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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



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File:

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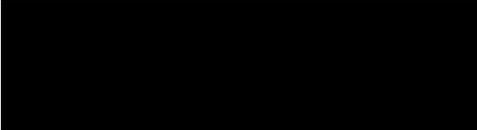
Date:

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

It is noted that the Form I-140 petition identifies Hollywood.com, an internet business specializing in entertainment information, as the petitioner. The petition, however, was signed not by any Hollywood.com representative, but by the alien himself. Therefore, the alien and not Hollywood.com shall be considered to be the petitioner. To hold otherwise would require the rejection of the appeal. The Form G-28, Notice of Entry of Appearance as Attorney or Representative, designates counsel as the alien's attorney, but not as the employer's attorney.

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 the arts. The director determined the petitioner had not established that he has earned 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 Service 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.

The petitioner seeks employment as the executive producer and web designer for Hollywood.com's Brazilian web site. 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 petitioner does not claim to have received 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, in the initial submission, does not address the ten regulatory criteria, and it is not clear which of those criteria the petitioner intended to satisfy with the documents submitted at that time.

The initial submission contains various Portuguese-language documents of unexplained significance. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

Some documents submitted with translations establish only the petitioner's educational credentials. While these documents help to establish that the petitioner is qualified for the position offered to him, one's educational background does not cause or reflect national or international acclaim.

The petitioner submits several photocopied pages from various issues of Superinteressante and other Brazilian publications, showing various graphics and illustrations that the petitioner had prepared as an art assistant. An editorial from Superinteressante contains the following passage:

Now, editors, illustrators and art assistant work together, and the result was extraordinary, we did a better magazine.

Everything has represented a deep modification in the professional life of all our artists. The case of [the petitioner] for example. [The petitioner] is our art assistant, but he knows as few people do the most important secrets of our computers.

The editorial adds that, because of his knowledge of computers, the petitioner has taken greater responsibility for many of the graphics that accompany the magazine's articles.

The record contains samples of the petitioner's art work, such as various advertising murals and billboards at a Brazilian airport. The petitioner was also editor in chief of CPOR/SP in 1987, and "diretor de redação" for O Independente in 1999. The record offers no information about CPOR/SP; O Independente is a Portuguese-language newspaper published in Florida for the local Brazilian community. The various examples of the petitioner's work as an artist and print editor do not, without further explanation, establish sustained acclaim in any field. They certainly do not establish or imply sustained acclaim as a web designer because they do not represent work in the field of web design.

Subsequently, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish extraordinary ability. The director instructed the petitioner to submit evidence to meet at least three of the ten evidentiary criteria listed at 8 C.F.R. 204.5(h)(3), and specified that the Service has defined "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." The director stated "[t]he evidence submitted [with the initial filing] does not establish that the petitioner is recognized as **one of the very best Web Designers**" (emphasis in original). In response, the petitioner has submitted evidence which purports to meet 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.

An undated certificate in the record states that the petitioner won the "Best Graphic Designer" prize at the "Colors Of Brazil" display at Galeira Sver & Boccato.¹ Another certificate states that the petitioner won first place in a graphic design competition sponsored by The Brazilian Post in 1998. The record offers no documentation to establish that either of these awards are nationally or internationally recognized.

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.

¹While the body of the certificate spells the last name "Bocatto," the company logo at the upper right of the document spells the name "Boccato" and we will follow the latter spelling.

Such evidence shall include the title, date, and author of the material, and any necessary translation.

A 1993 article from Meio & Mensagem describes a holographic advertisement on display at Cumbica International Airport in São Paulo. The petitioner is identified as one of four owners of the company (Meta 29) that created the piece, and he gave the reporter information regarding the cost of creating and maintaining the display. A second Meio & Mensagem article discusses Meta 29's use of three-dimensional advertising, but it does not mention the petitioner. Other submissions from the same publication also fail to mention the petitioner, and are not even articles; they are clearly advertisements placed by Meta 29 itself.

Articles from other Brazilian publications discuss Meta 29's use of 3-D advertising displays at Brazil's airports and other heavily-traveled sites targeted by advertisers. They also indicate that Meta 29 uses this technology as an agent for Kodak, which developed it. These articles do not mention the petitioner by name; the Meta 29 employee most often identified is an individual with the same surname as the petitioner. It is not clear if the two individuals are related, but they are clearly two separate individuals. Even if the articles did identify the petitioner, he does not explain how articles pertaining to an advertising firm establish that the petitioner has earned sustained acclaim as a web designer. Some of the articles do not even mention Meta 29; they report only that information kiosks are opening at an airport.

