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**U.S. Citizenship
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FILE: LIN 03 219 50117 Office: NEBRASKA SERVICE CENTER Date: **AUG 15 2005**

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

3 Robert P. Wiemann, Director
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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner submits additional evidence.

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 to the United States will substantially benefit prospectively the United States.

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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as the president of a private corporation. We note that he is also the founder and Chief Executive Officer (CEO) of the petitioning corporation. 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). 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. The petitioner has submitted evidence that, is claimed, meets the following criteria.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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Initially, the petitioner submitted its own local rankings in the State of Utah. The petitioner also submitted evidence that the beneficiary is a platinum member of the founders circle of the Boy Scouts of America. This recognition appears based solely on the beneficiary's monetary contributions to the Boy Scouts. Similarly, the National Republican Congressional Committee presented the beneficiary with the National Leadership Award. Again, this recognition appears based on the beneficiary's support of the political ideals of the Republican Party rather than his excellence in the field of business.

In response to the director's request for additional evidence, the petitioner submitted evidence that the beneficiary was ranked as a "Utah Finalist" for the Ernst & Young LLP Entrepreneur of the Year award in 1999. The materials submitted regarding this award indicate that 350 regional winners are chosen who are then eligible for "the national honor." The petitioner also submitted recognition accorded to the petitioning company from the Utah Information Technology Association. Finally, the petitioner submitted the beneficiary's "associate of the year" recognition from Visual Manufacturing of Lilly Software Associates, the manufacturer of the software marketed by the petitioner.

The director concluded that the above recognition did not constitute evidence that the beneficiary received nationally or internationally recognized awards or prizes for excellence in his field.

On appeal, counsel discusses the international prestige of the Ernst & Young Entrepreneur of the Year Award and concludes that being "selected as a finalist for such a high honor is a significant achievement." Counsel then reiterates the local recognition received by the petitioner and beneficiary.

We acknowledge that the prestige of the companies founded by the beneficiary is relevant to the classification sought. That distinguished reputation, however, was considered by the director in concluding that the beneficiary meets the leading or critical role for an entity with a distinguished reputation criterion set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(viii), discussed below. Under the instant criterion, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the alien's receipt of awards or prizes. Even if we were to consider the recognition received by the beneficiary's company as comparable evidence to meet this criterion pursuant to the regulation set forth at 8 C.F.R. § 204.5(h)(4), the rankings of the beneficiary's companies are all limited to Utah. Such local recognition cannot serve to meet this criterion.

As stated above, the recognition from the Boy Scouts and the National Republican Congressional Committee do not appear to represent awards for excellence in the field of business. Rather, they appear to express appreciation of the beneficiary's support for these entities.

The recognition from Lilly Software Associates appears limited to marketers of this company's products. Competition limited to the marketers of a single company's software cannot serve to meet this criterion.

Finally, as stated above, the beneficiary was a "Utah Finalist" for the Ernst and Young Entrepreneur of the Year Award, an award selected from 350 regional winners. It is not clear from the title of the award whether the beneficiary was a finalist for the Utah regional competition or one of the 350 finalists for the national award. At best, the beneficiary was one of 350 finalists. This office consistently holds that ranking as a "finalist" for an award is not, in and of itself, an award or prize, especially where there are hundreds of such "finalists."

In light of the above, we concur with the director that the petitioner has not established that the beneficiary 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 additional evidence, the petitioner submitted evidence of the beneficiary's membership in TEC, an International Organization of CEOs. The materials submitted reflect that the core of the TEC model is the TEC group of up to 18 CEOs from non-competing industries. Qualification for the invitation-only membership is limited to CEOs "of companies with \$5 million or more in annual sales and 25 or more employees." James Albertson, Chairman of a Utah TEC group, explains:

In Utah, the selection process is: 1) interviewed by the group Chairman; 2) if candidate, the individual is asked to attend one of the groups [sic] monthly meeting[s] to meet the members, participate in a learning session with an outside resource, and for the members to assess the candidate's personal and professional qualifications; and 4) a final selection interview of one and one-half hours with the chairman.

The director concluded that the petitioner had not established that TEC membership was limited to only those with outstanding achievements in the field of business. On appeal, counsel reiterates the above information and asserts that the director "ignored" this evidence.

