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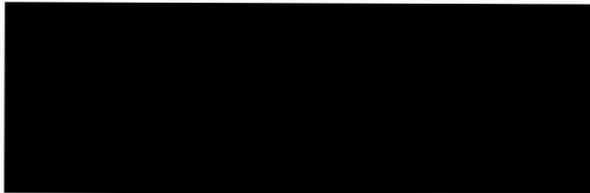
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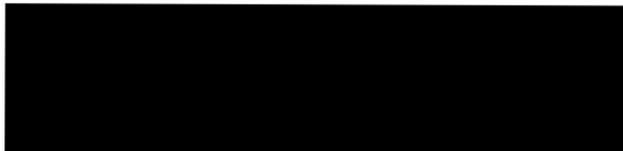


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 11 2009
SRC 06 267 53067

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting 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 that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had 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 petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

U.S. Citizenship and Immigration Services (USCIS) 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 September 8, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a business executive in the construction industry. The petitioner submitted evidence showing that he is a member of the Board of Directors and Vice President for the ██████████ ██████████ in Turkey. In a September 5, 2006 letter accompanying the petition, counsel states: “In 1980, at age 20, [the petitioner] joined his father’s company (Mr. ██████████ – CEO AND CHAIRMAN OF BOARD OF DIRECTORS of ██████████) and in less than 5 years he became one of the world’s first class leaders in business economy” On appeal, counsel describes the petitioner as an “international industrialist” and as an “expert in concrete technology.”

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. An honorary plaque presented by the ██████████ ██████████ of Commerce to ██████████, the petitioner’s father, in “recognition of his contribution of the highest national tax payment for the year 2002.”
2. A July 2004 release from the “Press and Information Secretariat” of Ankara stating: “During a personal visit to ██████████ Turkey’s highest tax payment record holder, ██████████ expressed thanks assuring him that he will be entitled to certain benefits in the future.”
3. An April 8, 2003 article in *Aksam* stating: “Having declared 100 million dollars in 2002 earned income, and having contributed 40 million dollars in owed taxes for the same year, ██████████ earned the title of highest paid Turkish Taxpayer Citizen.”
4. A 2006 article in *Haber* stating: “Highest Order of Merit awarded on May 2, 2006 to Mr. ██████████ by the Speaker of the Turkish Parliament . . . in recognition of ██████████ national and international service contributions.”

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

5. An October 5, 1999 Certificate of Appreciation presented by AmeriCares to [REDACTED], the petitioner's brother.
6. A June 28, 2000 Letter of Appreciation issued by the Governor of Ankara to [REDACTED] expressing appreciation for his "service contribution in the construction of the police station facility of Ostin District."

As the preceding honors were bestowed upon the petitioner's father and brother rather than the petitioner himself, they do not satisfy the plain language of this regulatory criterion.

The petitioner also submitted two Appreciation Awards "presented to ISTAS Company" by the General Director of the Turkish Aviation Organization and by the Governor of Ankara. There is no evidence showing that these two awards were presented to the petitioner or that he was primarily responsible for their receipt.

In this case, there is no evidence demonstrating that the petitioner has received nationally or internationally recognized prizes or awards for excellence in his field of endeavor. Accordingly, 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 order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the Turkish Industrialists and Employers Union, the Turkish Industrialists' and Businessmen's Association, the Cypress Chamber of Commerce, the Turkish Employers' Association of Construction Industry, and the Turkish Processed Concrete Union. The petitioner also submitted documentation pertaining to the Ankara Chamber of Commerce and the Ankara Chamber of Industry, but there is no evidence showing that he holds membership in these two organizations.² While the record includes general information regarding the preceding organizations, there is no evidence (such as membership bylaws or official admission requirements) showing that they require outstanding achievements of their members as judged by recognized national or international experts in the petitioner's field or an allied one.

² The documents submitted by the petitioner for the Ankara Chamber of Commerce and the Ankara Chamber of Industry bear the name of [REDACTED], his father, rather than the petitioner's name.

