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U.S. Citizenship
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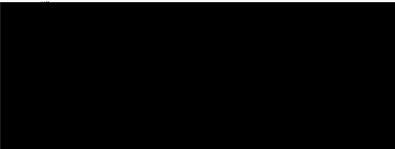
Office: VERMONT SERVICE CENTER

Date: JAN 11 2006

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.

Mari Johnson

Σ 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 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. On appeal, counsel submits additional evidence and contends that the director made factual errors and did not properly assess the evidence submitted initially, and in response to the director's Request for Evidence (RFE). Counsel's contentions and the evidence submitted below and on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed for the reasons discussed as follows.

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.

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.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), 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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in business, specifically within the field of "financial analysis and management accounting with a specialty in the structure of international business organizations," as stated in counsel's letter accompanying the Form I-140. The record shows that the petitioner formerly worked as a Cost Analyst, Senior Financial Analyst, and Finance Group

Manager for the Proctor and Gamble company in Egypt (hereinafter, "P&G-Egypt") and then came to the United States and received a Master's degree in Business Administration (MBA) from Columbia University in 2001. After obtaining his MBA, the petitioner worked as an Associate at Merrill Lynch and Company (hereinafter, "Merrill Lynch") in New York City from September 2001 to April 2002. In September 2002, the petitioner became a Manager at MeadWestvaco corporation (hereinafter, "MeadWestvaco") in Stamford, Connecticut, where he was employed at the time this petition was filed on July 30, 2004.

We address counsel's claims and the evidence submitted initially, in response to the RFE and on appeal in the following discussion of the regulatory criteria relevant to the petitioner's case. Counsel does not claim that the petitioner is eligible under any criteria not discussed below.

(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.

Counsel claims the petitioner meets this criterion through his membership in the American Institute of Certified Management Accountants (IMA), the Association for Investment Management and Research (AIMR), the Hermes Society of the Columbia University Business School, and *Beta Gamma Sigma*. The evidence submitted does not substantiate this claim.

The record contains a copy of a letter from IMA dated September 7, 1999, which is addressed to the petitioner and states, "The Certified Management Accountant designation that accompanies this letter is awarded in recognition of your success on the CMA examination and the completion of the experience requirement. . . . The Certified Management Accountant designation is a mark of distinction in the field of management accounting." Accompanying this letter is a second, undated letter confirming the petitioner's IMA membership and including his membership card with the "CMA" designation following his name.

In his recommendation letter, [REDACTED] Vice President of Hedge Fund Strategies at Goldman, Sachs and Company and the petitioner's former classmate at Columbia, explains that the petitioner is "a designated member of the [IMA], an organization that allocates a certification that is recognized admirably and respected by nearly every financial community in the world." Mr. [REDACTED] also explains that the CMA "is patently known as a mark of professional distinction" in the petitioner's field. Mr. [REDACTED] states that to maintain CMA status, an individual must have several years of "outstanding professional experience," pass four "extremely stringent exams" and complete "demanding" continuing education courses. Mr. [REDACTED] statements are not corroborated by evidence from IMA regarding the CMA requirements or IMA membership criteria. With his RFE response, the petitioner submitted a third letter from IMA that cannot be considered because it is dated 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).

While Mr. [REDACTED] letter and the petitioner's first two IMA letters indicate that the petitioner has obtained a level of distinction in his field through the satisfaction of allegedly stringent requirements, the record does not persuasively establish that CMA status is an outstanding achievement as judged by recognized national or international experts in the field. The petitioner's CMA status and IMA membership may show that the petitioner has attained a respected professional credential, but the record does not establish that CMA status alone demonstrates sustained national or international acclaim.

The record similarly indicates that the petitioner's affiliation with AIMR is a valued professional credential, but does not demonstrate that this credential is an outstanding achievement reflective of sustained national or international acclaim. The petitioner submitted a copy of a letter from AIMR dated July 18, 2003 and congratulating him on his passage of the 2003 CFA [Chartered Financial Analyst] Level I examination. The letter states, "The AIMR Board of Governors recognizes the challenge you have met and congratulates you on your achievement. Your success at Level I is an important step toward becoming a CFA charterholder. This year 42% of Level I candidates passed the exam." In his undated recommendation letter, [REDACTED] Manager of International Treasury for MeadWestvaco and the petitioner's former classmate and business colleague, explains that "AIMR expects and maintains a high level of professional conduct after a strenuous and competitive application process. To qualify as a regular member of AIMR, an investment professional must hold a Bachelors degree from an accredited institution, have passed Level 1 of the C.F.A. exam and have three years of professional work experience." Mr. [REDACTED] statement is not corroborated by documentation from AIMR regarding its membership criteria. With his RFE response, the petitioner submitted a letter dated January 10, 2005 stating that AIMR had changed its name to the CFA Institute and confirming the petitioner's membership in the institute and the significance of that membership. We cannot consider this letter because it was written after the petition was filed. Again, 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), *Katigbak*, 14 I&N Dec. at 49.

