U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5589947

Date: APR. 30, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a horse owner and breeder in dressage and jumping, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not received a major, internationally recognized award, and satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability 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.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained

acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(5)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-)(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner indicated that he is owner and president of [redacted] in [redacted] Canada. Because the Director found that the Petitioner did not establish that he received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3), he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner indicated on his Form I-290B, Notice of Appeal or Motion, and accompanying letter that he would be filing a brief and additional evidence to our office within 30 days. However, as of the date of this decision, we have received nothing further. Accordingly, the record is considered complete as it now stands.

In denying the petition, the Director determined that the Petitioner fulfilled only two of the initial evidentiary criteria, awards at 8 C.F.R. § 204.5(h)(3)(i) and published material at 8 C.F.R. § 204.5(h)(3)(iii). On his Form I-290B, the Petitioner generally asserts that he received a major, internationally recognized award and, in the alternative, meets at least three criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that he garnered a major, internationally recognized award or satisfies the requirements of any other previously claimed criteria. Moreover, although we agree with the Director that the Petitioner received a nationally recognized horse owner award for excellence, we do not concur with the Director's decision regarding the published material criterion, discussed later.

A. One-Time Achievement

The Petitioner initially claimed that his horse, [redacted] received the "Historic Highest Dressage Score" at the [redacted] in 2005, two gold medals at the [redacted] Games in 2010 and 2014, and a bronze medal at the [redacted] Games in 2011, thereby all constituting one-time achievements. In response to the Director's request for evidence (RFE), the Petitioner only argued eligibility for the "Historic Highest Dressage Score" at [redacted]

The Director thoroughly and sufficiently addressed the arguments and reviewed the submitted documentation, finding that the Petitioner did not demonstrate that the "Historic Highest Dressage Score," as well as the previously claimed awards, qualified as a major, internationally recognized

award consistent with the regulation 8 C.F.R. § 204.5(h)(3) and legislative history. Specifically, the Director found that the Petitioner did not establish that the dressage score award enjoyed the same level of attention or stature similar to other major, internationally recognized awards, such as the Nobel Prize, Pulitzer Prize, the Academy Award, and an Olympic Medal.[1] In addition, the Director indicated that the "Olympics include equestrian events such as dressage; however, the evidence in the record does not place the [redacted] on the same level as an Olympic event." Further, the Director cited to the official website of the U.S. Equestrian Federation and determined that "the website does not appear to accord the [redacted] with a level of recognition as one of the top events for the sport on par with the Olympics or others such global events."

Based on Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Moreover, the Petitioner did not demonstrate that he won any of the awards; rather the horses and riders received them. Accordingly, for the reasons discussed above, we concur with the Director's assessment of the record and conclusion that the Petitioner did not receive a one-time achievement.

B. Evidentiary Criteria

> *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.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner asserted that he met this criterion based on his horses, [redacted] and [redacted] registration with the [redacted] Moreover, he claimed that the horses participated on national teams competing at the [redacted] Games and [redacted] Games. In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[2]

The Director found that the Petitioner's assertions referred to the horses' memberships rather than to the Petitioner. We agree. The evidence provided by the Petitioner does not reflect that *he* is a member of [redacted] or that *he* competed on a national team.

Moreover, the Director concluded that the Petitioner did not demonstrate that [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts.

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[1] The House Report specifically cited to the Nobel Prize as an example of a one-time achievement. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739.

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

We also concur with the Director's finding. Although the Petitioner submitted the rules for stallion performance tests of the German riding horse breeds and licensing for the horses, he did not establish how this evidence relates to [redacted]. Regardless, as indicated by the Petitioner, stallion licensing requires minimum age, color, lineage, veterinary examination, and pedigree verification. Here, the Petitioner did not show how these requirements are tantamount to outstanding achievements, nor are they judged by recognized national or international experts. Further, the Petitioner did not present any evidence reflecting that competing on national teams, which he did not, at the [redacted] Games and [redacted] Games requires outstanding achievements, as judged by recognized national or international experts.

Accordingly, we concur with the Director's decision, and the Petitioner did not demonstrate that he fulfills 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.* 8 C.F.R. § 204.5(h)(3)(iii).

The Director found that the Petitioner satisfied this criterion without identifying the qualifying material and explaining his determination. In order to meet this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[3] Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we will withdraw the findings of the Director for this criterion.

The record reflects that the Petitioner claimed eligibility for this criterion based on 12 articles. In his initial cover letter, the Petitioner indicated the names of the authors for six of the articles, listed "unknown" for five of the articles, and "contractor" for one article. However, only four of the articles contain the authors: *Sidelines*, sun-sentinel.com, equisearch.com, and horsedaily.com. Furthermore, the Petitioner listed the photo credits as the authors for *HorseSport USA* and equestrianconnection.com. The inclusion of the authors is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii).