The director did not "ignore" the beneficiary's membership in a TEC group, rather the director concluded that the membership was nonqualifying. We concur. While an invitation is required for membership, the ultimate qualifications are being the CEO of a business with \$5 million or more in sales and 25 employees. This is not an outstanding achievement.

Moreover, while a selection process is utilized to issue invitations to membership, the interviews occur with the local chairman and the local group, who make the ultimate decision whether or not to issue the invitation. Thus, the beneficiary's qualifications were not "judged by recognized national or international experts in their disciplines or fields." As such, TEC membership does not meet the final regulatory requirement for this criterion as set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

In light of the above, we concur with the director that the petitioner has not demonstrated that the beneficiary 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.

In response to the director's request for additional evidence, counsel asserted that the beneficiary meets this criterion through his supervision of his employees as their CEO and through his consulting services for his clients' businesses.

The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim. This office consistently finds that duties inherent to one's position are not indicative of or consistent with national or international acclaim. It is inherent for any manager to judge the work of his subordinates. We cannot conclude that every manager, or even every CEO, enjoys national or international acclaim. Similarly, it is inherent to the field of consulting to review the businesses of clients. Moreover, the beneficiary is not a manufacturer; he is involved in sales and consulting. Thus, consulting for manufacturers is not judging the work of others in his or even an allied field.

In light of the above, we concur with the director that the petitioner had not established that the beneficiary meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

In response to the director's request for additional evidence, counsel asserts that the beneficiary meets this criterion through his development of software manufactured by Lilly Software and marketed by the petitioner. Counsel also references the money and jobs saved at companies using the beneficiary's consulting services. In support of these assertions, the petitioner submits a letter from its own Chief Financial Officer (CFO), Russell Card, letters from professors in the business field and a letter from the former Director of Client Relationships for the Utah Manufacturing Extension Partnership (MEP).

The director concluded that while the letters attested to the beneficiary's success, they were not indicative of the beneficiary's national or international acclaim in the field. On appeal, counsel reiterates the information in the above letters.

██████████ the petitioner's CFO, asserts that the beneficiary formed Visual Systems in Canada "to sell and support Lilly Software Associates' VISUAL Manufacturing and VISUAL Financials software." He notes that Lilly Software Associates is the market leader in manufacturing software. The beneficiary then moved to Utah and formed the group that now includes the petitioning company, which employs 60 people and "is the largest independent ERP [Enterprise Resource Planning] distributor in the Western United States." The petitioner is the top distributor of Lilly Software Associates, responsible for about one-third of that company's income. Mr. Card notes that the petitioner does more than sell software; it analyzes its customers' needs and provides training and backup troubleshooting. As part of these services, the beneficiary organized an annual conference for VISUAL software users. In 1999, the beneficiary created a VISUAL CRM module for a client that integrates front office applications with VISUAL manufacturing software, ensuring accurate data throughout the company. Lilly Software Associates subsequently contracted with the beneficiary to make VISUAL CRM part of its product line, ultimately purchasing the product rights from the beneficiary for \$2,200,000. Mr. Card concludes that the beneficiary's software and consulting services have saved manufacturing costs and jobs in the United States.

██████████, a professor at Pace University, provides similar information, acknowledging that his statements are based on his "review of documents submitted to me" by the beneficiary's representatives. Thus, ██████████ does not appear to have any former knowledge of the beneficiary's reputation in the business community prior to being contacted for a reference letter in support of the petition.

██████████ a professor at the University of Cincinnati, analyzes the job creation and financial savings through increased efficiency resulting from the beneficiary and his business services. ██████████ bases his analysis on data provided by the beneficiary himself. ██████████ does not indicate that he had any former knowledge of the beneficiary or his reputation in the business community prior to being contacted for a reference letter in support of the petition.

Finally, ██████████ former Director of Client Relationships for the Utah Manufacturing Extension Partnerships (MEP), discusses the beneficiary's participation in the Utah Best Practices Institute, created by MEP. Specifically, the beneficiary's recommendations during his participation were well received and adopted.

That the beneficiary's clients have benefited from his services indicates that the beneficiary provides useful software and consulting services. Not every CEO of a successful business that provides useful and productive services can be said to have international recognition for contributions to the field of business.

