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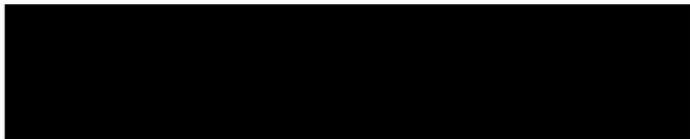
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U.S. Citizenship
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Services

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FILE: LIN 07 106 53281 Office: NEBRASKA SERVICE CENTER Date: OCT 29 2008

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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 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 thus qualifies for classification as an alien of extraordinary ability.

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 February 28, 2007, seeks to classify the petitioner as an alien with extraordinary ability in business. The petitioner states:

I have been working in the field of finance, enterprise, business and technology development for over 20 years. I currently apply my technical expertise and business experience to offer organizational

development, business re-engineering, technical consulting and capital formation, with special emphasis on green technologies. For over 20 years, I have been an entrepreneur and have started several consulting and technology related companies.

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.¹

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 the following:

1. Certificate of Recognition from [REDACTED] Speaker, California State Assembly, for the petitioner's "efforts to promote environmental and social stewardship within the City of Los Angeles and nationally" (September 28, 2005).
2. Certificate of Appreciation from [REDACTED] President, Los Angeles City Council, for the petitioner's "efforts to promote environmental and social stewardship within the City of Los Angeles" (September 29, 2005).
3. Certificate of Commendation from [REDACTED] a, Chair, Board of Supervisors, County of Los Angeles, for the petitioner's "efforts to promote environmental and social stewardship within the City of Los Angeles and nationally" (September 29, 2005).
4. Certificate of Recognition from [REDACTED] United States Congresswoman, 38th Congressional District of California, for the petitioner's "efforts to promote environmental and social stewardship . . . within the City of Los Angeles" (September 29, 2005).
5. Certificate of Recognition from [REDACTED] Senator, 26th District, California State Senate, for the petitioner's "efforts to promote environmental stewardship within the City of Los Angeles and nationally" (September 29, 2005).
6. Letter of Appreciation from [REDACTED], State of California, congratulating the petitioner on being honored for his "contributions to furthering environmentally-friendly technologies in California and around the world" (January 26, 2007).

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

7. Certificate of Congratulations from [REDACTED] Mayor, City of Los Angeles, congratulating the petitioner "on being honored with the 'Tom Bradley Legacy Foundation Award' given by the Green Technology Institute" (January 26, 2007).
8. Certificate from the Executive Director of the Who's Who Historical Society recognizing the petitioner "as one of its newest members to appear in the 2004-2005 edition of *International WHO'S WHO of Professionals*."
9. Certificate from the Chairman of Empire Who's Who recognizing the petitioner's qualification "for inclusion in the 2004-2005 edition of the *EMPIRE WHO'S WHO REGISTRY Of Executives and Professionals*."

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 this criterion. There is no evidence showing that items 1 – 7 constitute national or international recognition rather than local or regional recognition in California. With regard to the certificates honoring the petitioner's inclusion in Who's Who publications (items 8 and 9), there is no evidence showing that having one's biographic entry published in these comprehensive professional directories constitutes receipt of nationally or internationally recognized prizes or awards for excellence in the field. Appearing as one of thousands, or even hundreds of other successful individuals in a regularly published directory of professionals is not evidence of national or international acclaim at the very top of one's field.

In response to the director's request for evidence, the petitioner submitted two Certificates of Recognition presented to him by [REDACTED] Speaker, California State Assembly, and [REDACTED], Senator, 23rd District, California State Senate, on April 22, 2007. The petitioner was awarded these certificates subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, these two certificates reflect local or regional recognition rather than national or international recognition.

In light of the above, 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

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.

The petitioner submitted a February 7, 2007 article posted on PR Web Press Release Newswire entitled "Governor of California Arnold Schwarzenegger Honors [the petitioner], Co-Chairman of the Green Technology Institute." This press release lists the Green Technology Institute, which the petitioner co-founded and co-chairs, as a point of contact. The petitioner also submitted a December 6, 2006 PR Web news release entitled "Green Technology Institute is Assisting in the Growth of the U.S.-based Green Companies" posted on the internet site of Earth Networks Television, a company started and managed by the petitioner. The petitioner's initial submission also included an April 10, 2001 press release from Business Wire entitled "e-financialdepot.com Names New CTO" announcing his appointment as the company's Chief Technology Officer. Press releases, which are not the result of independent media reportage, cannot serve to meet this regulatory criterion. There is no evidence showing that the preceding articles appeared in professional or major trade publications or some other form major media.

