

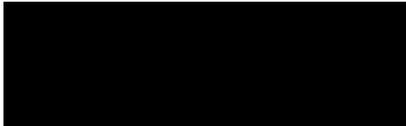


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-01-053-50951

Office: Vermont Service Center

Date: 18 JUN 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:



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 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.

On appeal, counsel's sole argument is that the director erred by only considering whether or not the petitioner earned an unusually high salary. While the director noted the petitioner's salary, the petitioner's salary was not the deciding factor in his decision. The director considered the remaining evidence and concluded that the petitioner had not established that she had acquired national or international acclaim. We will consider all of the evidence as it relates to the various criteria below.

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 an interior designer. 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 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 is a member of the International Interior Design Association (IIDA), the Network of Executive Women in Hospitality (NEWH), and the American Society of Interior Designers (ASID), which, according to counsel, limit membership to those who have "achieved recognized professional proficiency." The membership letter from IIDA, however, indicates that the petitioner need only demonstrate her education and that she was working in the field. A degree and a job are not outstanding achievements. The membership letter from NEWH asserts that members are "outstanding female professionals" and that the petitioner was accepted after she met the "professional eligibility standards set forth by NEWH." NEWH's website, www.newh.org, allows a user to download the organization's bylaws. The bylaws provide that general members are, "those professionals who have been engaged in the Hospitality Industry or a related field for a minimum of one year." Working in the industry for one year is not an outstanding achievement. Finally, the membership letter from ASID states that membership in that organization is based on "a combination of accredited education and full-time experience." As stated above, a degree and a number of years of experience are not outstanding achievements.

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.

Counsel asserted initially that the petitioner met this criterion through "published material about [the petitioner's] work." The regulation, as quoted above, requires published material about the petitioner relating to her work in the field. Articles which are not primarily about the petitioner personally do not meet the plain language requirements of the regulation. Moreover, the evidence submitted to address each criterion must be evaluated as to whether it reflects national or international acclaim. Articles which do not mention the petitioner by name cannot be considered a reflection of her personal acclaim.

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.

Counsel argued initially that the petitioner meets this criterion through her supervisory and team leadership duties with her employer. As stated above, the evidence submitted to meet each

criterion must be evaluated as to whether it demonstrates national or international acclaim. Duties that are inherent to one's job are not evidence of national or international acclaim. We cannot conclude that every supervisor at every major company has national or international acclaim. The record contains no evidence that the petitioner was requested by anyone other than her own employer to evaluate the work of others based on her national or international acclaim.

In response to the director's request for additional documentation, the petitioner submitted evidence that she served as a juror for a student competition at the [REDACTED] in Turkey organized by the Turkish magazine *Tasarim* and the Italian company Calligaris. The competition, however, took place in June 2001, several months after the petitioner filed the instant petition. As such, it cannot be considered evidence of her eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

Finally, in response to the director's request for additional documentation, the petitioner also submitted a letter from a professor at the [REDACTED] asserting that the petitioner was invited to give a lecture at that university. The professor does not indicate that the seminar was given prior to the date of filing. Moreover, giving a seminar does not constitute judging the work of others.

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

[REDACTED] a senior architectural representative at [REDACTED] asserts that while most interior designers apply interior design principles, the petitioner is one of those who "looks beyond the principles and provide[s] creative solutions and critical insights into the projects." He continues:

With W Hotel, [the petitioner] brought [to the project] an entirely new concept in hospitality design. Her idea to transform [the] 1928-built structure into a wellness center was driven by "quality of life" and environmental concerns. I was struck by the choice of colors, use of finishes and textures in the project which created an airy, warm and welcoming environment.

...

Another extraordinary work of hers that I was impressed with is Pod Restaurant in Philadelphia. She has made an original and significant contribution in her field when she introduced innovative materials such as urethane for [the] bar top, the seating unit made out of fiberglass substructure covered with EVA foam and urethane coating which has never been used indoor, self-skinning foam for [the] barstool top[s], gel cushions, custom designed tables and epoxy walls.

[REDACTED] provides similar information.

[REDACTED] provides general

praise of the petitioner's skills and professionalism. He does not identify any specific innovation that constitutes a contribution to the field of interior design.

[REDACTED] provides general praise of the petitioner's ability to develop a global vision of the project and coordinate its design. He adds:

[The petitioner] is the project manager of the new 31 story extended hotel being built in the Grand Central Area of Midtown Manhattan. She is transforming 300 sqf. studios into [a] flexible, multi-functional environment where the traveler can cook, eat, sleep, work and entertain. Her overall furniture design in this project by creating flexible, space saving functional and artistically appealing products has taken extended stay hotels into a new level. She is creating [a] "home away from home" for worldwide business travelers by developing the program for the extended-stay hotel, including service, amenities, [and] accessories. This is a very significant original contribution in the field because of her extraordinary skills not only in interior design field but also in developing unique concepts for [the] hospitality industry. She is playing a leading role in the industry by introducing a new project line into the global market place based on the concept she created for this project.

[REDACTED] does not specify what new techniques the petitioner used in designing the extended stay hotel suites. Nor does he specify that other extended stay hotels have adopted those techniques or requested the petitioner's services for a similar project.

The petitioner's employer [REDACTED] provides high praise of the petitioner's skills. He asserts that "her work is distinguished by her unique design approach and ability to apply a creative approach to the practical realities of the project." Once again, he does not identify a technique that other interior designs have adopted or that other clients have requested.

