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FILE: WAC 03 051 52357 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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.

for Marc Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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.

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 pertinent regulations 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.

The petitioner is part owner of the USA Shade and Fabric Products, Inc. (USA Shade) group of companies that manufacture and distribute shade structures. The petitioner is also a director of Shade Structures, Inc., one of the three companies in the USA Shade group. Counsel asserts that the petitioner "is a person of extraordinary ability within the field of *shade structures and skin cancer prevention*."

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 which, counsel claims, meets the following criteria.

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

The petitioner initially claimed nothing under this criterion. Subsequent to a request for further evidence, counsel observes that Shade Concepts, one of the petitioner's companies, "won an Award of Excellence at the 'International Achievement Awards,' from the Industrial Fabrics Association International" in 2002, and that the company has entered another of its projects into competition for a similar award in 2003.

The 2002 award is for an illuminated awning at the Los Angeles Farmers Market. There is no evidence that the petitioner individually received this award, or that he as an individual is largely responsible for the company's receipt of the award (for instance, by personally designing the awning). The petitioner does not single-handedly run Shade Concepts, and there is no evidence or indication that he is an officer of that company. Rather, counsel had previously specified that the petitioner is a part owner of USA Shade (which includes Shade Concepts), and a director of Shade Structures, Inc. Merely owning part of a company which won an award for someone else's work does not establish the petitioner's acclaim in the field. The award recognized the excellence of the particular structure, rather than the passive act of owning the company that created it.

The entry of another Shade Concepts structure for a 2003 award is not evidence of receipt of another award. The winner had not yet been selected as of the petition's December 2002 filing date, and speculation that the petitioner's company might win has no weight as evidence. Materials in the record appear to indicate that any company can enter its own products into competition, and self-nomination for an award is not "acclaim" by any reasonable definition of that term.

> *Published materials 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 submits copies of several newspaper and magazine articles. Many of the articles contain no mention of the company that built the structures, much less individual executives of that company. Other articles and photograph captions specifically discuss the structures, but still do not name the petitioner or his companies. Some articles only discuss other companies.

The petitioner submits an article from *Time* magazine, and counsel correctly states "the significance of *Time* magazine needs no further explanation." Counsel acknowledges that the petitioner's "name is not listed" in the article, although "the shade structures depicted in the photo . . . were installed by" the petitioner. The photograph also shows several buildings, furniture, and an artificial lake (the lake being the focus of the accompanying article). A second photograph shows three unnamed individuals who cannot be identified because they are facing away from the camera. The regulation plainly requires "published materials *about the alien*." The article never mentions the petitioner or his company, or shade structures in general; the structures are merely an incidental inclusion in the photograph. We cannot find, by any rational standard, that the article and photograph are "about the alien" in any logically defensible sense. The article is "about" real estate developer Kevin Loder, and the controversy that erupted when Mr. Loder constructed an artificial lake in a desert community.

An article from the locally distributed Dallas/Fort Worth *Star-Telegram* discusses Shade Structures, Inc., and other companies that install sun shades over several automobile dealers' lots. The article identifies some employees of the petitioner's company but not the petitioner. The *Dallas Business Journal* also discusses the petitioner's company's regional office in Texas. The article mentions the petitioner once, identifying him as "a director at" the company. This single sentence appears to be the sum total of documented press coverage of the petitioner himself, and it appears in a local rather than national publication. The petitioner has not shown that any major national or international publication has published articles about him.

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

Counsel states that the petitioner "is ultimately responsible for the design, manufacture, marketing, sales, and installation of Shade Structure's products," implying by omission that the petitioner has no such responsibility for products created by other USA Shade member companies. Counsel contends that "***perhaps a half-dozen persons in the world have achieved this level of expertise***" (emphasis in original). Expertise is not an original contribution of major significance. The petitioner must objectively show that he, personally, has been responsible for specific contributions of major significance.

