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U.S. Citizenship and Immigration Services

PUBLIC COPY

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APR 13 2004

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (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 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 he has sustained national or international acclaim at the very top level.

This petition, filed on February 4, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a cinematographer. 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.

Through counsel, the petitioner has submitted evidence that, he 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.

To establish that he meets this criterion, the petitioner submitted evidence of a 1991 "Diamond Award" and a 1991 "Gold Award" presented by the Creative Club of Belgium for the "Most Outstanding Cinema Single" entitled "Kippen." The evidence suggests that the award was presented to the advertising agency, with the petitioner identified as one of the film directors and also as the film photographer. According to counsel, the "Diamond Award," equivalent to a Clio award, is presented for excellence in television and cinema production and the "Gold Award" is presented for the best commercial on the silver screen. However, counsel submits no evidence establishing the significance of the awards or of the Creative Club of Belgium. 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). The evidence does not establish these awards as nationally or internationally recognized awards for excellence in the field of cinematography.

The same commercial was also the apparent winner of a Pub Diamond Award. As evidence, the petitioner submitted what appears to be a page from a May 14, 1992 edition of *Pub* magazine. Although included in the list of documents submitted with the petition and referred to as an award, counsel does not mention this document in her cover letter. No evidence was presented to establish this as a nationally or internationally recognized award for excellence as required by this criterion.

The evidence establishes that the same commercial was a film finalist in an international advertising festival, Lions 92, and the 1991 Eurobest Awards. Two commercials in which the petitioner was listed as "lighting/cameraman" were film finalists at the international advertising festival, Lions 93. The Cannes Lions website indicates that the festival is an annual event with representatives from many countries. As noted by the director, the winners are awarded gold, silver and bronze "lions." The "Grand Prix" is awarded to the best among those who received gold lions. The Eurobest awards are annual awards and are, according to its website, the "highest accolade to European creative excellence." The juries and competition are selected from throughout Europe. The evidence establishes that the Lions awards and the Eurobest awards are internationally recognized awards for excellence. The evidence does not establish that the petitioner was a recipient of any of these awards, and does not establish that he meets this criterion.

The record reflects that the Association of Independent Commercial Producers (AICP) honored a commercial for which the petitioner was listed as the director of photography. The record does not establish that this recognition by the AICP is a nationally or internationally recognized "award." Counsel also indicates that the petitioner was nominated for the "prestigious" British Design and Art Direction Award for this same commercial in 2002. Counsel submitted no evidence of this nomination, and as stated above, the assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. A simple nomination is not sufficient to meet this criterion, which requires the alien to be the recipient of an award for excellence in the field.

An unidentified and undated document indicates that a commercial, "Oliver Strelli," in which the petitioner is listed as film photographer, was nominated for an award, but does not identify the presenter of the award. As noted above, the nomination for an award is not the receipt of an award as required by this criterion. The petitioner also includes a copy of a summary translation of an article from an undated and unidentified print

media.[1] The translation indicates that "the video got laureated" at the US International Film and Video Festival and received a 1996 bronze award. The video is also not identified, although the petitioner is listed as the director of photography. No other evidence of this award was presented.

The petitioner also submitted copies of pages from the Creative Club website, which appear to be about its 1997 awards. The petitioner is listed as film photographer for a commercial, which seems to have won three awards. Also in the record is a copy of an apparent award presented to the petitioner at a 1998 international film commercial festival in Poland. We note that counsel does not address these documents in her cover letter with the petition. We note that no evidence establishes these awards as nationally or internationally recognized awards for excellence in cinematography. We further note that the evidence does not establish that the petitioner was responsible for or won any individual award for the award winning commercials.

The evidence does not establish that the petitioner meets this criterion.

