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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



11 SEP 2002

File: EAC 01 189 55317

Office: Vermont Service Center

Date:

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 is a retailer of fabrics. It 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 business and 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 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.

The petitioner seeks to classify beneficiary as an alien with extraordinary ability as a fashion coordinator. The petitioner has submitted Form ETA-750, Form ETA-750B, three local advertisements for a job opening with the petitioner as a fashion coordinator, a document from the Internal Revenue Service verifying the petitioner's employer identification number, and bank statements for the petitioner. While this documentation appears more relevant to classification of the beneficiary pursuant to section 203(b)(3)(A)(i) of the Act, Part 2 of the I-140 and the petitioner's statements confirm that the classification sought for the beneficiary is that of an alien of extraordinary ability.

On October 15, 2001, the director issued a request for evidence informing the petitioner of the deficiencies in the record and requesting that the petitioner submit evidence pertaining to the ten regulatory criteria. The petitioner responded by submitting several photographs of the beneficiary

preparing window displays and a letter of explanation from ██████████ President of Sewrite Fabrics. The petitioner's response, however, did not specify which of the ten criteria that the beneficiary seeks to satisfy. ██████████ states:

[The beneficiary] is very talented as a fashion coordinator. I have enclosed some photos of his work to show you what I mean. There are photos of [the beneficiary] making window displays, one of a beautiful floral arrangement, an unusual tapestry over some sheer fabrics that he designed and a photo of our window, which really doesn't do any justice to our work, but will give you an idea of his talent and, finally, one of a current Christmas display of figurines that have all of the youngsters who come in with their parents mesmerized.

The type of work that [the beneficiary] excels in is not taught at any high school or college... This gentleman, in his late 20's in a field becoming extinct, has an unusual ability to understand what being a fashion coordinator really is and in displaying merchandise so that the consumer understands it well.

Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. In this case, the petitioner has not provided evidence pertaining to the regulatory criteria set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The petitioner cannot demonstrate eligibility under this classification by submitting only photographs and a brief witness letter attesting to the beneficiary's talent. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director denied the petition, stating that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability. The director properly noted the absence of "evidence requested by the regulation."

On appeal, the petitioner requests oral argument. Oral argument, however, is limited to cases where cause is shown. The petitioner must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, the petitioner has shown no cause for argument; the petitioner simply expresses a desire to make his case in person. Consequently, the petitioner's request for oral argument is denied.

The petitioner has not specifically addressed the reasons stated for denial and has not provided any additional evidence as specified in the regulation.

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. The petitioner has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that he meets at least three of the criteria which must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the beneficiary has distinguished himself as a fashion coordinator to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that his achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's 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.