Counsel states that the petitioner's company "has designed the most technologically advanced, aesthetic, and economical shade structures in the industry," and cites a patent certificate issued to Shade Structures. The documentation does not show that the petitioner invented the patented structure.[1] The petitioner has not shown that, by holding a patent, the petitioner's company stands apart from other companies that manufacture the same type of products.

Counsel cites letters in the record, showing that structures built by Shade Structures are the only ones approved by California's Division of the State Architect, and have been certified as flame-retardant by California's Office of the State Fire Marshall. Counsel fails to explain how these acknowledgments from a state government demonstrate the national or international significance of the petitioner's work.

Documentation in the record also shows that structures manufactured by the petitioner's companies "are acceptable for use on California public school, state-owned or state-lease essential services building and California Community College projects." All levels of government routinely purchase goods and services from private companies. Conducting business with a state government does not establish sustained national or international acclaim.

The petitioner submits letters from individuals who have worked with the petitioner on various projects. Thomas J. Meagher, a civil engineer with the Bureau of Land Management, states that the petitioner "developed a workable, cost-effective solution" to "the challenge of how to provide shade for the hundreds of wild horses" that are rounded up and corralled prior to "relocation or 'adoption' by qualified owners." Mr. Meagher concludes that the petitioner's "original shade structure designs and concepts have advanced the field and represent a significant improvement over the other structures available in the market."

Joe Dixon, executive director of Maintenance and Operations for the Capistrano Unified School District in California, states "[n]o other products I reviewed reduced the sun's rays as effectively as those constructed by" the petitioner's company. Other clients include numerous schools and day care centers, in addition to the automobile dealers mentioned in the newspaper articles discussed above.

The record offers no objective indication to show that the petitioner is the individual primarily responsible for the effectiveness of the designs discussed above. As already noted, the petitioner's company appears to hold only one patent, for which the petitioner was not the inventor. Clearly, the company partly owned by the petitioner has enjoyed some degree of success, and the petitioner has demonstrated client satisfaction. The record, however, does not demonstrate that the petitioner (as opposed to his company as a whole, or other employees and officials of the company) is responsible for major contributions to the field.

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[1] According to official records at http://www.uspto.gov, the sole credited inventor is John Saunders.

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

Counsel asserts that trade show presentations are comparable to artistic displays, and hence can be considered under 8 C.F.R. § 204.5(h)(4), which allows for the submission of comparable evidence when the regulatory criteria do not readily apply to a given field. The petitioner must still link these trade show presentations to sustained national or international acclaim, either by demonstrating that such acclaim is a prerequisite for participation in the shows, or by producing objective evidence to show that the petitioner's trade show presentations have attracted national or international attention.

The petitioner was asked to donate a shade structure to a California public school, to be shown in an instructional video, and the petitioner gave presentations at national conferences of school officials, explaining that reduced exposure to direct sunlight can reduce the risk of skin cancer (hence counsel's reference to the petitioner as an expert on that subject). The petitioner has not shown that these presentations have resulted in sustained acclaim at the required level, or that the petitioner's presentations amount to display of his work, rather than the work of others at the company (the presentations concern structures that other individuals design and build, rather than the particulars of running the business).

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

As an owner of USA Shade group and a director of Shade Structures, Inc., the petitioner clearly plays leading roles for those companies. The burden is on the petitioner to establish that the companies have distinguished reputations. Counsel acknowledges that no objective ranking exists for shade structure companies, but counsel contends that, taking into account various factors such as "Shade Structures' patent registration" and "the diversity and prestige of its customers . . . it is clear that the USA Shade group are the most accomplished shade structure company [sic] in the U.S., if not the world." The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has provided no objective documentation to set his companies apart from others in the same business. The petitioner has not shown that merely holding a patent confers significant prestige on a company, and a list of prestigious clients does not imply that the company's own reputation equals those of the clients.

