

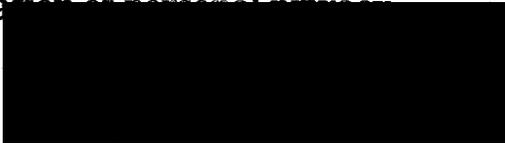


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U.S. Department of Justice

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 01 229 55792

Office: VERMONT SERVICE CENTER

Date: OCT 15 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 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

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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 achieved sustained national or international acclaim are set forth in Service regulations at 8 C.F.R. 204.5(h)(3):

Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) 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;

(iii) 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;

(iv) 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;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

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

Karen Nichols, corporate secretary and principal of the petitioning entity, describes the beneficiary's duties with the company:

[The petitioner] desires to employ [the beneficiary] as a Draftsman/Designer (unlicensed) with the special skill of 3-D renderings. In this capacity, [the beneficiary] will work with an established architectural team under the supervision of a registered architect. . . . His duties may include: preparation and/or drafting of preliminary designs of a conceptual nature; detailed development of design relative to dimensions and building materials; assistance with construction drawings; processing of clarifications and shop drawings requested by the contractor during the construction phase; and presentation drawings and 3-D renderings to communicate the idea of the project to clients and publications.

Counsel lists the exhibits submitted with the initial filing of the petition:

Copies of letters evidencing that the beneficiary has commanded a salary which demonstrates exceptional ability (copy of the e-mail to the beneficiary regarding acknowledgment and publishing of the beneficiary's work at the International Architectural Conference in Orleans, France; Material regarding his presentation at the International Festival in Florence . . . ; a copy of a letter from the New York's [sic] largest Greek Newspaper known as National Herald which is published in New York and distributed throughout the world. . . .

Copies of letter[s] evidencing beneficiary's recognition for achievements and significant contributions to the industry (translated letters from Constantinos Mitskotakis's [sic] – former prime minister of Greece; Yiannis Charalampopoulos – Minister of Foreign Affairs and Defense).

(Open parenthesis and capitalization as in original.) Counsel also discusses evidence pertaining to the beneficiary's academic degrees in the field. The categories of evidence listed by counsel (academic degrees, a salary which demonstrates an exceptional ability, recognition for achievements and significant contributions) derive from Service regulations at 8 C.F.R. 204.5(k)(2), pertaining to a separate, lower immigrant classification (alien of exceptional ability) pertaining to section 203(b)(2) of the Act. Indeed, in an introductory letter submitted with the petition, counsel refers to the beneficiary as "a person with exceptional ability in the business of architectural design." Further confusion results from the petitioner's introductory letter, which makes no reference to extraordinary ability or sustained acclaim. The petitioner's letter focuses, instead, on a description of the position offered, the assertion that the beneficiary "is qualified for the position described," and the terms of employment. The letter originally indicated that the petitioner seeks an H-1B nonimmigrant visa for the beneficiary, but the reference to that classification has been blacked out with a felt-tip marker. A notation on the I-140 petition form itself indicates that the petitioner seeks to classify the beneficiary as an alien of extraordinary ability, and it is under that classification that the director adjudicated the petition. On appeal, counsel has not disputed the director's reliance on extraordinary ability regulations at 8 C.F.R. 204.5(h) rather than exceptional ability criteria at 8 C.F.R. 204.5(k).

Counsel's letter implies that the letters and electronic mail messages in the record are evidence that the beneficiary has commanded high remuneration. That correspondence, however, contains no information at all regarding the beneficiary's remuneration. The only reference in the record to the beneficiary's compensation is the petitioner's assertion that it intends to pay the beneficiary \$50,000 per year.

The record shows that the beneficiary has created architecture-themed video presentations such as *Here Comes The Flood* and *The Fallen Skyscraper*, which were screened at conferences and exhibitions in Europe. The impact these works have had on the beneficiary's reputation as an architect (rather than a maker of films with an architectural theme) is not evident from the sparse documentation submitted with the petition.

Harilaos H. Daskalothanassis, managing editor of the Hational [sic] Herald, states:

The International Festival of Florence is one of the most important events in the field of New Media in Europe and internationally.

This past year [i.e., 1999] we were very proud to see that [the beneficiary] was selected to present his work in this prestigious event, attended each year by the most distinguished architects, artists and filmmakers, and sponsored by major Italian cultural institutions and media.

The record does not contain any documentation of the media coverage itself apart from Internet printouts regarding the beneficiary's presentations.

Constantinos Mitsotakis, former Prime Minister of Greece, describes various student honors that the beneficiary had earned. Regarding the beneficiary's current work, Mr. Mitsotakis states:

[The beneficiary] collaborates with the "Costas Kondylis and Associates" office of design and construction development, which works on architectural competitions, teaming up, at the same time, with Greek Technical Offices of Architectural and Urban Design Studies and Constructions, in view of the Olympic Games that will take place in Athens in 2004.

[The beneficiary's] perspectives are very positive and we believe that by pursuing the same course he will represent a remarkable member of his science and of society in general.