[REDACTED] owner of a custom textile business, provides general praise of the petitioner's style and problem solving abilities. She asserts that the petitioner's work on the W Hotel "won great accolades in the design community."

[REDACTED] Account Manager for Bendheim, a custom glass company, asserts that the petitioner's design for glass laminated with ginko leaves used in the W Hotel has resulted in a marginal increase in sale of similar products. [REDACTED] further asserts that the petitioner's use of frosted crystal film for the Pret-A-Vivre Hotel in Manhattan became the "signature" of the hotel.

[REDACTED] contract manager for the Stark Carpet Corporation, states:

One of the best example[s] of her exceptional talent is the carpet she designed for all the corridors at Bridge Tower Place, [a] 31-story high-rise in Manhattan. By using cut and loop pile and by creating carpet insets at each apartment entrance, she uniquely broke down the monotony of the hallways. The design was so successful

that Starwood Capital Group is using her custom carpet at the new W Guardian Hotel, opening [in] November 2000.

[REDACTED] of Museum Editions Art Advisors, provides general praise of the petitioner's skills, especially in the selection of art.

The above letters all appear to be from companies with which the petitioner has contracted for products such as rugs, furniture, and glass. As such, these letters do not establish that the petitioner's work is known beyond the circle of people with whom she contracts.

As stated above, the petitioner submitted several magazine stories which mention the petitioner's projects. For the reasons stated above, they cannot be considered articles about the petitioner herself. Moreover, several of the articles are about [REDACTED] including his selection as *Interiors* Designer of the Year in 1998. The petitioner cannot establish eligibility based on the acclaim of her employer. In fact, his acclaim, when compared with the petitioner's, is a strong indication that she is not one of the very few at the top of her field. Nevertheless, articles which showcase work for which the petitioner was primarily responsible could reflect a contribution to the field. As such, we will consider those articles under this criterion.

The November 2000 edition of *Wallpaper* describes the Pod Restaurant's design as "forward to say the least." *Philadelphia Home* and *The Philadelphia Inquirer* both devoted an entire article to the unusual modernism of the Pod Restaurant, although it is noted that both articles credit the design to a collaboration between [REDACTED] and the restaurant owner. *International Design* and several other publications, highlighted the W New York Hotel as innovative. In response to the director's request for additional documentation dated August 2, 2001, the petitioner submitted an article printed in a Turkish magazine, *Tasarim*, published in October 2001 in which the petitioner describes her role for the W Hotel. In that article, the petitioner implies that she was the project manager for the project. The article in *International Design*, however, includes a caption reading, [REDACTED] principal [REDACTED] senior associate-in-charge [REDACTED] director of interiors; [REDACTED] project manager; [the petitioner's name followed by 32 names in alphabetical order], staff." (Emphasis added.) While the petitioner's name is the first to appear after the title "project manager," her name is separated from the title by a semi-colon. A review of the list makes it clear that the name that appears prior to the title [REDACTED] which is separated from the title by a comma, was the actual project manager. As stated above, the list begins with David Rockwell, followed by his title and ends with the title "staff" followed by no names. Thus, it is clear that the titles refer to the preceding name. The petitioner is listed as a staff member only.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). The article in *International Design* was written by a disinterested journalist who researched the hotel to report its receipt of the magazine's design distinction. The record does not resolve the inconsistency between this article and the article in *Tasarim*, a magazine from the petitioner's native country, written by the petitioner herself and

published two months after the director requested additional evidence. This discrepancy raises concerns regarding the credibility of the petitioner's claim to have been responsible for the Pod Restaurant project.

The petitioner has not established that independent experts with no employment connection to the petitioner are aware of her work (and attribute such work to her personally). Moreover, the petitioner has not established that she was principally responsible for her employer's projects which received attention in the media and trade journals. As such, the petitioner has not established that she has made contributions of major significance to the field of interior design.

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

In his initial brief, counsel asserts without explanation that the petitioner meets this criterion. It is inherent to the field of interior design that one's work will be seen by clients and the public. A hotel lobby or restaurant allegedly designed by the petitioner does not constitute an artistic exhibition or showcase.

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

██████████ asserts that the petitioner played a "key role" for one of the company's "most successful projects," that her work on the Pod Restaurant "transformed the restaurant into a highly unique project," that she is the interiors project manager for a project in Turkey, that she is the project manager for a fast-track project for the ██████████ and that she is a "fundamental member of the ██████████ interior design team."

As quoted above, the caption in the *International Design* article reflects that each project has a senior associate-in-charge and a director of interiors. The petitioner is not an associate with Rockwell and there is no evidence that she ever served as a director of interiors. We cannot conclude that every project leader for a specific project plays a leading role for the company as a whole. The company designed several major projects on which the petitioner apparently played no role at all, such as the new theater for the Academy of Performing Arts. While counsel is correct on appeal that a petitioner need not demonstrate a high salary for this classification, where a petitioner earns only \$38,098 annually working on million dollar projects for a major company, it can be expected that the petitioner provide an explanation for how the relatively low salary is consistent with her claim to play a critical role for such a major company.

In light of the inconsistencies discussed above regarding the petitioner's title on the W Hotel project and the petitioner's low salary without explanation, we cannot conclude that the petitioner meets this criterion.

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 an interior 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 an interior designer, 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.