In response to the director's request for evidence, the petitioner submitted a May 11, 2007 article in the Business section of *India Journal* and an April 27, 2007 article in *India-West*. The preceding articles were published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this material in this proceeding. Nevertheless, there is no evidence showing that the preceding publications qualify as a form of major media.

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 submitted several letters of support from his personal and professional contacts.

, Chief Executive Officer, American Port Terminal Operators, Inc., states:

[The petitioner] is one of the three founders of our company, American Port Terminal Operators, Inc. ("APTO"), a Delaware company qualified to do business in California. I have known [the petitioner] personally for almost two years and am proud to be associated with him. I find him to be of the highest level of integrity, work ethic and professional skill, all of which judgments I base on firsthand, day-to-day interactions. His energy and industry have given our small American company an opportunity to engage in large and prestigious international deals usually only possible with large organizations.

APTO is a company devoted to developing innovative technologies, green businesses in sustainable infrastructure, biofuels and alternative energy. [The petitioner's] assistance in developing strategies for these green business opportunities, promoting clean energy, green fuel and other environmentally friendly technologies for export to the developing world, especially India and China, has been critical in the developmental process for APTO.

[The petitioner] has been invaluable in his understanding of how to commercialize these technologies and has further extended his expertise to refining products and services that can . . . capture market share in the U.S., India and in the rest of the developing world.

* * *

[The petitioner] brings unique insight and creativity to business and capital formation as well as business development. From what I have learned from him and his acquaintances, he has been involved for over 20 years as an entrepreneur and has started several successful consulting and technology-related companies.

His ability to initiate projects is prodigious. He established the Green Technology Institute at UCLA, an initiative of the Tom Bradley Legacy Foundation, viewable at their website: www.tombradlevlegacy.org. In this regard, his expertise and extraordinary abilities are dedicated to re-designing Los Angeles into a greener city, while developing strategies to attract U.S. green businesses to locate their offices in and around the City and County of Los Angeles. With the present and active support from the Governor of California, [the petitioner's] efforts here in the U.S., both through APTO and the Green Technology Institute, will help meet these important goals for California and America.

While the petitioner helped to establish the Green Technology Institute, it has not been established that his work in this regard constitutes an original business-related contribution of major significance in the field. For example, there is no independent corroborative evidence showing that the petitioner's work to make Los Angeles "a greener city" and to attract "green businesses" to the city and county of Los Angeles has had a significant national or international impact in his field.

[REDACTED], Special Agent, Federal Bureau of Investigation, Pennsylvania, states:

I am aware of [the petitioner's] expertise in Information Technology architectures, as well as IT networks, digital profiling, wireless security, in clean and green technologies. This knowledge, combined with his prior intelligence background, provide a unique combination of skills necessary in his efforts toward the development of fully integrated maritime and global supply chain security systems for the U.S. Ports. Additionally, [the petitioner's] numerous contacts within the intelligence and counter-terrorism community abroad have been invaluable in his efforts to provide a critical infrastructure link for port security systems. Presently, he is a [sic] advisor and the Co-Chairman of the Green Technology Institute at UCLA, a non-profit and non-remunerations effort assisting and promoting California and U.S.-based green technologies companies and entrepreneurs.

[REDACTED], Chief Executive Officer, Universal Guardian Holdings, Inc., California, states:

I have known [the petitioner] personally since 1999. [The petitioner] has proven to be valuable and continued resource to us in a number of critical areas. His expertise in IT architectures, network, digital profiling and wireless security combined with his intelligence background, provides a unique

combination of skills required in the continued development of fully integrated maritime and global supply chain security systems. Additionally; [the petitioner's] current contacts within the intelligence and counter-terrorism community in Singapore have been valuable in order to provide a critical infrastructure link to port security systems.

[The petitioner] has also shown extraordinary abilities to understand emerging technologies and assisting emerging companies like Universal Guardian to commercialize them. Currently working on commercializing technologies and developing products or services for the commercial maritime ports worldwide [sic]. [The petitioner] is an [sic] valuable and knowledgeable asset to many U.S. companies, his advise [sic] brings these companies and their technologies to the global marketplace.

