). The petitioner originally submitted supporting documents including her resume, an [REDACTED] brochure, a balance sheet and profit and loss statement for [REDACTED], certification of her junior college degree in electrical engineering, evidence of municipal and provincial prizes awarded to the petitioner and her present and former company, a patent granted to [REDACTED] and naming the petitioner jointly with two other individuals, copies of two lectures co-authored by the petitioner, four media articles purportedly about the petitioner and her company, and documents relating to the petitioner's salary. The director found that the record showed regional recognition for the petitioner's business endeavors, but did not establish that she had earned the requisite sustained national or international acclaim.

On appeal, counsel submits a brief, copies of documents previously included with the petition and the following new evidence: documents relating to [REDACTED]'s alleged business with foreign companies, a copy of [REDACTED] business license, one additional balance sheet and one additional profit and loss statement for [REDACTED]. Counsel's claims and the additional evidence submitted on appeal do not overcome the substantive reasons for denial and we affirm the director's decision.

We first discuss counsel's reference to an unpublished AAO decision. In both his initial and appellate briefs, counsel cites an unpublished AAO decision on a petition for a nonimmigrant worker under section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), for the proposition that mere submission of "three of the types of evidence prescribed in INA § 203(b)(1)(A) and Title 8 C.F.R. § 204.5(h) is evidence that merits an individual's classification as an alien of extraordinary ability" (emphasis in original). Counsel's reliance on this case is misguided for two reasons. First, designated and published decisions of the AAO are binding precedent on all Citizenship and Immigration Services (CIS) employees in the administration of the Act pursuant to 8 C.F.R. § 103.4(c), yet unpublished decisions have no such precedential value.

Second, the decision counsel cites is inapplicable to the petitioner's case because it concerns a petition for a nonimmigrant O-1 visa and because it allegedly provides an evidentiary standard inapplicable to the classification sought here. Although similar, the statutory provisions and the regulations for the O-1 nonimmigrant and the extraordinary ability immigrant classifications are not identical. Moreover, counsel conflates mere submission of evidence relevant to the regulatory criteria with the actual satisfaction of the criteria. However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h) must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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). For example, mere submission of newspaper articles about the alien may relate to the criterion at 8 C.F.R. § 204.5(h)(3)(iii), but will not satisfy that criterion if the articles were published several years ago in local newspapers and hence do not reflect the requisite sustained national or international acclaim.

Counsel's remaining contentions, the evidence submitted, and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The director correctly found that the petitioner did not meet this criterion. The record contains copies of various scientific and technical prizes awarded to [REDACTED] and the petitioner's prior company by provincial and municipal authorities. The petitioner is named on the award certificates along with four other individuals or is recognized for her contribution to group projects. The record contains a Certificate of Honor awarded to the petitioner as "one of Top-10 Scientific and Technical Stars of Shaoxing City" in 1995 by three Shaoxing municipal organizations. The petitioner also received the "2nd Prize of Advanced Scientific and Technical Individual of Shaoxing" in 1996 by the Shaoxing municipal government and the Shaoxing municipal committee of the Chinese Community Party. The record thus establishes the regional recognition of the petitioner's scientific and technical accomplishments, but does not demonstrate that she has won national or international prizes or awards for her business endeavors. Consequently, the petitioner does not meet this criterion.

*(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.*

The petitioner submitted four articles from Chinese publications as evidence of her eligibility under this category. The director briefly discussed the articles and found them insufficient to satisfy this criterion. We do not address the substance of the articles because the documents are accompanied by uncertified translations. Any document submitted to CIS that contains a foreign language must be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the articles, we cannot determine whether they support her claimed eligibility under this criterion. *Id.* The record is also devoid of any evidence that the articles were published in professional, major trade publications or other major media in China. Accordingly, the petitioner 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.*