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

A Form W-2 Wage and Tax Statement indicates that the petitioner earned $155,250 in 2001. Counsel offers statistics comparing the petitioner's earnings with those of "all other wage earners in the U.S." The regulatory standard is "in relation to others in the field." Comparison to "all other wage earners" is meaningless because earnings ranges vary dramatically from one occupation to another.

Richard Beam, president of the International Roofing and Shade Structure Association, states that the petitioner "commands a high salary in relation to other executives in the field." Mr. Beam states "[t]here are well in excess of 600 executives in the International Roofing and Shade Structure industry, earning an average annual salary of seventy thousand dollars, with reported salaries between forty five thousand dollars and one hundred twenty thousand dollars." Mr. Beam also asserts that the petitioner is "an Internationally recognized pioneer in our industry."

The statute specifically demands "extensive documentation" of recognition and acclaim. The assertion regarding the petitioner's compensation is not supported by any objective documentation that would allow a meaningful comparison between the petitioner's compensation and that of other top executives of companies in the same field. Also, we observe that, as an owner of the company that pays him, the petitioner is not entirely without influence in determining his own salary.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

Counsel acknowledges that the petitioner does not work in the performing arts, but asserts that the petitioner's companies have nevertheless enjoyed commercial success. Comparable evidence, under 8 C.F.R. § 204.5(h)(4), would have to include objective documentation that is comparable to box office receipts, record sales, etc., rather than general attestations regarding the financial success of the company.

A balance sheet for Shade Structures, Inc., shows that the company had assets of nearly $2.77 million as of December 31, 2001, and "earned contract revenue" in excess of $10 million for calendar year 2001. The accountant who prepared the balance sheet indicates that "[m]anagement has elected to omit substantially all the disclosures and the statement of cash flows required by generally accepted accounting principles," and that this information, if included, "might influence the user's conclusions about the company's financial position.

Counsel states "[i]n 1997 . . . the company earned $1.8 million in gross revenues and only three principal partners as employees. In 2001, the company earned $10.1 million. *For 2003, the USA Shade group of companies projects revenues in excess of $16 million with over 100 employees*" (emphasis in original). Projections of future revenues are not "evidence of commercial success," but rather conjectural claims.

The director denied the petition, stating that the evidence submitted does not establish that the petitioner has earned sustained national or international acclaim in his field. The director observed that much of the evidence concerns the company, rather than the petitioner himself, and some of the evidence is even further removed from direct relevance, such as the *Time* article that "appears to have nothing to do with the [petitioner], other than the fact that the photo for the article shows a couple of shade structures in it."

On appeal, counsel asserts that "[a] brief and/or evidence will be submitted . . . within 30 days." Counsel offers no specific information about the content of the "brief and/or evidence." To date, several months later, the record contains no further correspondence and we consider the record to be complete as it now stands.

Counsel states that the director "failed to consider the unique nature of the petitioner's field. . . . [T]he petitioner does not receive individual acclaim for his accomplishments. The petitioner's extraordinary ability can only be demonstrated through the success of his company." Counsel asserts that the director's insistence on "'individualized' acclaim . . . is clearly contrary to law and Service policy," but counsel fails to explain how this is so. Section 203(b)(1)(A)(i) of the Act requires "extensive documentation" that "the alien has extraordinary ability . . . which has been demonstrated by sustained national or international acclaim." 8 C.F.R. § 204.5(h)(3) contains similar language, stating that the petition "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." There is no indication whatsoever that association with a successful corporation can be substituted in lieu of evidence of "individualized acclaim." By statute and regulation, the acclaim must attach to the individual alien.

Counsel maintains "[t]he petitioner's extraordinary ability can only be demonstrated through the success of his company." Success is not identical with acclaim, and the petitioner has not provided objective evidence to show that the petitioner's companies are substantially more successful than its rivals, or to establish that the petitioner is largely responsible for the success of his companies.

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 in business 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. While the petitioner is a director of a successful enterprise, 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.

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.