Mr. Mitsotakis' assertion that the beneficiary "will represent a remarkable member of his science" does not suggest or imply that the beneficiary is already widely regarded as a "remarkable" figure in his field. The beneficiary's involvement with a firm that is involved in preparations for the 2004 Olympics is not, on its face, an indication of sustained acclaim. The record does not establish the extent of the beneficiary's involvement with those plans, the nature of his duties, or the means by which he was chosen to participate. Yannis Charalampopoulos, identified as "Deputy of Athens, former Vice President of the Government and Minister of Foreign Affairs and Defense," offers a letter that is similar in substance to Mr. Mitsotakis' letter.

The director instructed the petitioner to submit further evidence to show that the beneficiary "is one of that small percentage who have risen to the very top of the field of endeavor." In response, the petitioner has submitted additional letters and documentation. Karen Nichols states:

[The beneficiary] falls within the small percentage of 5% who have risen to the top.* [The beneficiary] has proven to be one of the very few architects that we consider invaluable. . . . [H]e has played a key role in helping our New York studio design an enormous project in Athens, schedule[d] to be completed for the opening of the Olympic Games in 2004. At this stage of the project, it would be impossible to replace him. . . .

[The beneficiary] is also our most experienced computer graphics renderer. . . . Hence, we now depend upon his outstanding skills for most of the projects in our New York studio. . . .

Without the remarkable talent of [the beneficiary], it would be difficult at this moment to sustain our international acclaim as architects. . . .

*His salary evidences the fact that he is among that small 5% of his field.

The petitioner provides no documentary evidence to support the claim that the beneficiary, with his salary of \$50,000 per year, is among the highest-paid five percent of workers in his field. The Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, page 100, states "[m]edian hourly earnings of architectural and civil drafters were \$16.93 in 2000. . . . The highest 10 percent earned more than \$26.13." The beneficiary's annual salary of \$50,000 equals an hourly wage of \$24.03, assuming 52 40-hour work weeks per year. If the beneficiary's hourly wage falls below "the highest 10 percent," then logically that same wage, while still comparatively high, cannot place the beneficiary among the highest-paid five percent.

We note here that, although Ms. Nichols repeatedly refers to the beneficiary as an "architect," she had previously identified the beneficiary as a "Draftsman/Designer," with duties to match, rather than an "architect." The *Occupational Outlook Handbook* states on page 92 that the "[m]edian annual earnings of architects were \$52,510 in 2000. . . . The highest 10 percent earned more than \$85,670." Thus, if we adhere to Ms. Nichols' wording and regard the beneficiary as an architect, rather than a drafter or designer, then his salary is significantly below the median and nowhere near the top five percent. The *Handbook* also states, on page 91, that "[a]ll States and the District of Columbia require individuals to be licensed (registered) before they may call themselves architects," and it is reasonable to expect officials of a major architectural firm to be aware of this basic requirement. If the beneficiary is not licensed (and Ms. Nichols had earlier specified that he is "unlicensed"), then it is at best misleading to refer to him as an "architect."

██████████ himself asserts that the beneficiary's "unique abilities are invaluable to this office," and that his firm "consistently receives commissions of worldwide importance." This letter lends support to the assertion that the beneficiary plays a critical role for a distinguished establishment, although at the same time we cannot ignore that Mr. ██████████ himself, according to Ms. Nichols, "has been awarded both the National Medal of Arts and the AIA Gold Medal; the two highest honors an architect can receive in this country." Thus, Mr. ██████████ appears to have reached a level of acclaim and recognition substantially higher than that reached by the beneficiary. Furthermore, it remains that, from the job description provided by the petitioner at the outset of the proceeding, the beneficiary's duties involve preparing graphic representations of architectural designs created by others (presumably registered architects), rather than creating original designs. The beneficiary appears to represent, in essence, support staff for architects, converting architectural designs into graphic representations for client presentations, technical drawings for builder reference, and so on.

Two of the beneficiary's former professors attest to the beneficiary's talent and skill, particularly in "computer animation and image manipulation." Neither of the professors' letters, however, demonstrates that the beneficiary has earned sustained acclaim outside of the universities where he has studied or the firms where he has worked.

The petitioner submits further materials about the exhibitions to which he contributed video presentations, and a copy of a page from *Arquine*, an architecture magazine published in Mexico. The beneficiary's name appears among other names at the top of the page, preceding two paragraphs of untranslated Spanish text. The significance of this material is unexplained. The excerpt is undated, and therefore we cannot determine whether this material existed at the time the petition was filed.

The director denied the petition, stating that the evidence shows the beneficiary to be "an enormous asset" to his employer, and "suggests that the beneficiary possesses a great deal of potential." Nevertheless, the director concluded that the record does not establish that the beneficiary is a nationally or internationally acclaimed figure at the top of his field.

On appeal, counsel asserts that the director did not give consideration to the initial submission, because the director's notice of decision contains a list of supplementary submissions but not a list of the initial materials. Counsel submits copies of the initial documents, and describes them, but does not offer any further explanation as to how these documents place the beneficiary at the top of his 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 and is one of the small percentage who has risen to the very top of the field of endeavor. The record establishes that the beneficiary is a talented draftsman whose services are valued by a prestigious architectural firm. The record does not, however, establish that the beneficiary's reputation as a draftsman or designer has reached a level that could be deemed national or international acclaim. The evidence is not persuasive that the petitioner's achievements set 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.