The director correctly determined that the petitioner did not meet this criterion. The record contains evidence that [REDACTED] was awarded a patent for a Single-Phase Torque Wiring Motor in 1994 by the Patent Office of Mainland China. The petitioner is named as one of five designers of the motor. When an alien claims eligibility under this criterion by virtue of a patent, he or she must still show that the patented invention constitutes a contribution of major significance to his or her field. As our office has repeatedly stated, the significance of a patented invention must be determined on a case-by-case basis. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n.7 (Comm. 1998). In both of his briefs, counsel claims that the [REDACTED] patent is the purest form of evidence that the Petitioner has made a unique and tangible business-related contribution of significance to her field." Counsel's claim is unsupported by the record. The patent evidences a scientific and technical innovation in China, but does not sufficiently demonstrate that the petitioner has made an original *business*-related contribution of major significance to her field. The record does not contain evidence, for example, that the Single-Phase Torque Wiring Motor set a new business standard for other electric appliance companies in China or abroad. Accordingly, the petitioner does not meet this criterion.

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

The director correctly determined that the submitted evidence did not satisfy this criterion. The petitioner submitted copies of two "lectures" entitled "Application of Motor on Household Electric Appliances (1) [and] (2)" on which the petitioner is listed as one of three co-authors. The lectures are accompanied by uncertified translations. Again, without certified translations of these documents, we cannot determine whether the evidence supports the petitioner's claimed eligibility under this criterion. *See* 8 C.F.R. § 103.2(b)(3). The record is also devoid of any evidence that these lectures were published in professional, major trade publications or other major media, or that other electric appliance business professionals have recognized the lectures as particularly significant or influential. Accordingly, 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.

The director correctly determined that the petitioner did not meet this criterion. Counsel claims that the petitioner meets this criterion as president of [REDACTED]. On appeal, counsel cites the media articles previously acknowledged under the third criterion as evidence under this category. Again, we cannot determine whether those articles support the petitioner's claimed eligibility under this criterion because the record does not contain certified translations of the documents. See 8 C.F.R. § 103.2(b)(3). Other evidence in the record indicates that the petitioner is the president of [REDACTED] joint-venture corporation between China and Germany. The submitted profit and loss statements show that [REDACTED] had a net profit of 628,343.33 *renminbi* (RMB) *yuan* in 2001 and 1,103,319.41 RMB *yuan* in 2002.

On appeal, the petitioner submits evidence of [REDACTED] international dealings including an unsigned and undated letter purportedly written by the petitioner that lists [REDACTED] business with companies in the United States, Canada, and the Middle East. The record also contains a copy of a letter from [REDACTED] Managing Director of Soleus International Incorporated in California (Soleus), addressed to the U.S. Consulate in Shanghai, dated November 28, 2003, and stating that Soleus invited the petitioner and three other [REDACTED] officers to the United States to discuss future business between the two companies and to attend the International Air-Conditioning, Heating, Refrigerating Exposition (The AHR Expo) in January, 2004. The petitioner also submitted a copy of a letter from [REDACTED] of the AHR Expo addressed to the U.S. Consulate in Shanghai, dated November 4, 2003 and stating that the AHR Expo had invited the petitioner and five other [REDACTED] officers to exhibit at the AHR Expo in January, 2004. Although the unsigned letter purportedly written by the petitioner states that she has traveled on business to Canada, Dubai and several European countries and that she "went to U.S.A. to attend exhibition and to develop the market at [sic] Jan. 28, 2004," the record contains no corroborative evidence that she actually attended the AHR Expo or any other international exhibitions. Simply going on record without supporting documentary evidence is not sufficient to meet 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)). Even if the record contained evidence of the petitioner's participation in the AHR Expo, we would not consider it because the Expo was held after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

