

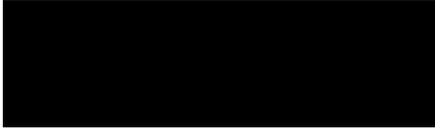
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536



File: WAC-01-230-51943

Office: California Service Center

Date: **DEC 05 2003**

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)

ON BEHALF OF PETITIONER:



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 Citizenship and Immigration Services (CIS) 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO), dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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.

The AAO concurred, finding that the petitioner had not established that she meets any of the ten regulatory criteria, three of which must be met to demonstrate eligibility in this classification. On motion, counsel argues that the petitioner has received lesser national or international awards, that she presented sufficient published material about herself, and that she judged the work of others. The petitioner, through counsel, also submits additional evidence relating to her previous claim that she has performed in a leading or critical role for organizations with distinguished reputations. We will discuss these four criteria claimed on motion 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 --

- (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 CIS 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 graphic 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. On motion, the petitioner continues to claim that she 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 initially submitted several awards and prizes, some of which were awarded locally. The AAO concluded that the petitioner had not established that any of the awards could serve to meet this criterion. On motion, the petitioner argues that the Summit Creative Awards and the American Graphic Design Awards are sufficiently prestigious to meet this criterion.

The record contains a letter announcing the results of the 2001 Summit Creative Awards. The AAO noted that the letter identifies only the petitioner's employer, [REDACTED] (not the petitioner herself), as a Bronze winner and questioned whether this award is exclusive. The AAO noted that the letter offers winners the opportunity to purchase award statues and that the most prestigious national and international awards, such as Pulitzer Prizes and Nobel Prizes, do not charge a fee for the award. The AAO further noted that according to the presenter's own website, www.summitawards.com, in 2001 Summit Creative Awards issued silver and bronze awards to 74 companies in California alone.

On motion, counsel argues that the AAO's concern regarding the fees charged to participate in the Summit Creative Awards and to receive award statues is "subjective" and "does not change the significance of the award." She further states that 74 winners out of 3,000 entrants is only 2.5 percent and notes that she won two awards in the same year. She asserts that "there is only a fraction of 1% of people who have attained this achievement." The petitioner provides an affidavit from [REDACTED] Vice President of [REDACTED] Inc. and Awards Committee Chair, who asserts that the petitioner was either the lead or worked solo on the projects that received the Summit Creative Award and that it is Hill & Knowlton's policy to have only the name of the company on the award itself.

The petitioner has not overcome all of our concerns. While 74 out of 3,000 may be a small percentage, we note that counsel is comparing the number of winners in California with the number of entrants internationally. It remains that the Summit Creative Awards issues numerous awards, 74 just in the State of California alone. We cannot conclude that an award issued to hundreds of applicants nationwide is a nationally recognized prize or award indicative of or uniquely consistent with national or international acclaim. The most prestigious national awards are issued to between one and three winners.

The record also contains a letter from Graphic Design.usa announcing the selection of an American Graphic Design Award for 2000. As stated in our previous decision, the letter is not addressed to either the petitioner or her employer, suggesting that the letter is a bulk-issued letter. The petitioner

submitted certificates for two 1998 American Graphic Design Awards, three 1999 American Graphic Design Awards, and one 2000 American Graphic Design Award. The AAO acknowledged that the awards name the petitioner, but noted that the awards do not specify any award level, such as first or gold. Rather, the awards are simply “for excellence in communication and graphic design.” Further, the AAO noted that while Graphic Design:usa’s website, www.gdusa.com/CallForEntries03.php identifies 24 different categories, none of the certificates of record reflect the category in which they were issued. The record also contains copies of special issues of *Graphic Design:usa* displaying the award winners. The AAO stated:

Every page includes five awardees in a given category. The winners are listed alphabetically with only a small section of the alphabet represented per page. Thus, a single page does not appear to represent all the winners in the category. As further evidence that the list of awardees in a given category may continue for several pages, the petitioner submitted two pages for the category “Announcements, Invitations, Cards” in 2000. Thus, there were at least 10 winners in that category in 2000. Moreover, as the second page of this category, page 84, ends with firms beginning with the letter “J,” it appears that there may have been significantly more than 10 winners. Furthermore, as they are listed alphabetically, the numbering does not reflect how they were ranked. As such, it is not clear that the American Graphic Award certificates represent competitive awards issued to only the one to three top entries per category as opposed to lesser recognition. Moreover, the letter announcing the award indicates that publication in the awards annual requires “an image conversion and production fee.” The amount of this fee is not indicated. The website also indicates that a fee of at least \$45 is required to enter the competition in the first place, with bulk fees available for multiple entries. The most significant national and international awards do not require entry fees or fees for publication.

