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U.S. Department of Justice

Immigration and Naturalization Service

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



File: LIN-01-221-53271 Office: Nebraska Service Center

Date: AUG - 5 2002

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: SELF-REPRESENTED

Public Copy

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, Nebraska 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. 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

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(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 children's educational web producer. 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, she 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 submitted evidence of her job appointments, scholarships, fellowships, academic honor societies, summer internships, and research award to meet this criterion. She also submitted a photography award and letters of appreciation from the Center of Science and Industry, Columbus, Ohio for collaboration on a project; the Wexner Center for the Arts, Columbus, Ohio for assistance with some of their programs; and the Museum Education Roundtable, Washington, D.C. for contributing a poster presentation. The director concluded that awards issued to the petitioner while she was a student were limited to students and, thus, could not establish national acclaim. The petitioner does not contest this conclusion on appeal, and we concur. Moreover, academic study is not a field of endeavor, but training for a future endeavor. As such, academic awards are not awards in one's field of endeavor.

In addition, job offers and letters expressing appreciation for assistance provided or posters presented are not awards or prizes. Finally, the photography award does not appear to be a nationally recognized photography award or an award in the petitioner's field of endeavor, educational web production.

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 to be a member of the American Association of Museums (AAM), the Association of Children's Museums (ACM), the Museum Education Roundtable (MER), the Museum and Computer Network (MCN), the National Art Education Association (NAEA), and Phi Kappa Phi. The record only contains evidence of the petitioner's membership in Phi Kappa Phi, which is an academic honor society, and cannot be considered an association in the petitioner's field.

The director concluded that the petitioner had not demonstrated that the remaining associations required outstanding achievements of their members.¹ On appeal, the petitioner concedes that the associations do not have such stringent requirements. The petitioner continues:

However, to act as [a] responsible member with persistent interests and devotions, it requires certain achievements throughout the years. I was chosen to present five times at NAEA's annual conventions, and twice at MER's annual assembly. In addition, I just receive[d] an invitation letter to present a section at AAM[']s] next year's convention in Dallas, Texas on educational Web site development for young

¹ The only association for which the petitioner provided membership requirements is the NAEA, whose website indicates that membership is open to "anyone and everyone concerned about quality art education in our schools."

adolescent[s]. Furthermore, I am going to present a topic on children online privacy protection at [the] Museum Computer Network[']s annual conference in Cincinnati, Ohio next week. For every single presentation [that] occurred at [the] national level, I have to compete with thousands of applicants to obtain that one out of a hundred opportunity. It proves vary [sic] topics of my presentation reach the interest at [the] national level. On the other hand, if I could not contribute to my colleagues [in the] national arena in a professional way, why [would] the organization ever grants [sic] me the opportunities to present?

The plain language of this criterion requires membership in an exclusive association that requires outstanding achievements of its members. While being selected to give presentations at the conferences of non-exclusive associations may demonstrate that association's recognition of the petitioner's knowledge in the field, such presentations cannot serve to meet the clear and unambiguous requirements of this criterion.

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.

While the petitioner did not claim to meet this criterion, the director noted that the published materials in the record about the petitioner's employer, the Chicago Children's Museum, did not mention the petitioner by name. Thus, the director concluded that these materials were insufficient evidence to meet this criterion. The petitioner does not challenge this conclusion on appeal and we concur.

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.

The petitioner submitted evidence that she served as a judge for the 2001 Best of the Web and Museums of the Web competition. The petitioner also served as a jury chair for "Interpretation and Education in History and Culture" in the 2001 MUSE Awards (for best museum films and videos). The Institute of Museum and Library Services (IMLS) advised the petitioner that she had been nominated to review grant applications and requested that she submit her qualifications to do so. While the record contains a subsequent letter from IMLS regarding a review request, it is addressed to "dear reviewer." The record contains no evidence that IMLS selected the petitioner as a reviewer.

The director determined that the judging all occurred in 2001 and 2002 and concluded that such recent judging could not reflect "sustained" acclaim. On appeal, the petitioner asserts that it took years of experience to attain her judging positions.

While accomplishments achieved several years prior to the filing of the petition may raise questions regarding whether a petitioner continues to enjoy sustained acclaim, recent accomplishments should not be discounted because the petitioner has not demonstrated a lengthy history of similar

achievements. The petitioner has recently served as a judge for two national competitions in her field. As such, we conclude that the petitioner meets this criterion.

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

The petitioner references her Ph.D. thesis and her presentations as evidence to meet this criterion. The director concluded that the record contained insufficient evidence that these works reflected a contribution of major significance. On appeal, as quoted above, the petitioner asserts that she would not have been invited to present her work at conferences if she were unable to contribute to her field.