> *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.*

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

To establish that he meets this criterion, the petitioner submitted two press releases from his agent. One of these releases announces the honor to be bestowed upon the petitioner by the AICP, and the other announces that his film was nominated for best cinematography at the 2002 British Design and Art Direction awards. The petitioner submits no evidence that these releases were printed in major media, or professional or major trade media. Further, press releases generated by the petitioner's agent do not reflect an independent assessment of the petitioner's work and are not, by themselves, indicative of acclaim as required by the criterion. The petitioner also submitted a copy of an article entitled "Shooting Star," which appears to be about him and his work. However, the article is incomplete and does not identify the source in which it was printed or the date of publication. The record also contains a copy of a page from the *Film and Video Magazine* website that is about the 2001 AICP show and briefly mentions the petitioner as an honoree. This article is not about the petitioner as required by this criterion.

The evidence submitted does not establish that the petitioner meets this criterion.

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

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[1] The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document submitted in a foreign language must be accompanied by a full English translation. This translation is insufficient evidence to prove the award for which it is offered.

To meet this criterion, the petitioner must show that he has performed in a leading role for an organization or establishment and that the organization or establishment has a distinguished reputation.

As a photography director, the petitioner is an independent entrepreneur who does contract work for various organizations. As evidence of this criterion, counsel refers to the petitioner's résumé and self-prepared list of commercials, music videos, awards and nominations, and directors for whom he has worked. However, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In response to the director's request for evidence (RFE) dated February 28, 2003, counsel submitted the copy of the article from the *Film and Video Magazine* discussed above, and copies of web pages entitled "AdWeek," which show that the petitioner was the director of photography for a commercial for Dr. Scholl's and Wisk Sport. Counsel also highlights the awards discussed above. The evidence shows that the petitioner played a leading role in the production of commercials for several companies. These projects have not been shown to be organizations or establishments within the meaning of this criterion. Further, the record does not establish that the commercials were critical to the success of the companies or their products, or that he played a leading or critical role for these companies.

On appeal, counsel states that the petitioner has performed in a leading role for top production companies that produce videos, commercials and films that have won Lion and Clio awards. However, the evidence of record does not establish that the petitioner's work has garnered these "ultimate" awards, or that he meets the requirements of this criterion.

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

As evidence that he meets this criterion, the petitioner submitted copies of "deal letters" and a letter from his agent stating that the petitioner is compensated at a rate of $3,500 per ten hours work. In his letter, the petitioner's agent states this rate of pay is commensurate with that of other acclaimed cinematographers who are also clients of the agency. On appeal, counsel asserts that this rate of pay is comparable to the top directors of photography in the U.S. The petitioner submitted no other information by which to evaluate his claim that he meets this criterion. As noted above, counsel's assertions are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner must show that his salary is significantly high as compared to other high earners in the field. He cannot establish that he meets this criterion by showing that he is remunerated at approximately the same rate as others represented by his agency without also showing that his agency only represents the top of the field nationwide. To establish that he is at the top of the field, he must show that he is compensated at a significantly higher rate than all other cinematographers who are directors of photography. In his letter of support, Oliver Stone states that the petitioner earns the "premium rate, amongst the highest in the industry." However, Mr. Stone's statement alone is insufficient to establish that this criterion has been met.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's

eligibility." The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the 10 criteria specified by the regulation. However, we will briefly address other evidence the petitioner has submitted under this provision.

The petitioner submits letters of support from several producers, directors, and performers in the entertainment industry. They all praise the petitioner's talents and skills as a director of photography. He is portrayed as "gifted" with an "incredible ability to successfully achieve the delicate balance between his creative vision and stringent and technical script requirements." He is also described as "tremendously talented," "exceptional," and "extraordinary." Oliver Stone describes the petitioner's work as "exemplary," and Meiert Avis, a director of commercials and music videos, states that the petitioner has a "rare talent and artistry." The petitioner cannot establish that he qualifies as an alien of extraordinary ability based only on the opinions of experts. As noted by the director, while the opinions of these experts are not without weight, they must be supported by other objective and verifiable evidence in the record. The record contains no evidence to substantiate the petitioner's claim of extraordinary ability.

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 his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a cinematographer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner is a talented director of photography, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.