The record thus shows that the petitioner has passed the first level of the CFA examination administered by AIMR. While the first AIMR letter shows that passage of the Level I examination was difficult, it does not establish that such passage is an outstanding achievement reflective of sustained national or international acclaim. Instead, the letter states that passage of this examination is a preliminary step to becoming a CFA charterholder.

The petitioner's membership in the Hermes Society of the Columbia University Business School and his purported membership in *Beta Gamma Sigma* also do not satisfy this criterion. Mr. [REDACTED] confirms the petitioner's past membership in the "coveted Hermes Society – a top-drawer group comprising of only the most talented, highest ranking and professionally acknowledged students in the graduate department at the Columbia Business School." Yet the record contains no documentation from this society or Columbia University to corroborate Mr. [REDACTED] statement. Moreover, Mr. [REDACTED] letter indicates that the Hermes Society is a group limited to graduate students of one academic institution and that the petitioner's membership ended upon his graduation. Hence, the petitioner's Hermes Society membership is not consistent with sustained national or international acclaim.

Counsel claims that the petitioner is a member of *Beta Gamma Sigma*, "a highly selective national business honor society affiliated with the Association of College Honor Societies." The record contains no evidence of the petitioner's *Beta Gamma Sigma* membership or the alleged selectivity and prestige of this society. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record shows that the petitioner has obtained two respected credentials in his field as administered by and in conjunction with his membership in IMA and AIMR (now known as the CFA Institute). However, the evidence

submitted fails to establish that these credentials are outstanding achievements that demonstrate sustained national or international acclaim in the petitioner's field. Accordingly, 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.

As evidence of the petitioner's eligibility under this criterion, counsel submitted two MeadWestvaco press releases and seven printouts of articles from <http://news.moneycentral.msn.com>, MeadWestvaco's website, and www.paperage.com, www.thetelecommanalyst.com, and www.datalignum.com. These articles discuss MeadWestvaco's acquisition of AMCAL Incorporated and Aries Packaging SA and MeadWestvaco's launch of its "\$500-Million Next-Phase Productivity Initiative." Although some of the recommendation letters state that the petitioner worked on these acquisitions and initiative [check], none of the articles quote, identify or mention the petitioner. Hence, none of the articles are about the petitioner or discuss work that they attribute to the petitioner.

Moreover, articles from MeadWestvaco's own website and the company's own press releases are promotional materials, not published materials about the petitioner in professional, major trade publications or other major media. The record is also devoid of any evidence that <http://news.moneycentral.msn.com>, www.paperage.com, www.thetelecommanalyst.com, or www.datalignum.com are professional, major trade publications or other major media.

With his RFE response, counsel submitted additional materials concerning the work of Merrill Lynch and Company in taking the Valor Communications Group public, work in which the petitioner was purportedly involved. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Accordingly, the petitioner does not meet this criterion.

(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 specification for which classification is sought.

Counsel initially claimed the petitioner met this criterion because he managed and reviewed the work of other employees in his three positions at P&G-Egypt and because he taught three training courses for the company. The letters of Sandy Gopalan, Head of Fast Moving Consumer Goods Consulting Group of Tata International and a former Assistant Finance Director and colleague of the petitioner's at P&G-Egypt, and Ahmed Elshamy, Chief Financial Officer of Al Ahram Beverages Company S.A.E. and a former Financial Director of P&G's European Headquarters who recruited the petitioner to work for P&G-Egypt, affirm the petitioner's managerial and teaching accomplishments at P&G-Egypt, but do not establish that he judged the work of other professionals in his field outside of his duties at P&G-Egypt or that his work was recognized outside of P&G-Egypt in a manner consistent with the requisite sustained acclaim.

