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U.S. Citizenship
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Services

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FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date: NOV 02 2009

SRC 07 138 54094

IN RE:

Petitioner:

[Redacted]

Beneficiary:

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in business, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director’s finding that the petitioner has not established his eligibility for the exclusive classification sought.

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, 60898-9 (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 seeks to classify the petitioner as an alien with extraordinary ability as a micro entrepreneur. According to page 14 of *Entrepreneurship*, submitted by the petitioner, Philippine enterprises are classified as micro, small, medium and large, with micro enterprises having assets of up to 3 million pesos and one to nine employees. Thus, while we do not contest that, according to page 15 of the same publication, micro businesses employ 37 percent of Filipinos, we will not narrow the petitioner's occupation to micro-scale business operators. Rather, the petitioner must compare with the most experienced and renowned entrepreneurs nationally, including those who have created large enterprises.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). In response to the director's request for additional evidence, the petitioner asserted that his "Special Award for Product Innovation" awarded by Citigroup at the 2006 Microentrepreneur of the Year Awards in Manila, serves as a one-time achievement. The director considered this award to be a lesser nationally or internationally recognized award. On appeal, counsel does not challenge the conclusion that the award does not rise to the level of a major internationally recognized award.

Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (September 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is made from an international pool of potential awardees, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a considerable cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field. As the petitioner was only selected from a national pool of microentrepreneurs rather than an international pool of entrepreneurs, the Citigroup award cannot serve as a one-time achievement.

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. As stated above, the director concluded that the petitioner meets the lesser nationally or internationally recognized awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Thus, the petitioner must demonstrate that he meets an additional two criteria. The petitioner has submitted evidence that, he claims, meets the following additional criteria under 8 C.F.R. § 204.5(h)(3).¹

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

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.

The petitioner submitted a certificate from the Opportunity Microfinance Bank congratulating him on his receipt of the Special Award for Product Innovation. The petitioner asserts in a self-serving caption that this certificate evidences his membership in the Maunlad Group of the Opportunity Microfinance Bank. A separate caption asserts that this evidence serves to meet this criterion. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In response to the director's request for additional evidence, the petitioner submitted a December 21, 2007 "certification" from [REDACTED] of the Center for Small Entrepreneurs (CSE), advising that the petitioner "has completed the Phase 1 and Phase 2 of Team Formation Sessions and is a member of [the] Ka-Entrep Program" at the CSE. [REDACTED] asserts that this program prepares participants for membership in the Ka-Entrep Micro and Small Entrepreneurs Organization of the Philippines. According to [REDACTED] this organization promotes the rights, welfare and interests of micro and small entrepreneurs and seeks to empower and strengthen those entrepreneurs to enable them to enhance and grow. While [REDACTED] asserts that the petitioner has contributed to the CSE and the Ka-Entrep program, she does not suggest that "membership" in CSE's Ka-Entrep program is limited to those with outstanding achievements as judged by national or international business experts.

The director concluded that the petitioner had not provided evidence of CSE's admission requirements for the Ka-Entrep program. On appeal, counsel does not challenge this conclusion.

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires membership in an association that requires outstanding achievements of its members as judged by national or international experts in the field. The first requirement is that the petitioner document "memberships." The certificate from the Maunlad Group of the Opportunity Microfinance Bank is not a membership document and does not reference the petitioner's membership with the group. While [REDACTED] uses the word "membership," the content of the letter suggests that this "membership" is actually participation in a professional development program.

Second, the petitioner must establish that he is a member of an "association." The "certificate" from [REDACTED] does not suggest that the petitioner is a member of CSE. Rather, she asserts that he is a member of the Ka-Entrep program which "prepares micro-entrepreneurs to become members of the Ka-Entrep Micro and Small Entrepreneurs Organization of the Philippines." "Membership" in a program rather than an association cannot serve to meet this criterion.

Third, the petitioner must establish that the association requires outstanding achievements of its members. Even assuming that the petitioner's participation in the Ka-Entrep program at CSE led to his

membership in the Ka-Entrep Micro and Small Entrepreneurs Organization of the Philippines, the record contains no evidence regarding the membership criteria for this organization.

Finally, the petitioner must establish that the association of which he is a member utilizes nationally or internationally recognized experts to evaluate membership candidates. Even assuming that the petitioner is a member of the Ka-Entrep Micro and Small Entrepreneurs Organization of the Philippines, the petitioner has not documented the membership process for the organization.

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.

The petitioner submitted evidence that he is listed on page 129 of *Stories of Entrepreneurial Greatness* published by the Center for Small Entrepreneurs, Inc. The petitioner asserts in a self-serving caption that this book is a reference book for business management students. As stated above, 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 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The petitioner also submitted a June 21, 2004 article purportedly in the *People's Journal* about his business, including his expandable drum covers that prevent dengue fever by serving as a lid for possible mosquito breeding grounds. The petitioner asserts that this newspaper has a national circulation. The copy of this article submitted subsequently reveals that it actually appeared in *People's Tonight*. In addition, the petitioner submitted a copy of a brief 2006 article in the *Philippine Daily Inquirer* reporting the Citigroup Microentrepreneur of the Year awardees. A self-serving caption states that the newspaper has nationwide circulation. Finally, the petitioner submitted a 2006 article in the *Philippine News* about a business fair that mentions the petitioner's presentation at that fair. The petitioner resubmitted these materials in response to the director's request for additional evidence.

