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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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: FEB 1 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

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

Elizabeth Hayward

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 building contractor and developer that seeks to employ the beneficiary as a landscape 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 claims to have met eight of the ten criteria.

We note that the petitioner indicates that the beneficiary has been living and working in the United States since January 1998, four years prior to the petition's January 2002 filing date. Given this length of time, any acclaim that the beneficiary may have earned in the past cannot be considered "sustained" if her work in the United States has failed to garner national acclaim. An alien must be at the top of the field at the time of filing; it cannot suffice for the petitioner to indicate that the beneficiary had been at the top of the field at some time in the past.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner claims that the beneficiary was named "Best Landscape Designer 1991 by VGP" and that the beneficiary won the "Ponds India Rolling Cup for Best Ornamental Garden [from the] Tamilnadu State Horticulture Department and Tourism Department" in 1992. The only support for these claims is a photocopy of an article from a publication identified as *Madras Gymkhana Club Magazine*. The article is in a section marked "Happenings," featuring short updates on the activities of "members of our Club." A club newsletter is not documentation of the beneficiary's receipt of the prizes claimed, because the club did not award the prizes and thus cannot offer first-hand attestation that the beneficiary received the prizes. A prize from a state horticulture department would not appear to be national in nature, and the record does not identify "VGP," and therefore the national significance of a prize from VGP cannot be determined.

Numerous witnesses refer to the beneficiary's receipt of the above "Best Landscape Designer" award, but none of these witnesses are representatives of the awarding entity. Furthermore, there appears to be disagreement as to whether the award was national or statewide; some individuals maintain that the award was presented by a national entity, while others are equally specific in asserting that a Madras state agency gave the award.

The record contains several photographs which are said to depict the beneficiary's receipt of various prizes. While these photographs show trophies and plaques, the photographs do not reveal the purpose of the awards or the identity of the entities presenting them. Other photographs are said to show a park which the beneficiary designed after winning a design competition, but the photographs by themselves do not identify the beneficiary as the designer or document the existence of the design competition.

The only plaque legible in the record is an "Employee Excellence Award" from Vilas Development Corporation. The inscription reads "your hard work dedication & abilities are recognized & appreciated by the management & staff." The award makes no mention of landscaping. The general nature of the inscription suggests that the plaque was mass-produced, a conclusion consistent with the manner in which the beneficiary's name appears on the plaque. The beneficiary's first name has been embossed on an adhesive label, which was then applied to a blank rectangle just above the aforementioned inscription. The fact that it is an "Employee

Excellence Award" indicates that the award is not national or international, but rather is available only to employees of the particular company that awarded it.

A letter from the public relations manager of Indian Bank Ltd. states that the bank's landscaped gardens "have been adjudged as Best Designed & Maintained Public Gardens." The manager (whose name is not legible) indicates that this information came from "[t]he Secretary, Agri-Horticultural Society, Madras." There is no indication that this society is national rather than limited to the Indian state of Madras.

The petitioner and several witnesses assert that the beneficiary won a prize as "Landscape Designer of the Year" for landscaping work at Madras Refineries Ltd.'s Research and Development Center, and another letter refers to the "First Prize in the competitions held by Tamilnadu Tourism & Horticulture departments" for landscaping work executed at Canara Bank's Spencer Tower. Again, the record lacks first-hand documentation of these claimed awards.

In response to the director's request for further evidence regarding the claimed awards, the petitioner discusses at length the procedures by which the winners of the awards are chosen. Because the petitioner is not the entity that presented these awards, the petitioner's own assertions in this regard do not constitute evidence. It remains that the petitioner has not produced any credible first-hand evidence from any entity that presented any award to the beneficiary.

> *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 submits documentation showing that the beneficiary is a member of the American Society of Landscape Architects ("ASLA") and other associations, but there is nothing in the record from these associations to support the petitioner's claim that they require outstanding achievements of their members.

