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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **NOV 29 2007**
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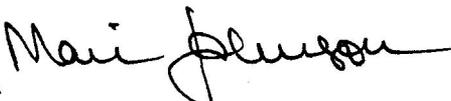
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:
[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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director failed “to properly consider the evidence submitted.”

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

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

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on December 16, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a “Business Analyst” in the healthcare industry. The record reflects that the petitioner has worked for Global Healthcare Group, LLC, since May 2003. A November 30, 2005 letter from this employer states:

[The petitioner] has been responsible for performance of strategic and competitive business analysis. He has been instrumental in laying a strong foundation with the company's business development. He is responsible for internal financial, sales and reporting requirements. Integrating business needs with system information capabilities as well as undertake [sic] business and healthcare staffing, sales and marketing analysis. Analyze business and financial operation and management to ascertain the competitive edges in healthcare business management . . . and help identify areas of recommended business, sales and financial solutions to meet our [needs].

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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner submitted a May 23, 1998 "Certificate of Excellence in Productivity, Quality, Innovation & Management" presented by the Institute of Economic Studies, New Delhi, India "INTERNATIONAL INC. NEW DELHI" rather than to the petitioner. According to the petitioner's resume and an October 2, 2000 letter from his former employer, the petitioner was working for Ancient Global Solutions, New Delhi in 1998.¹ There is no evidence demonstrating the petitioner's receipt of the preceding award.

The petitioner also submitted the following:

1. A November 1, 1996 letter from the petitioner's former employer, FCS Ltd., stating that he was awarded a "GOLD MEDAL for opening India's first Oxygen bar in DELHI."
2. A "Hind Rattan Award" presented to the petitioner by the Non-resident Indian Welfare Society of India, New Delhi at the 17th International Congress of Non Resident Indians on June 13, 1998.
3. A "Certificate of Appreciation" (2003) and "Certificate of Achievement" (2004) issued to the petitioner by his employer, Global Healthcare Group.
4. Nine recognition certificates issued to the petitioner by his former employer, Wockhardt Private Limited, India, from 1979 to 1987.

¹ The petitioner's resume indicates that he worked for Ancient Global Solutions from January 1997 to September 2000.

5. A "Certificate of Excellence in Management" issued to the petitioner by his former employer, [REDACTED], on January 23, 2001.

The record includes no substantive information regarding the significance of the preceding awards. There is no evidence that these awards reflect national or international recognition for excellence in the field of endeavor rather than institutional or organizational recognition for duties relating to his employment. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of a given criterion. In this case, the petitioner has not shown that his awards command recognition beyond the presenting organizations consistent with sustained national or international acclaim in his field.

In light of the above, the petitioner has not established that he meets this criterion.

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.

In response to the director's request for evidence, the petitioner submitted a printout of an online directory reflecting that he holds membership in the National Association of Personnel Services. The record, however, includes no evidence (such as membership bylaws or official admission requirements) showing that this association requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's or an allied field. Further, the plain language of this regulatory criterion requires membership in more than one association in the field. As such, the petitioner has not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted an April 2000 article in the *Hindustan Times* and February 29, 2000 and March 30, 2000 articles in the *Indian Express*, but the authors of these articles were not identified as required by the plain language of this regulatory criterion. The petitioner also submitted an August 1999 article in *The Times of India*, but this article, entitled "Medical Transcriptionist, a global career," is more of a recruiting

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

announcement for a four-month medical transcription training program being offered at the Medical Transcription Education Center in India rather than an article about the petitioner. Further, there is no evidence (such as circulation statistics) showing that the preceding articles appeared in “professional or major trade publications or other major media.”

In light of the above, the petitioner has not established that he meets this criterion.

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.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends 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).

The petitioner submitted a certificate issued to him on January 23, 2001 by his former employer, [REDACTED], stating: “This is to certify that [the petitioner] has judged and evaluated the work/documents of the Companies and senior personnel pertaining to Medical Transcription & Nursing programs at CGFNS [Commission on Graduates of Foreign Nursing Schools] Training centers in various Indian centers including New-Delhi-India.” The record includes no evidence showing the names of the personnel judged by the petitioner and their level of business expertise. Moreover, the preceding duties were inherent to the petitioner’s position as Vice President of Business Development at Gordon Herbert, Ltd. There is no evidence that the petitioner judged the work of others in his or an allied field in a manner significantly outside the general duties of his position and consistent with sustained national or international 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.³

On appeal, counsel states: “[The petitioner] has proven that he is an Alien of Extraordinary Ability by taking on leading and critical roles that required him to judge the work of others. He has worked at many prestigious organizations in the United States and internationally, in India, and has the honor of collaborating with other elite businesspeople.” Counsel, however, does not specifically identify the evidence of record which indicates that the petitioner has participated, either individually or on a panel, as a judge of the work of others in his or an

³ This is true with all duties inherent to an occupation. For example, publication is inherent to the occupation of scientific researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim in that field. The petitioner must demonstrate that the articles have garnered national or international attention, for example, by being widely cited or are otherwise consistent with sustained national or international acclaim.

allied field. 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).