The director noted that the petitioner had not documented the circulation of the above media and concluded that the materials were not indicative of sustained national or international acclaim. On appeal, counsel asserts that the petitioner was featured in two articles, a national television broadcast and a national radio broadcast.

The petitioner submits material from an Internet Philippine media guide. The guide lists both the *People's Journal* and *People's Tonight* as local capital region newspapers. The materials from the journal group's website, submitted by the petitioner, indicate that the online *Journal* includes the Philippines biggest *group* of daily tabloids including the *People's Journal* and *People's Tonight* but do not provide any information about the circulation of *People's Tonight* individually. The petitioner also submitted materials from the *Philippine Daily Inquirer's* website indicating that it is the country's "most widely read and circulated newspaper" with 2.7 million readers daily and a market share of over

50 percent. The petitioner also submits a translation of a radio interview, a DVD of a televised field news story that features the construction of foldable Christmas lanterns sold by the petitioner as well as a discussion of his drum covers. The petitioner further submitted evidence about the nationwide scope of ABS-CBN broadcasting and DZMM TeleRadyo but no evidence regarding the popularity of the individual shows that featured the petitioner. Moreover, the *Mondo Times* website materials submitted indicate only that DZMM 630, is “one of the most listened to radio stations in metro Manila.” There is no evidence that the petitioner’s radio interview was broadcast nationally rather than locally on DZMM 630. Finally, the petitioner submitted a December 2006 article in the *Philippine Star* about the *GoNegosyo* expo, noting the petitioner’s attendance.

At issue are whether the published materials are “about” the petitioner relating to his work and whether they appeared in professional or major trade journals or other major media. 8 C.F.R. § 204.5(h)(3)(iii). It cannot be credibly asserted that the articles about trade fairs or award competitions noting the petitioner’s attendance, participation or receipt of an award are “about” the petitioner. Thus, the materials in the *Philippine Daily Inquirer*, the *Philippine News* and the *Philippine Star* cannot serve to meet the plain language of this criterion.

The petitioner’s business history is included in *Entrepreneurship* as one of 22 “aspirants” following the biographies of seven “role models.” The booklet was self-published by the CSE in 2006 to “celebrate entrepreneurial successes and to inspire readers to venture into entrepreneurship and support the struggles of the micro entrepreneurs.” The booklet contains no ISBN or ISSN number, suggesting that it is an internal promotional booklet rather than a commercially available publication. Without additional information regarding the distribution or circulation of this booklet or other comparable evidence, we cannot conclude that it constitutes a professional or major trade journal or other major media.

As stated above, while DZMM as a company broadcasts throughout the Philippines, DZMM 630 is a local Manila station. The television broadcast, while in a foreign language for which the petitioner has not submitted a translated transcript, appears to be about two products sold by the petitioner’s company rather than about the petitioner relating to his work. Moreover, the petitioner has not demonstrated the scope or popularity of the program that included the field story. Thus, the broadcast media coverage of the petitioner or his work cannot serve to meet this criterion.

Finally, the 2004 article in *People’s Tonight* about his business includes sufficient information about the petitioner to be considered to be “about” the petitioner. The article, however, appears to be part of a full-page “Feature” on CSE as the entire page promotes CSE programs, highlighting those who have benefited from CSE loans or other assistance. While the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of the author of the material, no author is listed for the piece about the petitioner’s business. The record lacks evidence that this article represents independent journalistic coverage of the petitioner rather than a press-release-type promotion or even a paid advertisement by CSE to highlight those who have benefited from its services as a promotion of those services. In context, this coverage is not indicative of or consistent with sustained national or international acclaim.

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.

Initially, the petitioner submitted a 1999 Philippine copyright certificate for a batya/drum cover. The petitioner included a caption stating that this product "prevented the spread of dengue and malaria carrying mosquitoes." The petitioner also submitted a 2005 Philippine copyright certificate for a disposable toilet seat cover. Finally, the petitioner submitted a 2005 Philippine Certificate of Registration registering "Pipay" as a trademark issued to the petitioner doing business as JRO Enterprises.

In response to the director's request for additional evidence, the petitioner submitted the "certification" from [REDACTED] referenced above. She lists several contributions to the CSE and Ka-Entrep Program but does not provide any examples of the petitioner's impact in the field of entrepreneurship at the national level. The petitioner also submitted a letter from [REDACTED] for the Philippine Department of Trade and Industry. The letter advises that the petitioner participated in the 2003 Barakalan marketing event to exhibit and showcase the "finest products and craftsmanship of Small and Medium Enterprises (SMEs) from Region IV-Calabarzon and Mimaropa."