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 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.³

The petitioner submitted excerpts from a May 15, 2003 article entitled “Trade volume between Turkey and Kyrgyzstan doesn’t reflect real potential” and from a March 27, 2005 article entitled “Turkey: No threat against Turkish businessmen in Kyrgyzstan.” Without complete copies of the articles, it cannot be established that they were about the petitioner. The plain language of this regulatory criterion requires that the published material be “about the alien” relating to his work in the field. An article that only mentions the petitioner’s name in passing does not meet this requirement. The petitioner also submitted a September 11, 2003 article entitled “Small and medium industries support an expansion organization,” but the English language translation accompanying the article was incomplete. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. Without a full English language translation of the article, it cannot be established that the article was about the petitioner. Further, the authors of the three preceding articles were not identified as required by the plain language of this regulatory criterion. Finally, there is no evidence (such as circulation statistics) showing that the articles appeared in professional or major trade publications or some other form of 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

³ 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.

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). For example, evaluating the work of established professionals as a member on a national panel of experts is of far greater probative value than evaluating the work of one's subordinates.

The petitioner submitted excerpts of published material showing that he chaired the [REDACTED] Business Council of the Foreign Economic Relations Board. The petitioner also submitted documentation showing that he is a member of the Board of Directors and Vice President for the [REDACTED] Group of Companies. Counsel argues that the petitioner has judged the work of others in his field by virtue of holding the preceding high level supervisory positions. Counsel does not cite specific examples in the record of the petitioner's formal participation as a judge. The plain language of this regulatory criterion requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the . . . field." In this case, there is no evidence showing the specific work judged by the petitioner, the names of those he evaluated, or documentation of his assessments. Further, we cannot conclude that supervising one's subordinates is tantamount to participation as a judge of the work of others. In an occupation where evaluating the work of others is an inherent duty of the occupation, such as a teacher, manager, coach, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim at the very top of the field. While a business executive or council chairman does evaluate his subordinates and his organization's operations, this evaluation process is inherent to the positions.

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. We cite representative examples here.

[REDACTED] states:

In his capacity as Vice President of [REDACTED] GROUP OF COMPANIES, [the petitioner] is responsible for managing what is considered one of the most highly esteemed companies in the construction industry. The [REDACTED] GROUP OF COMPANIES is further reputed among Turkey's highest ranking concrete and cement industries.

[The petitioner's] exceptional abilities combined with his pioneering concepts have led to the expansion of the company. His role in the development of concrete and cement industries, steel tubes, water pipes, as well as hepp, dam, and water supplies have assisted in the growth

of the construction industry of his company promoting thereby Turkey's economic goals at national levels. These designs have received great attention in the areas of process technology where these techniques can be used in productivity and performance quality control. As a result of these ground-breaking designs, [the petitioner] has won national recognition as a leader of construction technology in Turkey.

Mr. [REDACTED] letter does not specifically identify the designs that "received great attention" or were "ground-breaking" nature. Nor is there is evidence showing that the designs were original and that they were conceived by the petitioner. Further, Mr. [REDACTED] letter does not specify the form of "national recognition" won by the petitioner.

[REDACTED] General Manager, [REDACTED] and [REDACTED] Istanbul, Turkey, states:

[The petitioner's] reputation as a highly accomplished and nationally acclaimed industrial expert is beyond dispute. His role in the development of concrete and cement industries as well as hepp and dam and water supply and steel tubes and water pipes is singularly significant. This is a fast growing field in Construction Industry with unique technological applications. For example, in Construction Industry, such applications have gained much greater attention in the area of process technology where technique and modernization are utilized as essential tool in productivity and performance quality control. The process calls for leadership of all projects for quality feedback and initiation of correction actions in real time. This has and will be an important aspect of construction development productivity and quality control, particularly in light of the recent unfortunate natural disasters all over the world caused by heavy rains and hurricanes.

[REDACTED] Vice President, [REDACTED] Turkey, states:

An executive leader and an outstanding scientist in his field, [the petitioner] has made significant contributions by training and developing thousands of engineering manpower thru the acquisition of numerous industrial contracts awards and close supervision of all industrial operations by manufacturing companies.

Spanning beyond a decade, [the petitioner] has focused exclusively on fields of his expertise: Concrete and Cement Industries, Dam & Hepp and Construction Industries as well as Steel Tubes and Water Pipes. Under his direction and supervision, his company has launched and completed millions of dollars projects directing his energies towards developing new methods for statistical analysis of projects through his superb leadership.

Throughout his extraordinary direction and evaluation of different projects [e]specially in such areas of high sensitivity as chemical instrumentation and architectural precision, he has demonstrated talents of highest order.