[REDACTED], Director, ClubTea Pte. Ltd., Singapore, states:

I have known [the petitioner] since 1987. Over the last 17 years, [the petitioner] and I have worked on several projects till his departure from Singapore to the U.S. He was appointed ClubTea Pte Ltd's independent business and technology consultant due to his diverse experience in finance, technology and operations of technology companies.

He is considered the leading authority on information and digital convergence theories. He has developed unique technologies for the entertainment, enterprise and the educational industries. He is also affluent in other areas and has developed unique technologies for integrated online trading and supply chain management systems. This unique and extraordinary ability vastly improved our trading and business methodologies platform.

Over the years, he has refined ClubTea's business, technology and operational processes; additionally, his approach to business extracts optimum productivity. [The petitioner] is extremely demanding, yet reasonable and pragmatic - with nothing but the highest standards for business ethics. Finally, he finds ways to make technologies and products useful, has a way of assisting entrepreneurs to see the reality of the marketplace, and position their products and services in a way that allows the company to be successful.

[REDACTED], Chief Executive Officer, Media Genesis, Singapore,

In the eight years I have known [the petitioner] I have been impressed with his dedication to any endeavor he has been involved with. His involvement with Media Genesis started in 1998 after he was introduced to my company as a person having an extraordinary ability to understand emerging trends in IT. As I was actively pursuing partnerships with U.S.-based firms, his wide network of industry contacts, his ability to analyze events, and his understanding of technology as well as the business requirements and cultures of both Singapore and the U.S., helped me to position my business for that market.

[The petitioner] has been instrumental in helping Media Genesis form several important partnerships with U.S. companies. . . . These and other collaborative efforts has [sic] helped Media Genesis introduce emerging technologies to Singapore and the Asia Pacific region and given the company an edge in the competitive environment here.

Besides this, [the petitioner] has also brought us several U.S. clients who were seeking to remain competitive by reducing developmental costs through outsourcing. This has become an increasingly important source of revenue for the company and he continues to display his exceptional knowledge and skills in helping our company grow.

 Chief Executive Officer and President, Applied DNA Sciences, Inc., California, states:

I have known [the petitioner] personally since 2000 and professionally till the present. Previously [the petitioner] was the Chief Technology Officer of eFinancialDepot, Inc. that later changed it name to Collaborative Financial Network (CFN), Inc., a OTC bulletin board company with it's last known ticker symbol, "CFNFE.OB" before going out of business. [The petitioner] was instrumental in designing the online transactional architecture and the middleware interfaces for the company's online day trading business. [The petitioner's] involvement with the company started in December 2000 till August 2001. After leaving CFN, [the petitioner] and I worked on launching various technology ventures in the early stage. He presently assists Applied DNA Science, Inc (www.adnas.com) for commercializing company's technology in different vertical markets and expansion in the Asia-Pacific region.

[The petitioner] has shown extraordinary ability to understand emerging technology and assisting emerging company like Applied DNA Sciences, Inc. to commercialize these technologies in various . . . markets.

The preceding individuals discuss the petitioner's activities for various companies and praise his business knowledge, but there is no evidence showing that his achievements constitute original business-related contributions of major significance in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien'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. We acknowledge that the petitioner has contributed to the success of various business projects, but there is no evidence to demonstrate that he has made original contributions of major significance in his field. For example, the record does not indicate the extent of the petitioner's influence on others in his industry nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, 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 recommendation letters 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. Thus, the content of the authors' 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 of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

In response to the director's request for evidence, the petitioner submitted evidence showing that he authored articles for the April 26, 2007 and May 3, 2007 issues of *Project Earthrise*, the April 2007 issue of *SiliconIndia* magazine, and the April 27, 2007 issue of *India Post*. The preceding articles were published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider these articles in this proceeding. Nevertheless, there is no evidence showing that the preceding publications qualify as professional or major trade publications or some other form of major media.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

While the petitioner submitted documentation of his involvement with various companies and organizations, there is no evidence showing that they have distinguished reputations. The self-serving nature of the press releases and website material originating from these entities cannot serve to demonstrate that they have distinguished reputations. Further, aside from APTO Inc. and the Green Technology Institute, there is no evidence showing that the petitioner's role for the remaining companies for which he has worked was leading or critical.

In this case, the petitioner has failed to demonstrate his 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).

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.

ORDER: The appeal is dismissed.