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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: [redacted] (LIN-02-031-53429) Office: Nebraska Service Center Date: SEP 04 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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The director reaffirmed his decision on motion. The matter is now before the Administrative Appeals Office 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.

Initially, the petition was supported mostly by the petitioner's own affidavit, a letter from the founder of the Dolya Artists Association and former fellow student of the petitioner's, [redacted] and letters from satisfied clients. While counsel describes the Dolya Artists Association as nationally prestigious, the only materials in the record regarding this association are published by the association itself. Those materials indicate that Mr. [redacted] founded the association in 1987 as a regional association in Rava-Rus'ka and moved it in 1988 to L'viv when he began attending the L'viv Institute of Decorative and Applied Arts with the petitioner. It appears from Mr. [redacted] letter that now that he is in the United States, the association promotes Eastern European artists in Chicago. Thus, the association appears to follow Mr. [redacted] as opposed to being a national Ukrainian association based in the Ukraine, existing independently of its founder's geographic location.

The letters from the petitioner's clients were supported by documentation regarding the letter writer's standing in his or her field, not the petitioner's. The petitioner submitted multiple copies of the affidavit and letters with different sections highlighted to address different regulatory criteria.

The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3), to be discussed below, 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. While the petitioner subsequently submitted some contemporaneous evidence, that evidence is insufficient for the reasons discussed 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 Bureau 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 fashion 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 that, she claims, 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.

Initially, prior counsel asserted that the petitioner was submitting evidence of her selection as the only fashion designer for an artistic tour and the petitioner's affidavit attesting to her first place award in the National Grand Prix of Fashion Design, "the most prestigious honor given to a Fashion Designer in Ukraine." In her affidavit, the petitioner claims to have won the Grand Prix award in 1991. In his request for additional documentation, the director requested documentation of any awards and their significance. In response, prior counsel made no mention of the Grand Prix award. Rather, she asserted that the petitioner had won the Republic of Ukraine Young Designer award in 1989, issued to a "rising talent." Prior counsel also asserted that the petitioner earned "National Certificates from distinguished artistic organizations." Finally, prior counsel asserted that the petitioner was invited to display her work at an exclusive show. The petitioner failed to submit contemporaneous evidence of the Grand Prix award or the Young Designer Award. Instead, the petitioner submitted copies and translations of awards with the following inscriptions:

1. Lviv's Artists Society, Tvorchist, is rewarding [the petitioner] for organizing a fashion show of a collection of theatrical – music-hall costumes titled "Shchedriy Vechir" "Epiphany." (1992)

2. Lviv's Historical Museum presents this award to [the petitioner] for participation in the exhibition of historical costumes belonging to the end of the last century. (No date.)

> 3. The Artists Association "Dolya" hereby awards the artist-fashion designer [the petitioner] for her active participation in the exhibition, organized in the State of Wisconsin, at the gallery of Pictorial. (October 12 of an unspecified year.)

The first and third awards are printed on the same type of certificate although they are issued by different organizations. In his initial decision, the director concluded that participation in a tour was not an award or prize and that the petitioner had not established the significance of the awards documented in the record. On motion, counsel argued that the director failed to consider the petitioner's Grand Prix award and a 1991 Best Designer of the Year award. Counsel referred to the petitioner's affidavit and the letter from Mr. [redacted] confirming the significance of these awards. Counsel presumed that the awards were not considered because they are Ukrainian and notes that an alien need only demonstrate national awards, not U.S. awards.

In his final decision, the director only discussed the criterion for which the petitioner had submitted additional documentation on motion. Thus, the director did not directly discuss this criterion again. On appeal, counsel reiterates her previous argument.

We do not find that the director failed to consider the petitioner's alleged Ukrainian awards because they were from the Ukraine. Rather, the record contains no contemporaneous evidence that the petitioner won the Grand Prix, the 1989 Young Designer Award, or the 1991 Best Designer of the Year award. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Similarly, 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). Moreover, the petitioner has never responded to the director's concern regarding the lack of objective evidence regarding the significance of these claimed awards.

The awards that the petitioner has documented do not appear to be nationally recognized awards for excellence. Rather, all three merely acknowledge the petitioner's participation in or organization of certain exhibits. Certificates of appreciation are not nationally recognized awards or prizes for excellence in the field.

Further, counsel does not appear to challenge the director's conclusion that the petitioner's selection for participation in an international tour is not an award or prize. We concur with the director and note that the invitation for the petitioner to participate in an exclusive show in Chicago is similarly not a nationally recognized award or prize for excellence in the field.