In this case, the petitioner's performance of managerial or business development duties for his employers is not tantamount to his participation, either individually or on a panel, as a judge of the work of others in his or an allied field, nor is it indicative of sustained national or international acclaim. As such, 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 submitted several recommendation letters in support of his petition.

[REDACTED], Vice-President, Global Healthcare Group, LLC, states:

[The petitioner] was instrumental in introducing and launching of Joint Venture program in Global. This entire JV program was the brain child of [the petitioner] and he tried to get various JV parties across the Globe from countries like Bangladesh, India, Philippines, and Ghana to bridge the gap of shortages of Nurses & Therapists in America. Once the Joint Venture party arrives in the Corporate office for signing the Joint Venture agreement, there is a specially designed orientation and training program that the Joint Venture parties is [sic] required to go through. This highly technical and specialized training program and orientation module has been developed by [the petitioner] as a result of his years of experience, expertise and knowledge in the field of healthcare and [the] healthcare staffing industry, thorough understanding of the future of [the] healthcare industry, as well as technical blueprint for setting up of Medical staffing business, marketing, budgeting and negotiating contracts.

Speech Language Pathologist and Rehabilitation Director, Sunshine Rehab Services, Inc., Southfield, Michigan, states:

As a Business Analyst, through his company, Global Healthcare Gp., [the petitioner] works to set up joint ventures around the globe. He approaches nursing schools, physical therapy schools, and entrepreneurs and assists them in setting up programs that teach the Curriculum/material required to be certified/licensed by United States Nursing boards and physical therapy boards. Once the nurses and physical therapists have graduated, he then assists them in finding employment in the United States and helps us in getting Therapists for the state of Michigan.

* * *

What makes his approach unique is that where many US staffing firms are confined to the pool of American nurses and Therapists; [the petitioner] has opened the field to include foreign nationals. He has contacts in countries, such as India and the Philippines that have allowed him to expand the pool of people who are qualified to work in the United States.

To my knowledge, very few medical staffing agencies are doing this. Not only does he find employment for the Nurses and Therapists, but the joint ventures offer the nurses a way to gain the training that qualifies them to pass the US licensure exam and then work in the United States.

General Manager/Administrator, Washington Heights Health Rehabilitation Medical Center, New York, states:

[The petitioner] showed himself as being a capable professional businessman and innovator/entrepreneur who presented a broad knowledge of the existing work market in [the] American Healthcare field. He helped to provide us with a NYS [New York State] licensed Physical Therapist, that was exactly of the qualifications that we were looking for and helped us to negotiate all the terms and conditions to mutual satisfaction, that ensured a [sic] long term productive professional working conditions in our office.

President, Comprehensive Center for Rehabilitation, New York, states:

I know [the petitioner] from [the] past few years as a Healthcare Staffing professional providing us NYS licensed Occupational Therapists, Physical Therapists and Speech Language Pathologists. . . . He has provided us with foreign educated and NYS licensed Therapists to ensure high standards of Therapy services to Board of Education schools to Board of Education schools in NY City.

We accept that the petitioner has addressed the staffing shortages of his company's clients by setting up joint ventures and through other means, but we cannot conclude that this work is an original contribution of major significance in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner is a skilled business analyst who has clearly earned the admiration of his employer and its clients, there is no evidence showing that the work attributable to him has had a substantial impact beyond his employer and its clients such that it can be considered a business-related contribution of major significance in the field. For example, the record does not show that the field has somehow changed as a result of the petitioner's healthcare management techniques.

Letters of recommendation from one's employer and clients, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 (Commr. 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 of support from the petitioner's professional contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a businessman who has sustained national or international acclaim. Without extensive documentation showing

that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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.

The petitioner submitted employment letters reflecting that he served as a Business Analyst for Global Healthcare Group, a Professional Service Representative for Wockhardt Ltd., Vice President of Marketing and Business Development for Gordon Herbert (India) Ltd., Director of Marketing for FCS Ltd., President and Chief Executive Officer of Ancient Global Solutions, a Business Analyst for Micropower Computer Institute, and a Business Analyst and Head of Marketing for Practice Management Sources LLC. The record, however, includes no evidence that these organizations have distinguished reputations. Further, the preceding letters lack sufficient information about the petitioner's specific duties and responsibilities to demonstrate that he performed in leading or critical role for these companies. Aside from his position at Ancient Global Solutions, there is no evidence demonstrating how the petitioner's role differentiated him from other executives in the aforementioned companies.

In light of the above, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the "expert opinion letters from peers in [the petitioner's] field" should be evaluated as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). These letters, which are from the petitioner's employer and satisfied clients rather than experts in the field, have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v). The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence," but only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, counsel's November 1, 2006 submitted on appeal argues that at least six of the ten regulatory criteria apply to the present case. Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.

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ORDER: The appeal is dismissed.