On motion, counsel asserts that only 750 awards were issued out of 10,000 entrants, placing the petitioner in the top 7.5 percent of her field. This argument is not persuasive. The petitioner has not demonstrated that the top graphic artists in the field compete for this award. While [REDACTED] asserts that the award is one of “the foremost competitions in this industry,” he then states, “like other similar awards in this field, a nominal application fee is required.” Thus, it appears that there are an unspecified number of awards of a similar caliber for which others in the field are also competing. Regardless, as stated above, we cannot conclude that an award issued to hundreds of entrants, all of whom have to bring themselves to the attention of the award issuing institution by applying, is consistent with national or international acclaim.

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.

On motion, counsel continues to assert that the petitioner meets this criterion through the inclusion of her projects receiving American Graphic Design Award recognition in a special awards issue of

Graphic Design:usa, the credit she received for her layouts in the newspaper *La Opinion*, and an interview of the petitioner that was aired on KMEX, a Univision television station.

The AAO previously concluded that the petitioner has not demonstrated the significance of the awards from *Graphic Design:usa* and that the inclusion of the petitioner's work as one of several recognized designs in a publication dedicated to listing awardees, possibly for a fee, is not journalistic reportage about the petitioner herself. Similarly, the AAO concluded that the petitioner's credit for layout design in *La Opinion* is not published material about her. The AAO noted that because it is inherent in the work of a graphic artist employed by a publication to design its layout, her layout design will appear in the publication. Finally, the AAO noted that the record contains no evidence of the KMEX interview. Regardless, the AAO concluded that a single interview on a local television station in her own community is not evidence of national acclaim.

On motion, counsel asserts that *La Opinion* is a major media outlet and that *Graphic Design:usa* is a major trade publication. Counsel questioned the AAO's conclusion that the materials were not "journalistic reportage" even though the petitioner was credited as the "author." The petitioner submitted a transcript of her interview on Univision.

The AAO did not discuss whether *La Opinion* was major media, although we question whether materials published in a language that the majority of the population cannot comprehend can constitute evidence indicative of or uniquely consistent with national acclaim. Counsel's personal assertion that *Graphic Design:usa* is major media is insufficient. Regardless, the AAO's main concern was that the nature of the materials that appeared in these publications did not meet the plain language requirement of the criterion.

Counsel appears to misunderstand the AAO's concern that the petitioner's credited layouts are not "journalistic reportage." We do not question that the petitioner designed and is credited with the layouts in *La Opinion*. Similarly, the petitioner is credited with the recognized designs featured in *Graphic Design:usa*. The issue is whether these constitute published materials *about* the petitioner (as required by the plain language of the criterion). Published materials *by* the petitioner do not qualify under this regulation. These materials simply do not constitute the type of independent journalistic reportage contemplated by the regulation. Specifically, they do not represent an interview with or an article about the petitioner by an independent journalist reporting about the achievements of the petitioner in her field. As stated in our previous decision, it is expected that a graphic designer who works for a newspaper will have her layouts appear in that newspaper. That the petitioner was able to secure employment in her field as a graphic designer for a newspaper is not uniquely consistent with or indicative of national or international acclaim.

The transcript from the Univision interview does not indicate when the interview was aired. An interview conducted after the date of filing cannot be considered evidence of the petitioner's eligibility at that time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In addition, the record does not indicate whether the interview was broadcast outside of California. If not, it is not uniquely consistent with or indicative of national 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.

As stated in the AAO's initial decision, the petitioner only claimed to meet this criterion for the first time on appeal. The petitioner relied on a letter discussing arrangements for her to review student portfolios. As stated by the AAO, the letter is from [REDACTED] Vice President of Education for the American Institute of Graphic Arts (AIGA), Los Angeles, but the letter is on Design Group, Inc. letterhead. An earlier letter from the American Intercontinental University (AIU), the petitioner's alma mater, reveals that the petitioner was scheduled to review student portfolios there. The AAO concluded that as the AIU letter references AIGA, it appears that both letters may refer to the same review event. The AAO discounted this evidence, noting that the petitioner did not submit any other evidence regarding the nature of the event or sponsor. The AAO also found that the record contained no evidence regarding the selection process for student portfolio reviewers. The AAO noted that participation in an event where professionals volunteer their time to mentor students at their alma mater preparing for a similar career is not evidence of those professionals' national acclaim.