Finally, while a petitioner need only establish national acclaim and while that acclaim does not necessarily have to be in the United States, a petitioner must establish sustained acclaim up until the date of filing. The petitioner left the Ukraine in 1993. Thus, she must demonstrate that she has sustained any acclaim she may have had in the Ukraine during the eight years she resided in the United States prior to filing the instant petition. The record contains no evidence of awards

issued to the petitioner after leaving the Ukraine in 1993. For the reasons discussed below, the record contains no evidence relating to the other criteria establishing any sustained acclaim up until the date of filing.

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.

Prior counsel asserted that the petitioner met this criterion through her membership in the Dolya Ukrainian Artists Association, her attendance at the "exclusive" L'viv Academy of Decorative and Applied Arts, and her membership in the Apparel Industry Board. Mr. [redacted] indicates that Dolya was founded "to promote artists from the Ukraine whose talents are unique and who have risen to the top of their field," but does not indicate what the particular membership requirements are. A newspaper article indicates that the association has 20 members and an equal number of "nonmember associates who have participated in shows it has organized." As evidence of her attendance at L'viv Academy of Decorative and Applied Arts, the petitioner relies on her personal affidavit and the letter from Mr. [redacted] The petitioner did not submit her transcript.[1] Prior counsel asserted that a letter from Dorothy Fuller, President of the Apparel Industry Board, Inc. "confirm[s] [the petitioner's] membership with the Board." This statement is inaccurate. Ms. Fuller asserts that the petitioner "handled sample making for many companies the Apparel Industry Board, Inc. worked with." Ms. Fuller makes no assertion that the petitioner was admitted to membership of the Board.

In response to the director's request for additional documentation, the petitioner submitted a letter from Marsha Brenner, Executive Director of the Apparel Industry Board, Inc. based in Chicago, confirming that the petitioner was a member in good standing in 2002. Prior counsel asserted that membership required a baccalaureate degree, two years of experience, and the wholesale of one's fashions.

The director concluded that the petitioner had not established that the Board required outstanding achievements of its members. The director noted that even if the Service (now the Bureau) accepted prior counsel's assertions, a degree and experience are not outstanding achievements. On motion, counsel did not challenge the director's conclusion. Thus, the director did not specifically address this issue in his final decision.

On appeal, counsel does not specifically assert that the petitioner meets this criterion, but the petitioner submits the Apparel Industry Board, Inc.'s "Mission Statement." The statement does not address membership requirements, but does indicate that it is a local Chicago association.

We concur with the director that the petitioner had not established that she is a member of an association that requires outstanding achievements of its members as judged by national experts in the field. The record does not establish that Dolya requires outstanding achievements of its members or

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[1] The petitioner did submit some Ukrainian documents, but they are not translated. Thus, we cannot determine what these documents represent.

that national experts in the field judge the accomplishments of prospective members. School attendance is not membership in an organization. Moreover, acceptance to even exclusive schools is not based on achievements in the field, as school is preparation for working in the field. Finally, as noted by the director, the petitioner has failed to establish that the Apparel Industry Board requires outstanding achievements of its members as judged by national experts. Moreover, the petitioner has not established that she was a member of the Board as of November 2001, the date of filing. Thus, her membership cannot establish her eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

> *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.*

Prior counsel asserted that the petitioner's personal affidavit establishes that she was featured in *Today's Chicago Woman* and Ukrainian newspapers. In her affidavit, the petitioner asserts that she has been featured in the "advertisement section" of *Today's Chicago Woman* and Ukrainian newspapers. The petitioner did not submit the articles themselves.

In his request for additional documentation, the director requested evidence of the petitioner's claimed media coverage. In response, prior counsel asserted that the petitioner had been recently featured in *Chas i Podiyi*, a Ukrainian-American newspaper with an alleged circulation of 50,000. In addition, prior counsel asserted that the host of a new television show, *La Vida Chicago*, was featured in magazines wearing clothes designed by the petitioner. Finally, prior counsel asserted that the petitioner had been featured on the television program of Chicago Web.com, "It's a Service Thing." The petitioner submitted a copy of the article that apparently appeared in *Chas i Podiyi* and a translation. The translation does not include a date; thus, not only has the petitioner not met the requirements set forth in the plain language of the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine if this article was published after the date of filing. While the petitioner also submitted her studio's contract with *La Vida Chicago* and several articles about *La Vida Chicago*, none of the articles mention the petitioner. Finally, the petitioner submitted what purports to be a transcript of "It's a Service Thing."