In response to a request for further evidence, the petitioner has submitted a letter from Rodney L. Swink, president of ASLA. Mr. Swink states "[u]ntil this week I was unaware of [the beneficiary's] work." This assertion indicates that the beneficiary's acclaim had clearly not reached the attention of the president of this major association. It also strongly suggests that the beneficiary's admission to that society was not the result of any high-level nomination or election process; otherwise, the beneficiary would have come to the attention of the society's officers.

office manager of the petitioning entity, asserts that "Outstanding Achievements happen to be one of the very important criteria for securing membership in most of the highly respected Professional Associations. Besides, the non achievers & lesser outstanding persons are admitted into Professional Societies only as Student Members, Associates etc & not as FULL

fledged members." [redacted] assertions notwithstanding, the burden is on the petitioner to submit actual evidence of the associations' membership requirements. It cannot suffice for the petitioner simply to claim that the requirements conform to the regulatory language. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In an unsigned statement in the record, the petitioner maintains that candidates must meet "several stringent requirements" to become a full member of ASLA. The petitioner adds that "persons with outstanding record of professional achievement may qualify for FELLOW member." The petitioner submits excerpts from the ASLA Constitution, which states that full members must "have had at least three (3) years of full-time or the equivalent experience," in addition to a bachelor's degree, "a certificate of completion of a professional program," or "a valid state license to practice landscape architecture." Possession of a license or a bachelor's degree is not a "stringent requirement." While membership as a fellow requires "outstanding contributions to the profession," there is no evidence that the beneficiary is a fellow of ASLA.

The petitioner also submits information regarding the American Society of Horticultural Science ("ASHS"), described as "the largest, most visible organization" in its field. It is not clear how an association can become "the largest" while maintaining strict membership requirements. The documentation in the record indicates that "ASHS has membership categories for all stages of a career in horticulture." Additional materials indicate that, to qualify for "Certified Membership" in the Association of Professional Landscape Designers, one must be a current associate member "and have a minimum of two years of professional landscape design experience." Other membership requirements appear to revolve around professional competence rather than outstanding achievement.

[redacted] adds that the beneficiary "has been accepted by well known universities for admission to Master's and Doctoral level programs based on her Bachelor's degree." Admission to a university is not demonstrative of sustained acclaim. Attendance at universities is generally considered to be part of the training process rather than a sign that the student has already reached the top of the field.

> *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 beneficiary was the subject of a lengthy profile in *The Hindu*, which documents in the record call "India's National Newspaper" with "a readership of over 3 million" nationwide. The article refers to the beneficiary's "well established firm . . . with a team of 300 workers." The beneficiary is the subject of articles in other Indian periodicals as well, ranging from a very short piece in *Business World* to a two-page article in *Femina*. The petitioner also submits a videotape identified as a television interview of the beneficiary with footage of some of the beneficiary's projects.

While the petitioner has not clearly documented the status of some of the publications submitted, the record demonstrates that the beneficiary has been the subject of repeated, detailed media coverage in her native India.

The record does not indicate that the beneficiary has earned any national media coverage during her four years in the United States immediately preceding the filing of the petition, or that the media in India have continued to cover the beneficiary's work in the years following her departure from India. A lengthy profile of the beneficiary appeared in the *Daily Herald*, apparently a local newspaper judging by its references to Romeoville and Naperville without identifying a state, implying that readers would be expected to know of those towns. Another profile of the beneficiary appeared in the "Community Front" section of the *India Tribune*, which despite its title appears to be a U.S.-based publication. It gives a telephone number with no international calling code for a Chicago business, and the text of the article contains a reference to the United States as "here" while repeatedly indicating that the beneficiary "came," rather than "went," to the United States. The *India Tribune* appears to be a local Chicago publication, given its announcement of an upcoming community theater production.

In sum, while the record indicates that the beneficiary was the subject of repeated media attention in India, there is no indication that this coverage continues to the present day either in India, or in the United States where she has lived and worked since 1998.

> *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.*

The petitioner submits photographs of the beneficiary and asserts that the photographs depict the beneficiary "as one of the Judges at the annual Flower show at Hyderabad" and at the "All India Industrial Exhibition." The photographs themselves contain nothing to corroborate these claims; they merely show the petitioner standing or sitting with other individuals.

In response to a request for further evidence, the petitioner expounds at length on the judge selection process at various events. The petitioner submits no documentation to confirm the accuracy of these assertions, or to establish that the beneficiary has in fact worked as a judge. All of the beneficiary's claimed judging work took place in India no later than 1997; the petitioner does not claim that the beneficiary has worked as a judge since her 1998 entry into the United States.

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

The petitioner submits copies of unpublished writings by the beneficiary, with no indication as to how these writings amount to contributions of major significance. Other documentation submitted under this criterion indicates that the beneficiary was contracted to design and maintain the landscape gardens of the Hindu Temple of Greater Chicago as well as temples in India.