The petitioner presented her dissertation at a seminar at the University of Ohio. The petitioner has not established that this seminar extended beyond students and faculty at the University of Ohio or that the circulation of the proceedings in which the presentation was published is national. There is no evidence that the petitioner's Ph.D. dissertation has been published in a nationally circulated journal and widely cited. As such, it is not clear how this work could be considered a contribution of major significance if it is not even available in a widely circulated journal.

Regarding the petitioner's presentations, presentations are accepted for conferences based on their originality and importance. We cannot, however, conclude that every presenter at a conference has national or international acclaim. A petitioner must provide additional evidence as to the major significance of her contributions beyond that normally attributed to information presented at a conference. In this case, the petitioner has not submitted evidence that other museums have adopted her website design or CD-ROM ideas or even that she has been contacted by others in her profession to provide guidance on their own website and CD-ROM designs.

The petitioner also submitted several letters of reference. Vesta Daniel, an associate professor at Ohio State University and chair of the petitioner's doctoral committee, writes:

[The petitioner's] innovative work in the area of instructional technology has made her very much in demand for the creation and development of educational web sites and other educational materials primarily for museums. The field of museum education has developed great interest in educational technology. This interest places [the petitioner] in the forefront of creating both innovative and educationally effective applications because of her unusual background in both art education and educational technology.

Over the past few years, [the petitioner] has made national and international presentations to professional organizations. Her presentations not only describe the theoretical foundation of educational technology but they also provide examples of and strategies for identifying and applying unique ways of enhancing educational experiences through technology. Her employers have been so confident of her skills and knowledge that she has been given many opportunities to be a leader in

experimental and innovative ways. Indeed, [the petitioner] continues to make a major contribution to museum education and educational technology. She has clearly distinguished herself as a leader in these fields. Many of us have seen our progress advanced by her tutelage and would be greatly disadvantaged if [the petitioner] were no longer available.

Dr. Elizabeth Kryder-Reid, Director of the Museum Studies Program at Indiana University at Indianapolis, discusses the petitioner's instruction of a course at that institution entitled, "Museums and Technology." Dr. Kryder-Reid asserts that the petitioner's "expertise in art education, museums, and technology, as well as her innovative research, have made her work nationally recognized."

Dr. Jacqueline Chanda, Chair of the Division of Art Education and Art History, asserts that she has known the petitioner for the past six years, "as a student, as a colleague, and as a friend." Dr. Chanda continues:

[The petitioner] has contributed greatly to the technology based educational resources of the Metropolitan Museum, the Indianapolis Museum of Art, and the Children's Museum of Indianapolis where she has created numerous CD-ROMs and websites that provide educational content, connected with art, math, and science for children and young adults. One website in particular with which I was impressed is the one entitled Puzzles in Art: Creatures of the IMA. It is an interactive website that allows children and adults to learn about the art and culture from other countries.

[REDACTED] a professor at Indiana University, indicates that he became familiar with her work at the Indianapolis Museum of Art and that he invited her to present a workshop at Indiana University for primary and secondary school teachers which was well received. He continues:

[The petitioner's] contributions in terms [of] web-based design have been inspirational to me and many colleagues in art education. I consider her to be a leader in the field of art education and museum education, particularly in respect to her development of web-sites and CD ROMs for use in classrooms throughout the United States. There are very few art educators or museum educators dedicated to providing the kind [and] quality of resources [the petitioner] has produced in a variety of museum contexts across the United States.

I view her work as most contributory and outstanding in the fields of art education and museum education. Her electronic and media publications, that number nine as of October 2000, are "cutting edge." Her presentations at several nationally judged conventions of the National Art Education Association are evidence of her participation at a very high level nationally. She has accomplished a lot since she received her doctorate three years ago. I expect she will take a leading role in museum education in the United States within the next [sic] few years.

[REDACTED] President Ex Officio of the Museum Education Roundtable, indicates that she recruited the petitioner to present her work at two Roundtable conferences, and writes:

[The petitioner's] work enriches the contemporary and historical perspective of the development, programming and strategies employed by children's museums in the United States.

[The petitioner] is an exceptional and highly committed practitioner who has contributed new insights into the increasingly important museum education field. Her knowledge integrating public administration, museum education, and instructional technology represents a unique intersection of skills very much in demand in the museum field.

[REDACTED] an education specialist at the Smithsonian Hirshhorn Museum and Sculpture Garden, asserts that she has known the petitioner since the petitioner worked as an intern at that institution. [REDACTED] recites the petitioner's educational and employment history and provides general praise of her dedication to her work.

