



U.S. Department of Justice

Immigration and Naturalization Service

*Handwritten initials: PJ*

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
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Washington, D.C. 20536



**Public Copy**

File: EAC 99 152 50003 Office: Vermont Service Center Date: **JUL 10 2001**

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:

*Identification 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 which 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 which 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 which 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*  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 the arts. 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 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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a graphic designer at Bloomingdale's department store. 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. Counsel, in the cover letter accompanying the petition, did not originally specify which of the ten criteria the petitioner has purportedly satisfied. Counsel merely discusses the petitioner's educational background, current employment, and several letters submitted with the petition. The evidence submitted with the initial filing appears to be intended to meet the following 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.*

The petitioner claims 13 "museum memberships," all at museums in New York City, as well as memberships in 32 "professional organizations." The record contains evidence of many of these memberships, but nothing to establish the membership requirements for the organizations named.

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

The petitioner demonstrates extensive involvement in designing logos, promotion materials, and other graphic items for Bloomingdale's, as well as promotional materials and web sites for other clients, but she has offered no independent evidence to show that her work in this area has been more influential or highly regarded than the graphic design undertaken or commissioned by countless other businesses and organizations.

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

The petitioner claims several group and solo exhibitions between 1993 and 1998. All of the petitioner's claimed shows from 1993 to 1996 took place at the Rhode Island School of Design ("RISD"), where the petitioner was a student at the time. The petitioner has not shown that RISD rarely displays the work of students in this way.

The remaining three shows, in 1997 and 1998, took place at galleries in London, Venice and Istanbul. The petitioner has submitted no evidence that these exhibitions took place at nationally known venues, for the purpose of public viewing of her work, rather than at galleries for the purpose of facilitating

their sale. It is not a mark of extraordinary achievement for an artist to sell her work through a gallery; rather, this is a common means through which artists earn a living.

Counsel argues that the petitioner's "work is prominently displayed in 23 Bloomingdale stores nationwide." The petitioner's work is certainly visible at the stores, in the form of signs, tags, and other promotional materials, but a retail department store is not an artistic exhibition or showcase. One visits the Guggenheim Museum to look at works of art; one visits Bloomingdale's to purchase clothing and other merchandise. That a shopper encounters the petitioner's promotional materials in the store is incidental.

Beyond the above criteria, several letters accompany the petition. An official of Bloomingdale's describes the petitioner's training and her current position as a graphic designer, but the letter offers no indication that the petitioner is among the best-known graphic designers in the nation or internationally.

Several individuals associated with RISD, where the petitioner studied, attest to the petitioner's talent as an artist. For example, Polly Carpenter, director of the New York Chapter of RISD's Alumni Association, states "I met [the petitioner] at one of the Alumni gatherings here in New York City and after seeing her work, I am convinced that she is an outstanding Graphic Designer." Ms. Carpenter does not indicate that she was familiar with the petitioner's work prior to meeting her personally at an alumni function, as one would expect from a nationally-acclaimed artist.

Several of the petitioner's witnesses are Turkish business figures now based in the United States; the record indicates that the petitioner has been active in promoting Turkish business interests. Perhaps the most prominent of these Turkish business figures is Ahmet M. Ertegun, co-chairman of Atlantic Recording Corporation. Mr. Ertegun states that he has "known [the petitioner] for some time," and deems the petitioner to be "an extremely and outstandingly talented artist." Mr. Ertegun asserts his intention "to use her as a designer for several of our forthcoming album releases." Like the other witnesses, Mr. Ertegun offers his personal opinion regarding the petitioner's talent, but offers no indication that the petitioner is a particularly well-known graphic artist, which she must be to qualify for this highly restrictive visa classification.

Various former clients attest to the petitioner's skill in creating commercial art for their various needs, but they do not demonstrate that the petitioner is among the best-known graphic artists in the country or the world.

A claim of extraordinary ability must rest on "extensive documentation," as section 203(b)(1)(A)(i) of the Act demands.

This requirement is reflected in the ten regulatory criteria set forth at 8 C.F.R. 204.5(h)(3). It cannot suffice for the petitioner simply to select witnesses who attest to her skill as an artist.

On August 26, 1999, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish her as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, 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."

In response to this letter, the petitioner has submitted three further witness letters, and arguments from counsel regarding evidence previously submitted, and discussed above. Counsel indicates that the three witnesses are "internationally prominent graphic designers."

[REDACTED] states that the petitioner "ranks among the most talented and creative graphic arts professionals working today. Barely 25 years old she has forcefully burst upon the scene and proven herself to be an important voice in the graphic arts community." [REDACTED] also indicates that the petitioner "came to my attention when I attended the opening gala of her solo exhibition . . . in 1998," suggesting that until she attended this exhibition, she was unaware of the petitioner or her work.