The claim that the beneficiary developed VISUAL CRM and that Lilly Software Associates purchased the rights to this software for over \$2 million is impressive but poorly documented. The assertions of the petitioner, supported by independent experts relying on the beneficiary's representations are not as persuasive as copyright or patent evidence identifying the beneficiary as the developer of this software, the contract between Lilly Software Associates, confirmation from Lilly Software Associates itself or evidence of the \$2,200,000 payment to the beneficiary. *See generally 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 promotional materials for VISUAL CRM submitted make no reference to the beneficiary or any of his businesses.

In light of the above, the evidence is not sufficiently persuasive regarding this criterion. Even if we were to conclude that the beneficiary meets this criterion without additional evidence connecting him to VISUAL CRM, he would only meet two criteria for the reasons discussed above and below. The petitioner must establish that the beneficiary meets three in order to establish the beneficiary's eligibility for the classification sought.

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

We concur with the director that the beneficiary 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.

Initially, the petitioner submitted the beneficiary's 2000 tax return, filed jointly with his wife, reflecting \$607,835 in wages and \$1,084,198 in total income. The petitioner's 2000 tax return reflects that it compensated the beneficiary \$517,548 that year.

In response to the director's request for additional evidence, the petitioner submitted a letter from an accountant asserting that the "majority" of the beneficiary's income derives from wages or "pass through" income from businesses that he either owns or controls. The accountant lists the beneficiary's taxable income for 1997 through 2002. The petitioner also submitted the beneficiary's 2002 tax return reflecting wages of \$245,472 and a total income of \$1,100,323.

The director concluded that the record did not support the beneficiary's income for all of the years discussed by the accountant. The director further concluded that the petitioner had not established the earnings of other business figures in the field for comparison purposes.

On appeal, counsel notes that the petitioner submitted the beneficiary's 2002 tax return in support of the accountant's letter. The 2002 return, however, and the 2000 return submitted earlier do not support the account's claims regarding 1997, 1998, 1999 and 2001. Thus, the director's statement to this effect was not in error. The petitioner submits a new letter from his accountant asserting that while the beneficiary's 2004 tax return cannot be complete without the beneficiary's Form K-1, his total income "should be approximately \$2,450,000."

The petitioner also submits a letter from [REDACTED] Principal for BroadBand HR Consulting. Ms. [REDACTED] tests to the beneficiary's "exceptional" income levels. A review of [REDACTED]'s basis for this conclusion, however, reveals that her conclusion is flawed as she compares the beneficiary's total income with "base salaries" for other CEOs. More specifically, [REDACTED] indicates that her research revealed that "base salaries" for CEOs of value-added reseller companies "typically fall in the range of \$200,00 to \$500,000, with an average of \$400,000 annually." [REDACTED] then discusses additional calculations for average base salaries for CEOs of a \$10-\$15 million software company (\$225,000) and concludes that the beneficiary's "income ranges from \$1M to \$23M in 2004 and is exceptional for a CEO in a software company of this size."

A comparison of the beneficiary's total income, which includes interest, capital gains, pensions, and passive investment income from real estate, partnerships or S-Corporations (which the petitioner is not), with base salaries is meaningless. The beneficiary's base salary from the petitioner in 2000 was only \$517,548, just above the typical range discussed by [REDACTED]. In 2002, the beneficiary's total wages, which may include wages from a separate company or his wife's wages, was only \$245,472, below the average.

This office consistently finds that an alien cannot meet this criterion simply by earning more than the average in his field. Rather, his income must compare with the most experienced and renowned members of the field. The petitioner has not demonstrated that the beneficiary's base salary compares with the top base salaries in the field.

Even if the petitioner had provided more meaningful comparison data, such as typical income levels in the field beyond wages, the petitioner has not established that any of the beneficiary's other income results from remuneration "for services" as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Specifically, any passive investment income is not awarded "for services." Regardless, as stated above, the petitioner is not a partnership or S-Corporation. Thus, any income listed on line 18 of the beneficiary's tax returns (\$815,587) cannot be considered income from the petitioner. The petitioner did not submit the beneficiary's Schedules E, which would explain the source of the income listed on line 18 of the Form 1040 tax return.

In light of the above, we concur with the director that the petitioner has not established that the beneficiary 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 a president 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 president, 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.