On appeal, the petitioner also submitted copies of purchase orders from MJC America Limited (MJC) to [REDACTED] and computer printouts concerning transactions between the two companies. The printouts are nearly illegible and the petitioner has not identified them or explained their significance. The petitioner also submitted copies of the business cards of two officers of Orphalese Global Strategies (Orphalese), Incorporated and three officers of Soleus as well as printouts from the websites of MJC, Soleus, Orphalese, Uawithya Machinery Company Limited of Thailand, Allcam Mobile Products Limited, and Turkhot Tech Incorporated (a Canadian company). The last printout is in French and is not accompanied by a certified English translation. Consequently, we cannot determine whether the printout supports the petitioner's claimed eligibility under this criterion. See 8 C.F.R. § 103.2(b)(3). The other printouts do not identify any of the companies' products as manufactured by Aoli or in any other way demonstrate that [REDACTED] has done business with these foreign companies. In sum, the evidence demonstrates only that the petitioner is the President of [REDACTED] which was profitable in 2001 and 2002 and has done business with one U.S. company, MJC. Although [REDACTED] and the petitioner have won regional awards for scientific and technical accomplishments (as discussed under the first criterion), the record contains no independent evidence that [REDACTED] has a distinguished business reputation throughout China or internationally.

Consequently, the petitioner does not meet this criterion through her role at [REDACTED]

Counsel also claims that the petitioner satisfies this criterion because she is the half-time Chairwoman of the Shengzhou Women Entrepreneurs Association, Director of the Shengzhou Entrepreneurs Association, and Permanent Director of the Shengzhou Commercial Chamber. The petitioner's resume states that she holds these titles, but the record contains no evidence of her positions or that these three organizations have distinguished reputations. Again, simply going on record without supporting documentary evidence is not sufficient to meet 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)). Accordingly, the petitioner does not 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.*

Counsel claims that the petitioner meets this criterion because her purported annual salary of 96,000 RMB *yuan* is higher than the leading occupation in a list of "China's 10 Top-Earning Professions" contained in a printout from the website of the Hong Kong Trade Development Council, which was submitted with the petition. The petitioner also submitted a letter from [REDACTED] purportedly attesting to the petitioner's salary. This letter is accompanied by an uncertified English translation and the attached certificate only affirms the veracity of the company's seal and the signature of [REDACTED] General Manager, [REDACTED] (who is not identified in the uncertified English translation of the letter). Because the petitioner failed to submit a certified translation of this letter, we cannot determine whether it supports her claimed eligibility under this criterion. *See* 8 C.F.R. § 103.2(b)(3). Even if we accepted the letter as currently translated, it would not support the petitioner's claim. The uncertified translation states that the petitioner "has a monthly salary of RMB Yuan eight thousand, and her annual income amounts to RMB Yuan eighteen thousand," not the annual sum of 96,000 RMB *yuan* alleged by counsel. The record does not explain this discrepancy or document that this figure is an erroneous statement of the petitioner's salary is due to a mistake of typography or translation.

Counsel's reliance on the list of "China's 10 Top-Earning Professions" is also misplaced. Counsel claims that the petitioner's salary is nearly double that of Chinese computer software developers, which he alleges are the highest earning professionals in China according to the Top Ten list. Although computer software developers are the first professionals on the list, they are not the highest earners in China. According to the list, "[o]ver 90% of the lawyers in Beijing's 200-plus law firms have an annual income of over Rmb 100,000." Counsel also claims that the petitioner's salary is comparable to top Chinese athletes, yet the list only speculates that leading Chinese soccer players "may have a monthly income of up to Rmb 10,000." Although the petitioner is not a lawyer or an athlete, counsel has himself invoked this unsupportive comparison by claiming that "the Petitioner's salary of RMB Yuan 8,000 per month is on par with the highest salaries in the country in any profession." This statement is made on page seven of counsel's original brief and is repeated verbatim on page six of his appellate brief. However, the record contains no adequate evidence of the petitioner's salary, let alone evidence that her salary is significantly higher than other company presidents in China or comparable to business professionals at the very top of their fields in China. Accordingly, the petitioner does not meet this criterion.

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