With his RFE response, counsel claimed the petitioner also met this criterion through his position at MeadWestvaco where he reviewed the work of different divisions of the company. The letters of Mr. Plon, John Szaepanski (Director of Strategy for MeadWestvaco's Consumer Packaging Group who helped recruit the petitioner to work for the company), and Anthony Mancuso (Controller and Chief Financial Officer of the New

Ventures Group at MeadWestvaco) affirm the petitioner's accomplishments while employed at MeadWestvaco, but do not establish that he judged the work of other professionals in his field outside of his responsibilities at MeadWestvaco or that his review of the work of other employees was recognized outside of MeadWestvaco in a manner consistent with the requisite sustained acclaim.

Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The petitioner submitted no evidence that he judged the work of other individuals in his field in a manner significantly outside the duties of his positions at P&G-Egypt or MeadWestvaco and reflective of national or international acclaim. Consequently, the petitioner does not meet this criterion.

In his RFE response, counsel also claimed the petitioner met this criterion through his current position at Merrill Lynch. We do not address this claim or the relevant evidence submitted because the record shows that the petitioner did not begin this position with Merrill Lynch until after the petition was filed. The petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

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

The plain language of this regulatory criterion indicates that it applies to the visual arts. Counsel nonetheless claims that the petitioner meets this criterion because (as stated on page 16 of his initial letter accompanying the petition) the petitioner's work "has been professionally showcased through his presentations to professional committees." Counsel then quotes the letters of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] as they describe the petitioner's in-house presentations while employed at P&G-Egypt and MeadWestvaco.

Although aliens with expertise in areas besides the visual arts may submit comparable evidence of their eligibility under this criterion pursuant to 8 C.F.R. § 204.5(h)(4), the comparable evidence provision is invoked only when the criteria at 8 C.F.R. § 204.5(h)(3), do not readily apply to the alien's occupation. Counsel has not explained nor documented how at least three of the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the petitioner's occupation.

Even if we considered the letters of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] as comparable evidence of the petitioner's eligibility, their letters would not satisfy this criterion. As explained above under the fourth criterion, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The petitioner's accomplishments as described in these letters were part of the duties and responsibilities of his positions at P&G-Egypt and MeadWestvaco. In-house presentations to professionals within (or clients of) one company or corporation do not demonstrate national or international acclaim. 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.

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. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of

that section independent of the organization itself. Here, counsel claims the petitioner meets this criterion through his roles at MeadWestvaco, the Columbia University Business School, Merrill Lynch and P&G-Egypt.

As evidence of the petitioner's eligibility under this criterion, counsel primarily cites the submitted recommendation letters. Academic and business classmates, colleagues or supervisors of the petitioner wrote these letters. While such letters 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 role has been recognized in his field beyond the limited number of individuals with whom he has worked directly and in a manner consistent with the requisite sustained acclaim. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence that one would expect of an alien who has achieved sustained national or international acclaim.

With his RFE response, counsel submitted evidence of the high ranking of the Columbia University Business School according to the *Financial Times*. We do not question the distinguished reputation of this academic institution or that the petitioner was an outstanding MBA student at Columbia. However, the petitioner's role as a student leader ended in 2001 upon his graduation and three years before this petition was filed. The record contains no evidence that the petitioner continued to perform a leading or critical role for his alma mater after his graduation and up to the date of filing. Accordingly, his former student role does not demonstrate sustained acclaim. More importantly, outstanding academic accomplishment or student leadership roles may evidence an alien's scholastic achievements, but they do not demonstrate that the alien has reached the very top of his field as a business professional.

On appeal, counsel also submitted evidence regarding the reputation of Merrill Lynch and MeadWestvaco. We do not question the distinguished reputations of these entities (or that of P&G) as a whole. However, we note that the record contains no independent evidence regarding the reputation of the specific divisions of Merrill Lynch, MeadWestvaco and P&G where the petitioner was employed prior to the filing of this petition.