Moreover, the Petitioner did not demonstrate that any of the articles reflect published material about him relating to his work. Instead, the articles mention the Petitioner as the owner of horses, but the articles are not about him. Rather, the articles are about horses and equestrian events and competitions. For instance, the *Sidelines* article is about the horse, [redacted]. Although he provided quotes about the horse, the article is not about the Petitioner. Further, the sun-sentinel.com article is mainly about another horse's performance at the [redacted] Equestrian Club with the Petitioner briefly noted one time as the owner of [redacted]. Similarly, the equisearch.com article covers the [redacted] Horse Show with the Petitioner indicated once as the owner of [redacted]. Likewise, the horsedaily.com article discusses the [redacted] Dressage with the Petitioner referenced one time as the owner of

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[redacted][4] Articles that are not about an alien do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

Furthermore, the Petitioner did not establish that the articles appeared in professional or major trade publications or other major media. He did not provide any documentation relating to *HorseSport USA*.[5] As it relates to sun-sentinel.com, the Petitioner submitted a screenshot from sun-sentinal.com's website asserting that it has 20.1 million average monthly page views and 3 million average unique visitors. However, the Petitioner did not offer any independent, objective evidence to support the website's claims. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of a major medium).

Moreover, regarding *Sidelines*, the Petitioner presented figures from rankw.org reflecting that sidelinesnews.com has 313 visitors per day and ranked 1,624,991 among websites. However, the Petitioner did not show that the article was posted on sidelinesnews.com rather than published in *Sidelines*. Further, the record does not contain information relating to *Sidelines* as a professional or major trade publication or other major medium.

Finally, the Petitioner submitted average daily visitors, rankings, and percentiles of global Internet users from HypeStat for the remaining articles: equisearch.com (4,498, 129,697th, 0%), equestrianconnection.com (892, 438,770th, 0%), horsedaily.com (743, 496,152nd, 0%), equestrianmag.com (510, 634,554th, 0%), and floridahorse.com (273, 1,032,795th, 0%).[6] However, the Petitioner did not show the significance of the statistics and rankings and how such data reflects status major media.[7] Further, based on the low figures, rankings, and percentiles, the Petitioner did not demonstrate that any of the websites are tantamount to major media.

For the reasons discussed above, the Petitioner did not demonstrate that he satisfies this criterion, and we withdraw the Director's decision for this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

Initially, the Petitioner contended that his "horse, [redacted], has made a contribution of major significance to Competitive Dressage: [redacted] set a Historic Highest Dressage Score at the intensely competitive [redacted]." In response to the Director's RFE, the Petitioner claimed that he "owned four championship horses: [redacted], [redacted], [redacted], [and] [redacted]"

[4] Although we discuss a sampling of articles, we have reviewed and considered each one. Again, the articles discuss horses and equestrian events with the Petitioner barely mentioned.

[5] The Petitioner claimed in his initial cover letter that circulation information was "not available."

[6] The Petitioner provided two articles from horsedaily.com, two articles from equestrianmag.com, and three articles from floridahorse.com.

[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

and his "horse, [redacted], helped facilitate the career of [redacted] World Champion Dressage Rider." In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[8] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

Again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field. The Petitioner claims that his horses have made original contributions by winning equestrian events. However, the Petitioner did not demonstrate how the horses' successes are *his* original contributions of major significance; the Petitioner attributes the horses' achievements as his own. Here, the Petitioner did not show that the act of owning horses, even horses who achieve successes, establishes original contributions of major significance in the field.

Notwithstanding the above, the Petitioner did not establish how the accomplishments of the horses rise to the level of major significance consistent with this regulatory criterion. The Petitioner, for example, did not demonstrate how winning an equestrian competition is automatically majorly significant, nor are we persuaded that winning any dressage event qualifies as an original contribution of major significance. Here, the Petitioner did not show the significance in the field of the awards of [redacted], and [redacted]. For instance, the Petitioner did not indicate how any of the horses' successes distinguish them from other horses in the field who have had successes in equestrian competitions and events.

