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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **APR 14 2006**

SRC 05 026 52055

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in business, 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. Specifically, the director concluded that the petitioner had not submitted evidence relating to any of the ten regulatory criteria, of which an alien must meet at least three.

On appeal, the petitioner asserts that the opinions of his tenants and a friend who appears to work for the German Consulate in Argentina are sufficient to establish his international recognition. The petitioner’s statements on appeal are difficult to comprehend and do not appear to explain how he meets at least three of the regulatory criteria.

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

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry to the United States will substantially benefit prospectively the United States.

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

According to Part 6 of the petition, it seeks to classify the petitioner as an alien with extraordinary ability as a “business operations specialist.” The petitioner operates a business purchasing, renovating and managing residential property. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien’s receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The criteria follow.

- (i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (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;
- (iv) Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner initially submitted (1) his resume (including the company's objectives and organization chart), (2) character references from business associates in Argentina, (3) an attestation as to the improvements to a residential building owned and managed by the petitioner signed by his tenants, (4) a description of the petitioner's investment and upgrade plans, (5) evidence of property ownership by the petitioner's company, (6) the company's incorporation and licensing documentation, financial statements, 2003 tax return reflecting a net loss of \$4,117 and bank and credit card statements and (7) the petitioner's law degree, bank statements and 2003 tax returns reflecting an adjusted gross income of \$6,133.

On February 26, 2005, the director advised the petitioner of the ten criteria listed above and requested evidence to meet at least three. The director also asked the petitioner to compare himself with others in the field. In response, the petitioner stated that he is submitting evidence relating to the criteria at 8 C.F.R. § 204.5(h)(3)(i),(vi) and (x), but did not explain how the evidence submitted relates to awards, contributions and commercial success. The petitioner then asserted that his knowledge in the field elevates him above others in the field. He chronicled his experience and discusses what makes a good manager, including the removal of problem tenants. The petitioner submitted an unsigned letter from Dr. [REDACTED], Consul Honorario of the Federal Republic of Germany who asserts that he served in Argentina's military with the petitioner and worked as a fellow attorney with the petitioner. An unsigned letter has no evidentiary value. The petitioner also submitted several complaints filed by the petitioner's company against tenants.

The director acknowledged the evidence submitted and concluded that the petitioner had not submitted evidence relating to the ten regulatory criteria. Specifically, the director concluded that recommendation letters do not constitute awards or prizes, that the petitioner's success did not rise to the level of a contribution of major significance to the field, that the petitioner had not demonstrated that his business enjoyed a distinguished reputation, that the petitioner's wages were not demonstrated to be significantly high and that the petitioner had not submitted any evidence of memberships, published material about him or scholarly articles authored by him.

On appeal, the petitioner asserts that the director did not properly value the "public testimonies" submitted. Although the wording is unclear, the petitioner appears to assert that the testimonies, if properly valued, are sufficient evidence in place of meeting at least three criteria. He asserts that he goes beyond the tasks of a good manager, converting insecure buildings into attractive places to live. The petitioner asserts that the support of more than 20 tenants "who without knowing myself" and the letter from Mr. [REDACTED] "who represents to a German colony of more than 300,000 inhabitants in his zone, and to whom I am his counselor in Miami in investments" demonstrate his "international recognition."

The regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of "comparable" evidence where the criteria are not "readily applicable." In order to rely on this provision, the petitioner must first demonstrate that the regulatory criteria are not readily applicable. The petitioner's inability to meet any of the criteria does not make them inapplicable to his field. The petitioner has not established that no

awards exist in the field of business, that there are no exclusive business memberships, that renowned business leaders are not featured in the mainstream media or in trade journals, that business executives are never called upon to judge the work of others, that major contributions to the business field are never recognized beyond one's associates, that business executives never author scholarly articles in their field, that business executives never play leading or critical roles for entities with distinguished reputations and that there are no highly paid business leaders. Thus, while we acknowledge that artistic display and commercial success in the performing arts are not applicable to the petitioner's field, the petitioner has not established that the remaining eight, of which the petitioner must meet three, are inapplicable. In fact, the commentary to the final rule published at 56 Fed. Reg. 60897-01, 60898 (November 29, 1991), provides: "Several of the criteria, including such indicia of achievement as awards, articles by or about the alien in major publications, and salary level, are written in terms broadly applicable even within the business community."

Without evidence that the regulatory criteria are inapplicable to the petitioner's field, we cannot conclude that the regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence in this matter. The petitioner has not attempted to rebut the director's analysis of why the evidence does not relate to the ten criteria. Specifically, the petitioner does not contest that letters are not awards, that his income of \$6,133 is not significantly high in the field of business or that the renovations he has completed have not influenced the field nationally such that they can be considered major contributions to the field of business (as opposed to the lives of his tenants). The petitioner also fails to explain how any of the other evidence relates to any of the other criteria. We concur with the director's analysis, discussed in detail above.

Even if the petitioner had established that the regulatory criteria were inapplicable, the petitioner has not established that the evidence provided is "comparable" to the objective evidence of acclaim normally required. Whether or not his tenants have actually met him, their signatures on a petition prepared by someone else can hardly be considered independent and objective opinions as to his rank in the field. Moreover, the petitioner has not established that his tenants are business experts in their own right. As such, the petitioner has not established their expertise in evaluating his credentials and business accomplishments. Finally, even if we considered the letter from Mr. [REDACTED] despite the lack of a signature, the letter is not persuasive. First, Mr. [REDACTED] does not explain why he served in the Argentine military with the petitioner if he (Mr. [REDACTED]) is a German citizen. Moreover, every attorney making a living in his occupation has clients. Thus, the fact that the petitioner represented Mr. [REDACTED] corporation in La Plata does not demonstrate the petitioner's national or international acclaim. National or international acclaim necessitates recognition beyond the tenants living in the building one owns and one's own clients.

Finally, the subjective opinions of tenants and clients, or even independent experts, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) 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. 1988). However, CIS 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; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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. The statute requires extensive documentation to establish eligibility for this classification. The regulations require that an alien of extraordinary ability be able to demonstrate sustained national or international acclaim. Assuming that the beneficiary is a talented and knowledgeable business operations specialist, the record does not reflect that he has attained any national acclaim for that talent. Specifically, the petitioner has not submitted documentation that meets any of the ten criteria.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a business operations specialist 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 business operations specialist, 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.