We acknowledge the petitioner's submission of reference letters praising his expertise in the industry and discussing his activities in the field. Success and effectiveness in one's field, however, are not necessarily indicative of original business-related contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field. While the petitioner has contributed to the expansion of his family's company and the successful completion of its construction projects, there is no evidence establishing that the specific work attributable to him is tantamount to original 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. While the petitioner is admired for his work on projects for the ██████ Group of Companies and the ██████ Business Council, the petitioner has not established that this work constitutes 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 field nationally or internationally, nor does it show that the industry 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 regulatory criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS 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, USCIS 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; USCIS 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 experts' 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 an individual who has sustained national or international acclaim at the very top of the field. 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 published material and company rankings from the ██████ of Industry showing that the ██████ Group of Companies has a distinguished reputation. Further, the petitioner submitted documentation showing that he plays a leading and critical role for his family's business as a member of the Board of Directors and as Vice President. As such, the petitioner has established that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted a June 10, 2006 letter from [REDACTED] Chief Executive Officer and Chairman of the Board of Directors, [REDACTED] Group of Companies, stating that the petitioner “receives an annual salary of U.S. \$1,500,000.00 paid to him in three installments at the end of each quarter.” The record, however, does not include supporting financial documentation (such as payroll records, bank transactions, or income tax forms) showing the petitioner’s actual earnings for any specific period of time prior to the petition’s filing date. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner submitted a July 5, 2005 article posted online at [REDACTED] providing salary information for police officers, medical doctors, university professors, parliament members, the prime minister, and cabinet ministers. The plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary “in relation to others in the field.” The salary figures for these occupational categories do not represent appropriate bases for comparison.

The petitioner submitted information from the July 6, 2005 issue of *Capital Magazine* stating: “Based on most recent surveys, CEO’s of private corporations receive highest rates in monthly compensation. These rates range between 120 to 200 thousand dollars in monthly compensation – a figure represented by a total of 2,400,000 dollars per annum.” We note that the petitioner’s salary as specified in the June 10, 2006 letter falls substantially below this amount.

The petitioner submitted an undated article posted on *Sabah* newspaper’s online edition entitled “Turkish Companies pay the highest executive salaries.” The article states: “The average executive yearly salary in Turkey is 79,000 Euros.” The date of the article and the date of the salary survey were not provided. Further, the average salary amount was specified in Euros rather than in U.S. dollars (the currency cited in the June 10, 2006 letter). Finally, average salary information is not an appropriate basis for comparison. The petitioner’s evidence must demonstrate that his salary places him at the very top of his field rather than simply above average in his field. *See* 8 C.F.R. § 204.5(h)(2).

The petitioner submitted salary statistics for U.S. executives as posted on the AFL-CIO’s internet site in July 2006. We note that the petitioner’s salary as specified in the June 10, 2006 letter falls substantially below the salary amounts listed on the AFL-CIO’s internet site. Nevertheless, we find that Turkish executive salaries (rather than U.S. executive salaries) represent more appropriate bases for comparison.

On appeal, the petitioner submits two August 23, 2007 letters from the General Coordinator of the Finance Department for the [REDACTED]. The first letter states:

[The petitioner] is one of the five members of the Founding Board of our Group, with a share of %20.

He is also the Chairman of [REDACTED] and [REDACTED]
[REDACTED]
having a share of %95 in each with an annual net profit of over 1,200,000.00 USD.

His annual income as the member of our Founding Board, is 1,540,000.00 – USD only.

The second letter lists the petitioner's salary of \$1,540,000.00 and the salaries of his family members.

On appeal, counsel states: “[The petitioner’s] current annual income is: Annual salary of US\$1,540,000.00 His shares and compensation as an Executive Officer total US\$1,600,000.00 – Annually. His minimum total annual income is US\$3,140,000.00.”

The petitioner's salary as indicated in the two August 23, 2007 letters was earned 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); *see Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner's "current annual income" from 2007 in this proceeding. Further, the petitioner's non-salary income (shares and other executive compensation totaling US\$1,600,000.00 as described by counsel) is not adequately documented. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). For example, there are no financial records showing the dates the petitioner received his non-salary net profit shares.

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

In this case, the petitioner has established that he meets only one of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

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 a 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.

Page 11

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.