Similarly, regarding [redacted]'s highest dressage score at [redacted], the accomplishment relates to the horse rather to the Petitioner; [redacted] received the highest dressage score rather than the Petitioner. Moreover, the Petitioner did not demonstrate how [redacted]'s receiving the highest dressage score at [redacted] reflects a contribution of major significance in the overall field. While the highest dressage score may be notable at [redacted], the Petitioner did not show the major significance of the score in the greater field rather than limited to a single equestrian event.[9]

Finally, the Petitioner asserted that his "horse, [redacted], helped facilitate the career of [redacted] World Champion Dressage Rider." Again, the Petitioner credits [redacted] for facilitating [redacted]'s career rather than his own contributions. Nonetheless, the record contains a letter from [redacted] who praised the Petitioner who "has an exceptional eye for horses that can compete in show jumping or global dressage" and "brought [his] career to all new heights." Although [redacted] credits the Petitioner for his personal accomplishments, the letter does not show how the Petitioner has made original contributions of major significance in the overall field. Here, the Petitioner did not establish how his influence on [redacted] resulted in majorly significant contributions in the field as a whole.[10]

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[8] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[9] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[10] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (providing that letters which specifically articulate how

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

Initially, the Petitioner claimed that his "horses have completed at equestrian competitions across the globe," and "[his] horses' display their artistic ability – strength, power and elegance – at every equestrian competition." In response to the Director's RFE, the Petitioner referenced [redacted]'s letter as comparable evidence to meeting this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). In order to demonstrate eligibility for this criterion, a petitioner must show that his work was on display, and the venues were artistic exhibitions or showcases.[11]

The Director stated:

> USCIS notes that this criterion is for fields of endeavor for which artistic works are created which are displayed in exhibitions or showcases. Equestrian dressage, or more specifically owning and breeding horses for dressage, does not meet this criterion. In addition, athletic events are not artistic showcases. Further, it is not apparent that any artistic work which might be displayed is the [Petitioner's] work product. While the evidence documents the [Petitioner's] involvement in the breeding process, the petitioner has not shown that the [Petitioner] was the rider and trainer of the horses.

We concur with the Director's findings. Here, the Petitioner did not demonstrate that he displayed his work at equestrian competitions through owning and breeding horses as opposed to riders and trainers. Moreover, the Petitioner did not establish that equestrian competitions involve artistic exhibitions or showcases.

Furthermore, the regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.[12] A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[13] General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.[14]

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a petitioner's contributions are of major significance in the field and its impact on subsequent work add value; on the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion); *see also 1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990) (finding that USCIS need not accept primarily conclusory statements).

[11] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

[12] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

[13] *Id.*

[14] *Id.*

Here, the Petitioner did not show why he cannot offer evidence that meets at least three criteria. The fact that the Petitioner provided documentation that does not meet at least three criteria is not evidence that a horse owner and breeder could not do so. In fact, the Petitioner claimed to meet six other criteria. Moreover, the Petitioner did not explain or establish how [redacted] letter is "truly comparable" to the display criterion.[15]

Accordingly, the Petitioner did not demonstrate that he fulfills this criterion, including through the submission of comparable evidence.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner initially asserted his eligibility because he "established a distinguished reputation" and "[t]hrough his work as a horse owner and breeder, [he] has been noticed and worked alongside accomplished individuals in the field of equestrian sports." In addition, he submitted letters confirming the riding, training, breeding of his horses. In response to the Director's RFE, the Petitioner claimed that he "performed in a leading or critical role for the equestrian (dressage/jumping) community" and provided [redacted]s riding record.

In order to fulfill this criterion, the Petitioner must demonstrate that he "performed in a leading or critical role for *organizations* or *establishments* that have a distinguished reputation." (emphasis added). As correctly pointed out by the Director, the Petitioner did not establish that he qualifies as an "organization" or "establishment." Moreover, the Director determined that "[t]he equestrian community as a whole is not an organization or establishment" and "being a diverse group of participants at various levels of talent and interest," do not have a distinguished reputation. As the Petitioner has not identified a distinguished organization or establishment in which he performed in a leading or critical role, we agree with the Director's findings.

For these reasons, the Petitioner did not establish that he satisfies 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.* 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner claimed that he is highly compensated from the sale of horse semen. The record reflects that the Petitioner submitted receipts from his business selling horse semen ranging from $2,100 - $5,000 per unit. In addition, he presented an article from vocative.com indicating "an average price of $873 per dose, with the most expensive horse semen costing $6,500." In order to meet this criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.[16] Here, the Petitioner's evidence shows the amount that his business charged for horse semen rather than the amount he commanded for services. Moreover, while the article establishes that his business charged more than the average per dose, the Petitioner did not demonstrate that the remuneration was significantly high as evidenced by the $6,500 per dose indicated in the vocative.com article.

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[15] *Id.*

[16] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

Similarly, the Petitioner asserted that his horse farm business "has managed to accumulate over 100 times the average income of the median income for horse owning households." The Petitioner submitted a letter from a certified public accountant and financial statements for his business from 2011 – 2012. In addition, he provided documentation from the American Horse Council Foundation reflecting the median income for horse owning households. However, the Petitioner did not establish his earnings rather than his business' finances. Moreover, the comparison of a horse business to a horse owning household does not demonstrate that the Petitioner commanded a high salary in relation to others. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

Accordingly, the Petitioner did not show that he meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Price*, 20 I&N Dec. at 954. Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has experience in owning and breeding horses, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.