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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: EAC 01 196 54680

Office: Vermont Service Center

Date: AUG 23 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is a repair, restoration and construction company that seeks to employ the beneficiary as an artisan/designer, in a position that requires the following skills:

- Read blueprints, coordinate work with other workers
- Knowledge of floor covering installation, carpentry, plastering
- Prepare low budget cost for renovation
- Good faux finisher, restorer on antiques
- Must handle power and hand tools

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's initial submission established that the beneficiary is trained in her field of work, but it contained no evidence of sustained acclaim or extraordinary ability. The director instructed the petitioner to submit evidence of sustained acclaim, as set forth in 8 C.F.R. 204.5(h)(3). In response, the petitioner has submitted evidence apparently intended 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.*

Newspaper articles and other documents in the record mention the beneficiary's receipt of various awards, but there is no first-hand documentation from the awarding entities to identify or clarify the nature of those awards.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The "Weekend Events" section of the New York *Daily News* carried an announcement for an exhibition of Guyanese art at a Brooklyn gallery. The exhibition, running from May 24 to June 3, 1997, featured works by the beneficiary and by several other artists. The article did not focus on the beneficiary, mentioning her only in the context of a list of exhibitors.

Other articles announce solo shows by the beneficiary. The record contains no information about these publications to show that they qualify as "major media" as the regulation requires. Purely local media coverage cannot satisfy this requirement, unless the petitioner can establish significant local coverage throughout the nation. Also, the petitioner has not shown that it is unusual for the local media to cover upcoming art shows.

Apart from standard announcements of upcoming shows, the articles include "Art from the Heart," a profile of the beneficiary which appeared in *Caribbean Week* in 1989, and "Caribbean women have also liberated our men" from a 1991 issue of *Fusion*. The *Fusion* article discusses several female artists involved in an exhibition, and states "one of the participants at that exhibition is quite prominent as an artist in today's Guyana." That artist is identified as someone other than the petitioner, inferring that the petitioner was not viewed as a prominent artist in Guyana in 1991. The author of the article states that the beneficiary's "work has not been given the critical evaluation or attention it deserves." As we have noted above, the record does not establish that these publications constitute "major media," nor does the record show that the beneficiary has sustained this level of media attention since arriving in the United States in 1992. As of the petition's filing date in April 2001, the beneficiary had been in the U.S. for over eight years, and it is appropriate to judge the

beneficiary's subsequent reputation and achievements since that time against the standard of top U.S. artists.

*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.*

Roseann P. Evans, regrant coordinator for the Brooklyn Arts Council, states that the beneficiary, as a panelist in the council's Community Regent Award, "was instrumental in recommending funding for our application process" and that the beneficiary "gets pleasure from promoting projects that target and enhance the artistic climate in communities in Brooklyn." This work, on behalf of an organization in the community where the beneficiary lives, appears to be strictly local in nature, rather than demonstrative of national or international recognition.

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

Bob Menzel, executive director of the Alliance of Queens Artists ("AQA"), states that the beneficiary "exhibits sculpture regularly in our gallery and other AQA venues." The record does not establish the reputation or popularity of the venue. Considering that there are thousands of museums and art galleries in the United States (hundreds in New York City alone), only a small fraction of which are nationally or internationally recognized, we cannot assign equal weight to every instance in which an artist's work is displayed. A sculpture displayed for sale at a local gallery, for instance, is considerably less significant than a solo exhibition at a famous museum that attracts visitors from around the country or the world.

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

Stanley Greaves of the Dorothy Tait Foundation, Georgetown, Guyana, states that the beneficiary "is president of the Guyana Women Artists Association in her second term of office." The record contains nothing from the association itself to confirm the beneficiary's title or to establish the association's distinguished reputation. The beneficiary's own resume makes no reference to her two-term presidency of a national artists' organization.

The petitioner has also submitted witness letters that do not readily fall into the above regulatory categories. Eugene Williams, director of studies at Edna Manley College of the Visual and Performing Arts in Kingston, Jamaica, states that the beneficiary "was involved in several productions" at the Theatre Guild in Guyana, where "[m]uch of her work was concentrated in the areas of set construction, set painting and set dressing. Her talent as a visual artist was particularly evident in non-realistic sets that required imaginative use of materials and textures." This letter shows that the beneficiary has experience in artistic aspects of construction, but that experience is not inherently demonstrative of sustained acclaim.

Other letters reflect her donation or loan of art works for various purposes, but these letters do not indicate that the beneficiary is or has been a nationally recognized artist in the U.S., Guyana, or elsewhere.

The director denied the petition, stating “the beneficiary does seem to have received more than average notice and more than average recognition for her work,” but exceeding the average does not meet the very restrictive threshold of the immigrant classification sought. On appeal, the petitioner states “[a]rtistic expression is not measured by publicity, but by individual quality and skill.” Evaluations of a given artist’s talent are, by nature, subjective. A finding of extraordinary ability cannot rest on the opinion of witnesses who believe an alien’s work to be of extraordinary quality. The statute demands “extensive documentation” of sustained national or international claim, a demand mirrored in the regulatory requirement for several different kinds of documentary evidence. Some artists have become nationally or internationally known for their work, such as (for example) Pablo Picasso, Alexander Calder, and Andrew Wyeth. The fact that most artists never attain such a level of success merely underscores the fact that only a small number of artists reach the very top of the field.

The petitioner asserts that individuals with the beneficiary’s skills “are a dying breed,” and that “the minority community” suffers when restoration work is sub-contracted. The petitioner also asserts that political factors in her native Guyana affected the beneficiary’s career, and that the beneficiary “would be faced with extreme hardship” unless the petition is approved. These assertions, even if they are completely true, are not relevant to the central issue of whether the beneficiary has earned sustained acclaim as one of the very top artists in her field. The requirement of sustained acclaim is fundamental to the immigrant classification, and cannot be waived for any reason, including hardship to the beneficiary.

The petitioner submits documentation on appeal, showing that the beneficiary participated in training programs funded by the United Nations. There is no evidence that this program was a form of recognition extended to acclaimed artists. The documented fact that it was a training program suggests that the beneficiary was not yet an established artist, but rather was an emerging artist in need of further training.

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 beneficiary has distinguished herself as an artist or artisan 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 is not persuasive that the beneficiary’s achievements set her significantly above almost all others in her 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.