The petitioner submits letters from the beneficiary's former clients and other witnesses, some of whom assert that the beneficiary's work has won significant prizes (covered by another regulatory criterion, above) [redacted] of Kotnour's Landscape & Nursery, Romeoville, Illinois, states that the beneficiary "became very well known by millions of people in India." The record contains no clear evidence to demonstrate the extent to which the beneficiary's work in India has affected the field of landscaping in that country. The record is also devoid of evidence that any of the beneficiary's landscaping projects in the United States have been recognized as being of major significance. Because the beneficiary has been in the United States since 1998, and had performed some work during previous visits to the U.S., it is entirely appropriate to judge her recent work by U.S. standards.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submits three articles under this criterion. Two of these articles, "Confessions of a Landscape Architect" and "Many Faces of the Contemporary Woman," do not appear to be "scholarly" in nature at all. The first article offers anecdotes about the beneficiary's experiences as a landscape designer, while the second consists of reflections about the changing role of women in Indian society and has nothing to do with landscape architecture. A third piece, "All About Landscaping," consists of three pages of one-sentence tips for aspiring landscape designers. There is no indication as to where, or indeed if, this piece was ever published.

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

The petitioner submits photographs of the beneficiary at trade shows and seminars, and escorting various visitors through what are said to be exhibitions of the beneficiary's work. The petitioner also submits computerized renderings of the beneficiary's landscape designs. The petitioner has not shown how these forms of "display" differ from the routine activities of landscape designers. "Displays" set up by the beneficiary or her employers for the purposes of commercial promotion do not carry the same weight as exhibitions set up by independent parties for the purpose of celebrating and honoring an artist's work.

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

The petitioner submits still more photographs of the beneficiary, with no clear explanation as to the leading or critical role that the photographs are intended to demonstrate. The petitioner submits copies of letters from various landscaping firms, attesting to the beneficiary's previous employment, but these documents do not show that the firms have distinguished reputations. The petitioner also submits letters from some of the beneficiary's clients, but the petitioner has not established that the beneficiary's preparation of landscape designs for these clients amounts to a leading or critical role. These clients (including temples and an oil refinery) are not, themselves, primarily concerned with landscaping.

Beyond the evidentiary criteria at 8 C.F.R. 204.5(h)(3), the petitioner has submitted several letters from the beneficiary's former clients, former employers, and other individuals who state that they have known the beneficiary for years. A reputation among one's own acquaintances, employers and clients is not tantamount to national or international acclaim. In response to a request for further evidence, the petitioner has submitted further letters, identified as being from "Experts and Professors in The Landscaping field, not acquainted with [the] beneficiary."

The authors of these letters do assert that they have never met or worked with the beneficiary, but they also indicate that their assessments are based on background documentation provided to them by the petitioner. None of the witnesses indicate that they had ever heard of the beneficiary before they received this background information.[1] Any assertions that these witnesses make that are based on the petitioner's evidence amount to repetition, rather than corroboration, of the petitioner's claims. Debbie Slivka of the petitioning entity asserts that letters such as those in the record are "given only to achievers & outstanding persons," but this claim is entirely uncorroborated. It remains that the beneficiary was clearly not sufficiently "outstanding" for most of these witnesses to have heard of her before they were asked for letters. Section 203(b)(1)(A)(i) of the Act demands "extensive documentation" of sustained national or international acclaim. The petitioner cannot meet this requirement by soliciting letters from individuals who were previously unaware of the beneficiary or her work. Sustained acclaim will, by nature, generate a significant quantity and variety of evidence that would exist prior to, and independent of, the filing of any immigrant petition. Such documentation carries greater weight than new materials created by the petitioner for the express purpose of demonstrating the beneficiary's eligibility.

The director denied the petition, stating that the beneficiary had failed to demonstrate the significance of the evidence submitted. On appeal, the petitioner requests an opportunity for the beneficiary to present oral argument because "she is best equipped to establish the facts." The petitioner also requests oral argument. Oral argument, however, is limited to cases where cause is shown. It must be shown that a case involves facts or issues of law which cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. The petitioner does not specify what "facts" can only be established orally by the beneficiary rather than through documentary evidence. Consequently, the petitioner's request for oral argument is denied.

In a brief submitted subsequent to the filing of the appeal, [redacted] states that "confirmation" of the beneficiary's acclaim "also appears on [the World Wide Web], listing eminent Professionals of India at Zeelearn.com."[2] The petitioner submits a copy of this listing, which identifies the beneficiary as one of four "Eminent People in Landscape Designing." The

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[1] Statements by one witness are ambiguous in this regard. That witness, William C. Sullivan, is an associate professor at the University of Illinois, not far from where the beneficiary has worked in the Chicago area; thus, any familiarity suggested in this letter is not evidence of a reputation beyond parts of Illinois.