The director concluded that the petitioner had not demonstrated that "It's a Service Thing" or *Chas i Podiyi* constitute major media. The director further concluded that the articles regarding *La Vida Chicago* did not appear to be primarily about the petitioner. The director also noted that the coverage did not refer to the petitioner as one of the very few at top of her field.

On motion, counsel defined the regulatory criterion as follows:

> Documentation that the alien has achieved national or international recognition for achievements (evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications).

This definition can be found at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), relating to nonimmigrant aliens of extraordinary ability in the arts. Unlike the immigrant classification of the same name, the

nonimmigrant classification for those in the arts requires only "distinction" and the criteria are quite different than the criteria required for the immigrant classification.

Counsel noted that prior counsel indicated that the circulation of *Chas i Podiyi* is 50,000 and that the articles refer to the petitioner as "one of the most perspective [sic] American Designers and the best in Chicago." Finally, counsel asserted that the petitioner has also been featured in *Novy Svet*, the largest Russian-language newspaper in Chicago. The petitioner submitted the article in *Novy Svet*, published in June 2002, after the date of filing. The petitioner submitted the subscription costs for the newspaper, but not its circulation.

The director noted that counsel had quoted a more lenient criterion than the one specified in the regulations and concluded that the new article in *Novy Svet* did not alter the director's ultimate conclusion as the petitioner had not established that it is major media. On appeal, counsel reiterates her previous arguments.

We will evaluate the evidence under the criterion relating to the immigrant classification sought at 8 C.F.R. § 204.5(h)(3)(iii). Counsel does not challenge the director's conclusion that the petitioner had not established that "It's about Service" was broadcast outside of Chicago. Thus, we concur with the director that this interview cannot be considered evidence of the petitioner's national acclaim. Nor does counsel challenge the director's observation that the articles about *La Vida Chicago* are not primarily about the petitioner. We also concur with the director on this point.

As stated above, the unsupported assertions of counsel and the petitioner are insufficient as evidence. Thus, the petitioner has not established that she received major media coverage in the Ukraine or that she was featured in *Today's Chicago Woman*. Regardless, the petitioner only claims to have appeared in the advertisement section of the latter publication. Purchasing advertising in a local magazine (or even a national magazine) cannot constitute published material about the petitioner in the major media. It is not indicative of national or international acclaim.

The only documented print-media coverage of the petitioner consists of the two articles appearing in Ukrainian and Russian language publications based in Chicago and distributed in the United States. Newspapers in a language most of the national population cannot comprehend cannot be considered major media as they are not indicative of name-recognition among the general public or even the industry as a whole. Moreover, the petitioner has not established that she appeared in either publication prior to the date of filing.

Finally, while the petitioner does not meet the plain language requirement of the regulation relating to the immigrant classification sought, counsel's statement that the articles refer to the petitioner as "one of the most perspective [sic] designers" and "the best in Chicago," is not persuasive. "Perspective" is a viewpoint, and makes no sense in the context used. If the translator meant "prospective," that term conveys only that the petitioner is expected or is likely to rise to the top of her field, not that she is already there. Being the best in Chicago is not necessarily consistent with being one of the very few at the top of the field nationally.

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.

Neither prior counsel nor counsel have asserted that the petitioner meets this criterion. The director noted that the petitioner claimed to have judged the work of design students with the Chicago Apparel Center and concluded that this could not constitute judging the work of other professionals in the field. Counsel does not challenge this conclusion on motion or on appeal. The record contains no evidence supporting the petitioner's assertion to have performed this duty or regarding the significance of the position. Thus, we affirm the director's conclusion that the petitioner does not meet this criterion.

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

Initially, prior counsel asserted that the petitioner's affidavit attesting to the caliber of her clients and the letters from other local clients and a former business partner is sufficient evidence to meet this criterion. The petitioner claims to have designed fashions for "Hollywood actresses including Oprah Winfrey, Uma Thurmond [sic], Michele Pheifer [sic] and others." The petitioner did not submit letters from these actresses, receipts, or contracts evidencing the relationship. The letters from clients Youlia Tkatchouk, a freelance artist in Chicago who attended the L'viv Academy with the petitioner, and Margaret Lastick,[2] owner of a prestigious Chicago bakery, provide praise of the petitioner's skills. A member of the wardrobe staff[3] with the Soul Children of Chicago choir indicates that the petitioner designed their choir outfits and requests that the petition be approved "in the national interest of fostering beauty and advancing multicultural awareness and appreciation." The petitioner's former business partner in L'viv, Alex Litvintsov, asserts that the petitioner's skills made their fashion business successful. Shu Shubat, the Artistic Director of the Jellyeye Drum Theater in Chicago asserts that the petitioner has been producing the theater's costumes since 1998 and praises her "rare" and "extensive" abilities.