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

Elizabeth L. Davis, Hollywood.com's director of Human Resources, states:

Hollywood.com currently employs [the petitioner] as an independent contractor. In this capacity [the petitioner] acts as Executive Producer for our International Web Sites. [The petitioner] not only possesses very specialized web design skills but the ability to speak, read and write in Portuguese. He also brings a strong understanding of the South American culture, which is important to the readers of our web site.

Clóvis Augusto Mostafa Cordeiro, director of Meta 29, states:

[The petitioner] was a former partner/proprietor of Meta 29. Since he decided not to be part of Meta 29 as one of the partners, he started working for us as a freelancer in designs of Board 3-D, backlights and airport projects. He also worked as our correspondent in U.S.A. exerting functions as

Graphic/Industrial Designer and coordinator of great projects, during the period of October 1997 to January 1999.

Almir Gajardoni, manager of the editorial staff at Superinteressante, states that the petitioner "exercised the function of Graphic Designer . . . and stood out as 'The Best Professional' in his category." The original letter, in Portuguese, refers to the petitioner as a "*Design Gráfico*." The actual issues of Superinteressante, however, list the petitioner as a "*diagramador*," which has been repeatedly and consistently translated as "art assistant."

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

The petitioner claims to satisfy this criterion, even though he is not a performing artist. Furthermore, the evidence cited under this criterion is not direct documentation of commercial success; rather, the petitioner submits reviews from other web sites, praising Hollywood.com's Brazilian offshoot for which the petitioner is responsible. This evidence adds to the Hollywood.com's distinguished reputation as a well-regarded source of film information on the Internet, but it does not demonstrate commercial success in the performing arts.

The director denied the petition, stating that the petitioner has failed to demonstrate that the evidence of record satisfies at least three of the regulatory criteria. On appeal, the petitioner submits short statements from counsel and from a Hollywood.com official.

Amy Dermott, identified as Hollywood.com's Human Resources Generalist, states that the petitioning "company has a distinguished reputation as an Entertainment content web site in the US and abroad," and that the petitioner "has played a critical role in our company. . . . Without him and his team we would not have a Latin American Web Site today." The evidence previously submitted shows that Hollywood.com is a highly regarded and successful purveyor of entertainment information via the Internet. Because the petitioner is the principal person responsible for Hollywood.com's Brazilian site, he can be said to fulfill a critical role for that company. All the same, this fulfills only one of the regulatory criteria.

Counsel, on appeal, offers arguments regarding other criteria:

[T]here are no national or international awards for excellence in graphics design. There are awards sponsored by national magazines such as the Brazilian Post & the Gallery Sver &

Bocatto. These serve as the equivalent of national awards as they are national magazines of art and graphics in Brazil.

The petitioner offers no documentary evidence to support any of these claims. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). For example, the record does not even establish that "the Gallery Sver & Bocatto" is in fact a national magazine rather than (as its name suggests) an art gallery. The translation of the prize certificate refers to "the display 'Colors of Brazil' in the Gallery Sver & Bocatto."

Also, there is no evidence that The Brazilian Post is, in fact, a Brazilian publication rather than a U.S. publication for the Brazilian immigrant community. We note that the publication's title is listed in English, and only in English, on the prize certificate. The certificate identifies the competition as "Brazil Com Z," translated as "Brazil with a Z," an apparent reference to the fact that the native spelling of the country's name is "Brasil."

Counsel adds that the director "in paragraph 4 on page 3 of the decision, specifically admits that evidence was submitted that suggests that the beneficiary himself has achieved commercial success." The paragraph in question reads, in its entirety:

Finally, the petitioner argues that the beneficiary has commercial success. The evidence submitted included only information about the petitioner, Hollywood.com. There is evidence to suggest that the beneficiary himself has achieved commercial success. The petitioner has failed to show that the beneficiary has had commercial success.

The "specific admission" cited by counsel is obviously a typographical error; otherwise the second and fourth sentences flatly contradict the third sentence (from which a "no" appears to be missing) and the paragraph makes no sense. In Sussex Engineering, Ltd. v. Montgomery, 825 F.2d 1084 (6th Cir. 1987), the Court of Appeals held that it is absurd to suggest that the Service must treat acknowledged errors as binding precedent.

The director's wording aside, the record contains no evidence to show that the petitioner is among the most commercially successful web designers in his field, even if we ignore the "performing arts" clause of the regulation.

The bulk of the record deals with the petitioner's work outside of the field of web design, which is the occupation in which the petitioner seeks employment. We cannot conclude from the evidence

of record that the petitioner is nationally or internationally acclaimed as one of the top figures in the field of web design.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a web designer 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 has had a successful and fruitful career in advertising and graphic design, but is not persuasive that the petitioner's achievements in web design place 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.