[2] The actual URL for the article cited is www.womenexcel.com/career/landscapeint.htm. The page includes a link to zeelearn.com, which the petitioner may have mistaken for an identification of the site containing the article.

record does not indicate when this listing first appeared or the criteria for selection as an eminent person in landscape design. Regarding the petitioner's claim that the World Wide Web confirms the beneficiary's recognition and acclaim, a google.com search for the petitioner's name yielded only two "hits"; the listing cited above, and the March 2002 edition of the *ASHS Newsletter*, which includes the beneficiary in an alphabetical list of "New ASHS Members." If it is the petitioner's contention that a mention of the beneficiary on the World Wide Web is significant, then we cannot ignore the near-total absence of any mention of the beneficiary on the web apart from the article cited.

The remainder of the appellate brief consists, for the most part, of arguments regarding previously submitted evidence, such as the assertion that one of the beneficiary's projects from 1993 "confirms [that the beneficiary] was considered the top ranking Landscape Designer" because the client selected the beneficiary instead of a different landscape architect, even though the beneficiary had "to be flown in thousands of miles." This argument relies on unproven assumptions, such as (1) the client would only accept "the top ranking Landscape Designer" and (2) only the most highly acclaimed landscape designers travel significant distances for projects.

The director had observed that the beneficiary was a member, but not a fellow, of ASLA. In a new letter [redacted] asserts that the beneficiary has been an ASLA member only since 1997, and therefore cannot yet meet the ten-year membership requirement for fellow status. This letter offers nothing that would support the assertion that the beneficiary has sustained acclaim in her field. Indeed, [redacted] who previously indicated that he knew nothing about the beneficiary until the petitioner asked him for a letter, states "[g]iven time, I am sure that her work here would receive acclaim as well." Aside from speculation about the future, which is not evidence, Mr. Swink's statement is logically identical to the statement the beneficiary does not yet have acclaim in the United States. Other letters, newly solicited on appeal from the authors of previously submitted letters, likewise offer nothing to overcome the grounds for denial. The subjective opinions of individuals who only recently became aware of the beneficiary's work cannot satisfy the statutory demand for extensive documentation.

Even given the most generous reading of the evidence provided, it remains that whatever reputation and acclaim the beneficiary may have earned in India through the beginning of 1998, such acclaim has not been shown to have followed her to the United States. Witnesses identified by the petitioner as prominent experts admit that they had no knowledge of the beneficiary's work until the petitioner approached them for letters of support, and the beneficiary's documentary evidence is almost entirely from India, pre-1998. The few documents relating to the beneficiary's later work in the U.S. does not demonstrate or imply sustained acclaim. Given that the beneficiary worked in the United States for four years immediately prior to the filing of the petition, the beneficiary's apparent absence of acclaim within the United States is inconsistent with the assertion that the beneficiary is currently at the top of her field and continues to enjoy sustained acclaim (rather than past acclaim).

Attached to the brief submitted on appeal are two of the beneficiary's business cards. One card, as submitted, shows the petitioner's name and logo, the beneficiary's name, and the company's

address and telephone number. Additional inscriptions on the card had been obscured first with ink, then with correction fluid, with adhesive tape placed over the dried correction fluid. One inscription reads "A HIGHER STANDARD," while the second inscription (which the petitioner appears to have taken greater pains to obscure) appears directly beneath the beneficiary's name and reads "Business Development Manager."

The second business card was attached to the brief, with the blank reverse of the card facing outward, and the phrase "To Administrative Appeals Unit, INS, Washington" inscribed on the blank reverse of the card. On this card, too, the phrase "Business Development Manager" was obscured with correction fluid before the card was stapled, printed side down, to the folder containing the brief. It is not clear why the petitioner and/or beneficiary found it necessary to alter the beneficiary's business cards in order to conceal her title of "Business Development Manager."

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 a landscape designer to such an extent that she may be said to have achieved sustained national or international acclaim or to have reached and remained at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Many key claims are unsubstantiated or in some cases even contradicted by the record. Any prior acclaim the beneficiary may have earned in India does not appear to have followed the beneficiary to the United States, and thus has not been sustained as the beneficiary has continued her career in the United States. 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.