The director concluded that the record did not establish a contribution of major significance such that the petitioner had influenced the field at the national level. On appeal, counsel asserts that the petitioner's influence in the field is evidenced by his copyright for a product that can prevent the spread of dengue fever, the inclusion of the petitioner's work at a national trade show as evidenced by the letter from [REDACTED] contributions to CSE as evidenced by [REDACTED] "certification," inclusion in CSE's book and the interest of "non-affiliated" companies in utilizing the petitioner's services as a business coach.

Counsel is not persuasive. 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. To be considered a contribution of major significance in the field of entrepreneurship, it can be expected that the petitioner would be able to document not only recognition but a demonstrable influence at the national level.

Regarding the copyright certificates, as stated above, this office has previously stated that a different intellectual property right, a patent, is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* While the record contains references to the drum cover's sales, the development of a marketable product is a necessity as an entrepreneur rather than a contribution of

major significance to the field of business. The record contains no health agency confirmation that dengue fever incidence has decreased in the Philippines or even in areas where the petitioner shows strong sales. Regardless, the petitioner seeks to work as a business coach in the United States. Even if we were to conclude that the drum cover were a medical or engineering contribution of major significance, and we do not, it does not reflect on the petitioner's contributions to entrepreneurship in the Philippines. The record contains no evidence that his copyright certificates are used as a business model in business schools or comparable evidence of the certificates' significance to the business world.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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 (Comm'r. 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. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian v. USCIS*, 2009 WL 2836453, *5 (9th Cir. 2009).

The petitioner's participation in the 2003 regional trade show is not indicative of a contribution of major significance. For example, the record contains no evidence that participants are either required to demonstrate past influence or typically influence attendees from across the nation. Rather, it is a regional marketing event for those who sell marketable products.

Ms. Hizon's letter is equally insufficient. She lists the following contributions to the CSE:

- Contributing articles to the CSE's magazine *EntrePinoy*,
- Being featured in the *People's Journal* (actually *People's Tonight*),
- Being featured in CSE's book *Entrepreneurship*,
- Representing CSE and the Ka-Entrep Program as a resource radio speaker and

Being CSE's featured entrepreneur on a television broadcast.

The regulations contain separate criteria for published material about the petitioner, 8 C.F.R. § 204.5(h)(3)(iii), and scholarly articles by the petitioner, 8 C.F.R. § 204.5(h)(3)(vi). We are not persuaded that evidence submitted to meet those criteria is presumptive evidence to meet this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. *See also Kazarian*, 2009 WL 2836453 at *6 (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance).

The fact that the petitioner is a successful recipient of CSE assistance and, thus, is promoted as one of their aspirants, does not demonstrate that he has personally contributed to the process of entrepreneurship in the Philippines at the national level. For example, the record contains no evidence that the petitioner's business is commonly used as a case study in Philippine business or engineering schools or comparable evidence of his influence.

While the petitioner's published article may provide useful information to new micro entrepreneurs, it includes only the most basic information about the value of securing and respecting intellectual property rights. The record lacks evidence that this article constitutes a contribution of major significance to intellectual property law understanding or utilization in the Philippines.

Finally, the fact that the petitioner is able to produce examples of U.S. businesses interested in his services demonstrates only that he would be capable of earning a living in his field in the United States and is not evidence of his past contributions of major significance in the United States or the Philippines.

In light of the above, while the petitioner was clearly able to develop a successful company from a small investment, an ability to earn a profit and expand as an entrepreneur is not a contribution of major significance to the field as a whole. Thus, the petitioner has not established 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 additional evidence, the petitioner submitted his article about the value of intellectual property in a 2004 edition of *EntrePinoy*, published by the CSE. Rather than providing a scholarly analysis of the complexities of intellectual property law, the petitioner lists the basic types of intellectual property protections and provides cautionary tales of those who failed to secure or respect intellectual property rights. The director concluded that the record lacked evidence of the significance of this article.

On appeal, counsel does not challenge this conclusion. The record lacks any evidence about the distribution of *EntrePinoy* or its impact. For example, there is no evidence that it is carried by a variety

of business schools in the Philippines. Thus, the record does not establish that the petitioner's article appeared in a professional or major trade publication or other major media.

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

Initially, the petitioner submitted a book of exhibitors at Barakalan 2003. The petitioner's products are listed as foldable lanterns, drum covers and ironing boards. As stated above, in response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] confirming the petitioner's participation in this regional exhibit.

The director concluded that this criterion relates to the visual arts and, regardless, the petitioner had not demonstrated the exclusive nature of the exhibition. Counsel does not contest this conclusion on appeal. We concur with the director that this criterion is limited to those working in the visual arts. Moreover, the evidence is not comparable to the exclusive exhibitions that might serve to meet this criterion for a visual artist pursuant to 8 C.F.R. § 204.5(h)(4). The exhibit was designed for entrepreneurs to market their products rather than as an exhibition designed to showcase the petitioner's work. Thus, the petitioner has not established that he meets this criterion.

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

Review of the record, however, does not establish that the petitioner has distinguished himself as an entrepreneur to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a microentrepreneur, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.