Counsel initially claimed the petitioner met this criterion through his role at Merrill Lynch. The record indicates that the petitioner was a summer intern at Merrill Lynch while an MBA student and worked for the company for seven months upon graduation. With his RFE response and on appeal, counsel states that the petitioner was subsequently recruited back to Merrill Lynch after the petition was filed and cites evidence relevant to his achievements in this more recent position. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

The only evidence regarding the petitioner's previous employment with Merrill Lynch is a letter from [REDACTED] Vice President of Merrill Lynch's Investment Banking Group in New York City. Mr. [REDACTED] states that as an Associate with his group, the petitioner "valued a large acquisition target" and that "[d]ue in great part to [the petitioner's] expertise in his field, the transaction was completed efficiently and with great success." Mr. [REDACTED] also states that the petitioner contributed to an "elite group" within the company that advised institutional investors and company traders on the financial viability of certain companies and that he was selected to "prepare, present and participate in many due diligence reviews for several key telecom companies in their initial public offering stages." Mr. [REDACTED] letter indicates that the petitioner was successful in his assignments and work for various projects within the Investment Banking Group at Merrill Lynch in New York City. His letter does not establish, however, that the petitioner performed a leading or

critical role for that group or for Merrill Lynch as a whole in a manner consistent with the requisite sustained acclaim.

The letters of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] affirm the petitioner's valuable contributions to MeadWestvaco as a Manager of Business Analysis, his work for the Investor Relations and Papers Groups at MeadWestvaco and as Co-Chair of the company's United Way fundraising campaign. While some of the work that the petitioner was involved with at MeadWestvaco is reported in the submitted articles discussed above under the third criterion, none of these articles quote, mention or identify the petitioner. Hence, the record does not demonstrate that the petitioner's roles at MeadWestvaco were recognized by his field outside of the company itself and in a manner consistent with the requisite sustained acclaim.

Mr. [REDACTED] and Mr. [REDACTED] describe the petitioner's valuable work as a Cost Analyst, Senior Financial Analyst and Finance Group Manager and trainer at P&G-Egypt, but the record contains no other evidence regarding the petitioner's work for this company. The letters of Mr. [REDACTED] and Mr. [REDACTED] do not establish that the petitioner's accomplishments in any of his roles at P&G-Egypt were recognized outside of the company itself and in a manner reflective of sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

On appeal, counsel contends that the director made five errors in his decision. We address each of these contentions in turn. First, counsel quotes the portion of the director's decision that states that in his RFE response, counsel requested that Citizenship and Immigration Services (CIS) adjudicate the petition based on the evidence previously submitted. While this portion of the director's decision is erroneous, it has not prejudiced the petitioner, because we have addressed the evidence submitted with the RFE response and explained that the additional evidence of the petitioner's accomplishments cannot be considered because it arose 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), *Katigbak*, 14 I&N Dec. at 49.

Second, counsel correctly states that the director erroneously stated that the petitioner currently works for MeadWestvaco. Yet the record shows that the petitioner returned to work at Merrill Lynch after the petition was filed. Hence, his accomplishments in his current position cannot be considered. The petitioner must establish eligibility at the time of filing. *Id.*

Third, counsel stresses that the director stated that only one recommendation letter described the petitioner as an alien who has risen to the top of his field of endeavor. While it is true that five of the recommendation letters describe the petitioner as having achieved sustained national or international acclaim and as having reached the top of his field, these letters alone do not prove the validity of these statements. Without independent corroborative evidence of the petitioner's accomplishments and recognition in his field, recommendation letters alone are insufficient to establish the petitioner's eligibility for immigrant classification as an alien with extraordinary ability, (as explained above under the eighth criterion).

Fourth, the director stated that the petitioner's recommendation letters primarily refer to his accomplishments after he obtained his MBA degree. As counsel points out and as we have discussed above under the fourth, seventh, and eighth criteria, the letters of Mr. [REDACTED] and Mr. [REDACTED] both describe the petitioner's work at P&G-Egypt prior to his MBA studies. We have explained why these letters do not establish that the petitioner has achieved sustained national or international acclaim and we do not repeat that discussion here.

Fifth, counsel contends that the director's statement that none of the evidence submitted indicated the petitioner's ranking in comparison to other financial analysts in his field is erroneous and shows that the director did not consider the evidence submitted to establish the petitioner's extraordinary ability and that he "therefore ranked superior to his peers." As evidence that the petitioner ranks high among his peers, counsel cites on appeal the high ranking of the petitioner's alma mater, the Columbia University Business School, and the distinguished reputations of the petitioner's current and former employers, Merrill Lynch, MeadWestvaco and P&G. As discussed above under the eight criterion, the record does not establish that the petitioner's association and work with these entities demonstrates, reflects or is consistent with sustained national or international acclaim.

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 does not establish that the petitioner had achieved sustained national or international acclaim placing him at the very top of his field at the time of filing. He 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 his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.