The petitioner also submits letters from two fashion designers. John Rodriguez is the President and Chief Executive Officer of CM Custom Clothiers in Missouri. Mr. Rodriguez asserts:

> [The petitioner] handles all stages of production of custom design clothes for a variety of our clients. . . . Being a designer herself, she knows exactly what is involved in the

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[2] The record contains a faxed copy of this letter with Ms. Lastick's signature and a pristine unsigned copy. While Ms. Lastick's signature indicates that she endorsed the contents of the letter, it is not clear that she authored its contents, somewhat reducing the weight accorded this letter.

[3] The typed letter contains blanks that have been completed regarding the date the author began working with the choir, the author's position with the choir, and the name of the person who introduced the petitioner to the author. This information has been added in ink. The construction of this letter suggests that it was composed by someone without knowledge of who would sign it. While the author's signature reflects that he or she endorses the contents of the letter, he or she is not the author of the letter, somewhat reducing the weight accorded this letter.

> concept of perfectly tailored clothes. [The petitioner] has produced many pieces of high fashion designs for our customers.

The letter by itself is ambiguous as to whether the petitioner is actually designing clothes for CM customers or is simply producing clothes designed by designers at CM.

Laurie Borse, a fashion designer based in Chicago who previously interned at Yves St. Laurent, similarly indicates that the petitioner "being a designer herself, is uniquely qualified to respond to my artistic vision and design concept. She has produced several pieces of clothing for my collection, shown in Paris, which won acclaim among her piers [sic] and the public." This letter is clear that the petitioner is not designing clothes for Ms. Borse, but is producing Ms. Borse's designs for Ms. Borse's own collection. There is no indication that Mr. Rodriguez and Ms. Borse, both members of the fashion design field, would use the term "produced" to refer to different stages of the fashion creation process. As such, it appears that the petitioner is not designing clothes for CM or Ms. Borse.

In response to the director's request for additional documentation, prior counsel argued that the petitioner's participation in the international tour, work as a designer for the Apparel Foundation Show, appearance on television, press coverage, and employment of five full-time employees demonstrate her contributions to her field. The petitioner submitted a new affidavit claiming that she has been "selected for the second year in a row to present my designs in the Annual Apparel Board Fashion Show." In support of this assertion, the petitioner submitted a joint letter from Dorothy Fuller and Marsha Brenner of the Apparel Industry Board, Inc. regarding the petitioner's participation in the 2002 "CHICago . . . we're RED HOT" fashion show.

The director concluded that while the petitioner had established that she enjoys a successful career, she has not established how her work has influenced the field of fashion. On motion, counsel asserted that the director gave little weight to the press articles, the nature of the petitioner's clientele, and the letters from "experts in the field."

As the petitioner did not submit any new evidence regarding this criterion, the director did not re-address this issue in his final decision. On appeal, counsel reiterates her prior arguments.

We concur with the director that the petitioner has not established that she meets this criterion. The two local articles submitted do not explain how the petitioner has altered the fashion industry by starting a new trend or otherwise. The record contains little evidence that the petitioner has designed clothes for well-known actresses. Regardless, as stated by the director, the mere act of designing clothes for well-known actresses does not imply that the petitioner has significantly contributed to the fashion industry. Similarly, producing the designs of other fashion designers does not constitute a contribution of major significance in the field. The record lacks articles in trade publications of the fashion industry crediting the petitioner with starting a new trend or letters from independent fashion designers attesting to how the petitioner has influenced their own designs. Finally, regarding prior counsel's argument, we cannot conclude that running a business in one's field, and, thus, hiring five employees, is evidence that one has made a contribution of major significance to that field.

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

The director found that the petitioner met this criterion and we will not disturb that conclusion.

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

As evidence to meet this criterion, prior counsel referenced the following exhibits:

> Letter from John Rodriguez, President and CEO of Castaneda & Michael, Inc., confirming that [the petitioner's] custom designs are essential to the success of their business.
>
> Letter from Alex Litvintsov, professional Fashion Designer, confirming that [the petitioner's] artistic vision, extraordinary talent, meticulous craftsmanship and business acumen was critical to the success of the business.
>
> Letter from Laurie Borse, professional Fashion Designer, confirming that [the petitioner's] designs are critical to the success of her business.
>
> Letter from Shu Shubat, Art Director of Jellyeye Theatre, confirming that [the petitioner's] designs are critical to the artistic expression of the theatre.
>
> Letter from [name], of Soul Children of Chicago Choir, confirming that [the petitioner's] costume designs are critical to the success of their performances.
>
> Letter from Yuri Skorupsky, professional artist and founder of Dolya, confirming that [the petitioner's] designs are essential in preserving European culture.