On motion, the petitioner submits a letter from Dr. [REDACTED] AIGA Los Angeles Portfolio Day Coordinator. She asserts that the petitioner has been invited to the association's annual portfolio review day for the past four years and that AIGA "selects the top designers to participate in this event." Dr. [REDACTED] continues:

The criteria used to select our jurors is quite comprehensive. First, a juror has to be an AIGA professional member. Second, his or her work has to be award winning and stellar. To find such jurors we research awards such as the American Graphic Awards and the Summit Awards among others to select what we consider to be outstanding. Only a very small pool of people are selected to participate. Third, we require a very high level of expertise. In addition we also take into consideration the prestige of the company the juror works for. We select our jurors every year to make sure they meet our criteria and to ensure that we only get the top designers to participate.

This letter does not indicate that AIGA Los Angeles selects its jurors from a national pool. As such, the petitioner has still not demonstrated that this portfolio review is uniquely consistent with or indicative of national or international acclaim.

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

Previously, the petitioner asserted that she had played a leading role for all of her employers and her clients. On motion, the petitioner only submits evidence relating to her current employer, [REDACTED] & [REDACTED] and the Society for the Prevention of Cruelty to Animals, Los Angeles (spcaLA). Thus, we will only consider the petitioner's role for those two entities.

In its previous decision, the AAO considered the general praise provided by the petitioner's employer and its clients. The AAO, however, also noted that Hill & Knowlton has 65 offices in 34 countries and

concluded that the petitioner had not demonstrated that a junior art director in one of those offices plays a leading or critical role for the company as a whole. Moreover, the AAO concluded that the general, boilerplate accolades failed to sufficiently establish that the petitioner, as a junior art director, plays a leading or critical role even for the Los Angeles office. The AAO noted that the record did not establish how many employees work at the Los Angeles office or the organization of that office.

The AAO also considered a letter from [REDACTED] Vice President of Outreach for the American Society for the Prevention of Cruelty to Animals (SPCA). The AAO noted that the letter included boilerplate language appearing in many other letters and merely praised the petitioner for volunteering with the spcaLA. The AAO concluded that Ms. [REDACTED] failed to explain how the petitioner has played a leading or critical role for spcaLA as a whole.

Finally, the AAO stated that the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for “extensive documentation” in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

On motion, the petitioner submits new letters from her employer and a new letter from spcaLA. Ms. [REDACTED] Vice President of Hill & Knowlton, lists the petitioner’s awards and asserts that the petitioner “either lead or solely worked on all of them.” Ms. [REDACTED] not attest to the petitioner’s role for Hill & Knowlton as a whole. [REDACTED] Senior Account Supervisor for Hill & Knowlton, asserts that the petitioner’s work helped the company secure new and current clients. Mr. [REDACTED] further asserts that the company utilizes the petitioner’s skills “at a national and international level to develop business with world-wide brands.” Specifically, the petitioner collaborated with the company’s offices in Chicago, San Francisco, New York, Canada, Britain, Mexico, and Australia. He concludes that the petitioner’s contribution to the company has been crucial to its success.

The relevant inquiry for this criterion is the nature of the role that the petitioner was hired to fill. Nothing submitted on motion overcomes the decision that she has not performed in a leading or critical role, based on the information submitted previously indicating that the petitioner is a junior art director at Hill & Knowlton. The letters submitted on motion do not explain how the position of junior art director is a leading or critical role for the company beyond the general need for a competent individual to fill the position.

In her new letter, [REDACTED] Vice President of spcaLA, asserts that through the petitioner’s volunteer work for the spcaLA, the organization has saved tens of thousands of dollars in design costs while maintaining high quality designs. While the petitioner’s volunteer services have saved spcaLA money, we still conclude that volunteering one’s services, regardless of how welcome it is to the receiving organization, is not the type of leading or critical role contemplated by the regulation. Volunteering one’s services for a local nonprofit organization is simply not uniquely consistent with or indicative of national or international acclaim.

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 graphic 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 a graphic 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 previous decision of the AAO will be affirmed, and the petition will be denied.

This decision is without prejudice to the filing of a new petition in a lesser classification by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The AAO's decision of April 17, 2003 is affirmed. The petition is denied.