[REDACTED] an associate museum educator for the Metropolitan Museum of Art in New York, indicates that she recruited the petitioner for a summer internship at that institution after observing her presentation at a conference. Ms. Howes writes:

Although [the petitioner's] physical presence in The Metropolitan Museum of Art lasted only one summer, the work that she completed here continues to have a tremendous impact. It was [the petitioner's] responsibility to design and create an Education section for the Museum's World Wide Web site from a variety of sources including information culled from a collection of 2 million objects and 18 curatorial departments. With incomparable enthusiasm she forged an intellectual and visual structure for the site which has remained largely the same, surviving even a complete web site overhaul in the year 2000. The "Explore and Learn" section of the Museum's web site (www.metmuseum.org) features content developed by [the petitioner] five years ago, and continues to attract children, parents, and teachers alike. At a time when few museums were exploring this medium for educational purposes, [the petitioner] foresaw how electronic information would best serve the Met's web public. Her vision continues to inform how the Museum flows the site and has influenced the model of how other Museums design educational materials on the Web.

[REDACTED] the curator of Asian art at the Indianapolis Museum of Art, provides similar information to that quoted above. The petitioner's current employer, the Indiana Children's Museum, provides general praise of the petitioner.

With the exception of the letter from [REDACTED] the above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole.

[REDACTED] letter reflects that the Roundtable has found the petitioner's work interesting enough to invite her to present her work at two conferences. The letter falls short, however, of establishing that museums at which the petitioner has never worked, have adopted the petitioner's design techniques or have been heavily influenced by her designs. The record also fails to establish with independent evidence, that the petitioner's CD-ROMs are being utilized across the United States. The record is simply absent sufficient evidence that the petitioner's contributions to her field have been of such major significance as to reflect national or international acclaim.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As stated above, the petitioner's thesis was published in the proceedings of an Ohio State University seminar. As further stated above, the petitioner has not established that this publication has a national circulation. As such, publication in this journal is not evidence of national acclaim. The petitioner also submitted several web pages and CD-ROMs designed by the petitioner. These designs are inherent to her job and are not scholarly articles in the petitioner's field of childhood education and web production.

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

Jeffrey H. Patchen, President and CEO of the Children's Museum of Indianapolis, asserts:

The Children's Museum of Indianapolis is the largest children's museum in the U.S. Our annual visitation is more than 1 million visitors and our annual operating budget is \$21 million. We employ 200 full-time staff and 200 part-time staff. Our school-related programs and distance-learning initiatives reach hundreds of thousands of students each year. Our public website, our internal staff website, and four extranet sites are crucial to the success of our operation. [The petitioner] plays a crucial role in the success of these initiatives.

The petitioner has not submitted evidence to substantiate these claims, such as evidence that the website's popularity grew when the petitioner began work on it or that the museum's attendance or prestige increased due to the petitioner's work. The newspaper insert from the *Indianapolis Star* regarding the museum's 75th anniversary indicates that the website is "award-winning" and that more than 10,000 students in more than 125 libraries, schools, and hospitals worldwide participated in the distance learning program in 1999. The record does not include a copy of any awards issued to the museum for its website or other evidence that the website received awards after the petitioner began producing it. The insert makes clear that the distance learning program was already widely

used more than one year before the petitioner's date of hire, January 2001. The petitioner concedes that the museum employs over 400 employees and has over 4,000 programs, such as classes, gallery demonstrations and interpretation, workshops, live performances, field trips, parent/child activities, adult programs, special interest clubs and fairs. The record does not establish that the petitioner, whose role is limited to web producing and distance learning programs according to Mr. Patchen's letter and the job description in the record, plays a leading or critical role for this institution as a whole.

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

The petitioner did not initially claim to meet this criterion. The director noted that the petitioner's submission of her appointment letter, which included her salary, was insufficient evidence to meet this criterion. On appeal, the petitioner asserts that she has been unfairly judged for choosing a low-paying profession.

To meet this criterion, one must merely earn a significantly high salary in relation to others in the same field. As such, working in a low-paying profession does not preclude a petitioner from meeting this criterion provided she establishes that her salary is significantly high when compared with others at the top of the field. Thus, the petitioner must submit evidence relating to the salaries of top people in her field. The petitioner did not do so. Finally, the director's decision was not based on the petitioner's salary alone. The director concluded that the petitioner had not met at least three of the regulatory criteria, and we concur.

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 herself as a web producer 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 web producer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.