(Brackets around "name" in original.) In response to the director's request for additional documentation, prior counsel did not reiterate her claim that the petitioner meets this criterion. The director concluded that this criterion only applies to the performing arts. Counsel does not address this criterion on motion or appeal.

We do not agree with the director that this criterion only applies to the performing arts or even the arts. Nevertheless, prior counsel's characterization of some of the letters above is inaccurate. John Rodriguez does not claim that the petitioner's custom designs are essential to the success of his business. Rather, he states that customer satisfaction is essential to the success of the business and, as stated above, that the petitioner "handles all stages of production of custom design clothes for a variety of our clients." For the reasons discussed above, it appears that the petitioner is not custom designing the clothes, but producing designs provided to her. Similarly, Ms. Borse does not state that the petitioner's designs are critical for the success of either Ms. Borse's business or the petitioner's, although we do not question that the petitioner plays a leading or critical role for Studio N. (By the use of "her business" it is not clear whether prior counsel was referencing Ms. Borse's business or the

petitioner's.) As stated above, Ms. Borse does not indicate that the petitioner is designing clothes for Ms. Borse's collection. Rather, the petitioner is producing Ms. Borse's designs. Moreover, it is not clear that Ms. Borse's collection constitutes an "organization or establishment" that has a distinguished reputation nationally or internationally. While the petitioner plays a leading and critical role for Studio N, the record does not establish that Studio N has a nationally distinguished reputation.

Shu Shubat asserts that the petitioner's costumes are "an integral part of our artistic expression." Even if we were to accept that this constitutes a leading or critical role, the promotional materials for Jellyeye in the record do not establish that the theatre has a distinguished reputation nationally.

Conversely, while the record contains some evidence that the Soul Children of Chicago has performed around the United States and abroad, we cannot conclude that the designer of one of the choir's costumes played a leading or critical role for the choir. Certainly, a letter signed but not authored by an unidentified member of the wardrobe staff is insufficient to establish the significance of the petitioner's one-time role for this group.

Mr. Skorupsky states only that the petitioner "donates her time to the young ones, just entering the design scene, with whom she shares her European craftsmanship." Even if he had asserted that the petitioner plays some type of role in preserving European culture as claimed by prior counsel, that type of vague assertion cannot establish that the petitioner plays a leading or critical role for an *organization* or *establishment* with a distinguished reputation.

Finally, while Mr. Litvintsov does assert that the petitioner, as his business partner, was responsible for the success of their company, the record contains no objective evidence that the business had a distinguished reputation nationally in the Ukraine.

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

Prior counsel asserted that the petitioner's affidavit and her business tax return supported her claim to meet this criterion. The petitioner claimed to have grossed $230,000 in 2000 and $150,000 in 1999. She anticipated grossing $250,000 in 2001. The tax return submitted reflects gross income of $149,323 in 1999, with $56,909 paid as wages and no officer compensation. The director requested evidence documenting the income of top fashion designers. In response, the petitioner submitted materials from the Occupational Outlook Handbook indicating that the top ten percent of fashion designers earn more than $103,970. The director concluded that the petitioner had not established that she earned the income claimed. Counsel does not challenge this conclusion on motion or on appeal and we concur with the director.

Comparable evidence under 8 C.F.R. § 204.5(h)(4)

Counsel claims that the petitioner has submitted "documentation that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged (such testimonials must clearly indicated [sic] the

author's authority, expertise, and knowledge of the alien's achievements." Counsel references the "expert" letters we have addressed above.

Counsel appears to be asserting that the petitioner meets one of the criteria for nonimmigrant aliens of extraordinary ability in the arts under 8 C.F.R. § 214.2(o)(3)(iv)(5). As stated above, the nonimmigrant classification requires only "distinction" for aliens in the arts. The alien in the nonimmigrant classification need not be "one of the small percentage who have risen to the very top of the field" as required for the immigrant visa of the same name. The criterion referenced by counsel is not one of the 10 possible criteria for the immigrant classification. Moreover, as it is only evidence of "distinction" we cannot conclude that it is "comparable" to the ten criteria set forth in the regulations for the immigrant visa. Regardless, the petitioner does not meet the plain language of this nonimmigrant criterion because the "experts" referenced by counsel have not been shown to be "recognized experts in the field" and, because the petitioner only produces their designs, they have no reason to have knowledge of her designs.

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 fashion 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 fashion designer with some local recognition in Chicago, 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.