[REDACTED] head of a London-based design firm that bears his name, states that he attended an exhibition of the petitioner's work, which featured "unusually challenging and exciting work." [REDACTED] asserts that the petitioner "has reached the first rank of her profession."

[REDACTED] director of [REDACTED] employed the petitioner as a summer intern in 1995, and states that the petitioner conducted her work "with a level of proficiency and geniality rarely encountered even among the most highly experienced practitioners in our field."

The director denied the petition, stating that the petitioner had not established the significance of the evidence submitted in support of the petition; for example, the petitioner had not documented the membership requirements of the organizations to which she belongs. The director also noted that the petitioner had not fully established the credentials of the above three witnesses.

On appeal, counsel asserts that the petitioner's witnesses are "at the peak of [their] profession" and therefore their statements

carry significant weight. The petitioner submits two further letters attesting to the reputations, not of the petitioner, but of Steve Benson and Pacci and Bellini Associates. Certainly, these witnesses claim significant levels of achievement, but the petitioner has not shown that her own accomplishments have reached a similar level.

Counsel contends that the director "has created a new legal standard" wherein the petitioner possesses extraordinary ability but is not "among the most elevated designers in the world." In fact, the director stated that the petitioner "has been termed an extraordinary graphic designer," not that the petitioner has objectively established extraordinary ability as contemplated in the statute and regulations. The petitioner has located witnesses who place the petitioner at the top of her field. Witness statements, however, inevitably contain an inherent degree of subjectivity; each artist is going to have his or her own opinion of the talents of another artist. It is for precisely this reason that the statute demands "extensive documentation" and the regulations require a broad variety of objectively verifiable documentation, to establish that the petitioner is seen as extraordinary not only by a handful of witnesses whom she herself has chosen, but by the field as a whole on a national or international level.

Counsel then turns to the regulatory criteria in 8 C.F.R. 204.5(h)(3). Regarding the petitioner's memberships, counsel concedes that "[m]embership in the nineteen associations of which [the petitioner] is a member is self selected" rather than selected by recognized national or international experts. Given counsel's understanding of this fact, it is not clear why counsel had earlier claimed that these very same memberships satisfied the criterion pertaining to "membership in associations . . . which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." Whether counsel knew all along that these associations did not fit this criterion, or was simply unaware of the associations' membership requirements, counsel would have had no factual basis upon which to base the claim that these memberships satisfy the criterion.

Counsel notes that the petitioner "has recently been nominated to serve as a board member of the New York Chapter of the American Institute of Graphic Arts." This nomination had not yet taken place as of the petition's filing date, and it cannot retroactively establish her eligibility as of that date. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Furthermore, even if a nomination secured her position on the board (which it does not), this position is not

with any national organization, but rather with a local chapter of such an organization.

Counsel submits documentation showing that the Eclipse Gallery, which has shown the petitioner's work, selects only 40 artists out of 1,000 applicants each year. The petitioner submits additional evidence regarding exhibitions. This evidence strengthens the petitioner's claim regarding exhibition of her work,<sup>1</sup> but it remains that this criterion is only one of ten, and the petitioner must satisfy at least three. Counsel, on appeal, addresses only two of the ten criteria, one of them in the context of admitting that the petitioner does not satisfy it (the criterion pertaining to associations in the field).

Bloomingtondale's senior vice president of Creative, [REDACTED] in a new letter, praises the work that the petitioner has done for Bloomingtondale's since joining the company, stating that she possesses "rare talent" and has won the admiration of her peers. [REDACTED] asserts that, when hiring graphic designers, he selects "people who have a talent and skill that is . . . like no other." [REDACTED] states that the petitioner "breath[es] award winning life into all of her projects," but neither identifies nor documents any actual awards that the petitioner has received for her design work. Certainly Bloomingtondale's is one of the United States' best-known department store chains, but it does not follow that a graphic artist employed by Bloomingtondale's is among the best-known or most highly acclaimed graphic artists in the country. The petitioner seeks an extremely restrictive visa classification, and it cannot suffice that the petitioner has shown her work to top graphic designers, who have been impressed with the quality of her work. The petitioner herself must rank among these top designers, not just in the personal opinions of witnesses chosen by the petitioner, but throughout the field at a national or international level. Admittedly, this is a difficult standard to meet, but it is not an impossible standard if one is, in fact, one of the leading figures in the field.

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 herself as a commercial graphic artist

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<sup>1</sup>We note that some of this evidence pertains to the petitioner's work as a photographer rather than as a commercial graphic designer.

to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a graphic artist, and has won the respect of some other artists and clients, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field nationally or internationally. 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.