PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

B2

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 15 2004

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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) 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 business. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The petitioner filed a motion to reconsider with the service center and, alternatively, an appeal with the AAO. The petitioner's motion to reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability in marketing, specifically credit union marketing. 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, it 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.*

The petitioner asserts that the beneficiary meets this criterion based on her receipt of the 2002 CUES (Credit Union Executives Society) Marketer of the Year award and the CUNA (Credit Union National Association) Best Practices Award. Although the petitioner states that the Marketer of the Year Award is the most prestigious award given to a credit union marketer, no evidence in the record corroborates this statement. 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 record reflects that CUES Marketer of the Year award has been presented by the organization for over 15 years. The award is designed to recognize the marketer for "outstanding achievements in the credit union movement." Selection is by a panel of judges who use written criteria in the selection process. The award can only be won once. CUES is an international organization of credit union executives. The record reflects that the CUES Marketer of the Year award is a nationally recognized award.

The petitioner did not submit evidence regarding the selection and eligibility requirements of the Best Practices Award won by the beneficiary. However, CUNA's website indicates that selection for the 2004 award was by a panel of CUNA Marketing and Business Development Council Executive Committee members, past winners of the award and industry professionals. The selection was based on the candidates' strategy, process, application and results.[1] CUNA is a nationwide association of credit unions. We find that the CUNA Best Practices Award is a nationally recognized award.

The petitioner presented evidence that it had won Golden Mirror awards in 2001. However, the beneficiary was not the named recipient of these awards. Evidence of her contribution to the petitioner's receipt of these awards is considered in a separate criterion.

We find that the petitioner meets this criterion based on her receipt of the CUES Marketer of the Year award, and we withdraw the director's determination of this criterion.

> *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.*

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding

---

[1] *See* www.cunamarketingcouncil.org/bestpractices.html.

achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner states that the beneficiary is a member and officer of several organizations. It is noted that the evidence consists generally of media references to the beneficiary's membership in various organizations. The petitioner submitted no primary evidence from the organizations to which she belongs. Further, no evidence of record establishes that membership in these organizations require outstanding achievement as a condition of membership. Counsel asserts in her brief that the beneficiary was one of a "select number of individuals to serve on the Educational Advisory Council of the California Credit Union League. To serve in this capacity, you must have demonstrated outstanding achievements in the field and be considered a leader." Again, no evidence to support this assertion appears in the record. Additionally, a committee within the organization is not an association as required by this criterion. Therefore, the beneficiary's participation on a council that requires achievement to serve would not establish that she 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.

The petitioner presented an article from the July 2002 issue of *Credit Union Management* that included a brief professional biography of the beneficiary and indicated that she received the 2002 CUES Marketer of the Year award. The petitioner also submitted a reprint from the April 2002 issue of *Credit Union Management* that appeared on the CUES website. The article discussed the name changes undertaken by two credit unions, including Hughes Aircraft Employees' Federal Credit Union, which is now the petitioner. Another article, which counsel states in her cover letter appeared in the July 1, 2002 edition of *CU Times*, also discusses the petitioner's name change and quotes the beneficiary. These articles are not primarily about the beneficiary and do not establish her eligibility under this regulation. In his request for evidence (RFE) dated February 24, 2003, the director informed the petitioner that the publications do not appear to be major trade publications and specifically requested additional information regarding the listed publications. The petitioner did not address this requirement in its response to the RFE. On appeal, counsel asserts that the evidence submitted to support this criterion appeared in "trade publications." No evidence was submitted, however, to indicate that either of the publications qualifies as a professional or *major* trade publication. The petitioner submitted no evidence that these publications are relied upon by those in the trade as a major source of information.

The petitioner submitted several articles from the CUES and CUNA websites discussing the beneficiary's receipt of their respective awards. Even if could be said that these articles were about the beneficiary, the petitioner has not established that the websites constitute professional or major trade publications. This is similarly true for the El Segundo Chamber of Commerce website which contains a picture of the beneficiary receiving a new member plaque, and the beneficiary's quotation that appeared on the 2Lead.com website. Neither is published material about the beneficiary and in neither case has the petitioner established that the website is a professional or major trade publication or major media.

The beneficiary has been in the credit union marketing business for more than "two decades." Yet the published material submitted in support of this criterion spans at best one year, and centers generally around one event in the beneficiary's professional life: the launching of a name change for the petitioner. Even if we were to accept that these articles were about the beneficiary and that they appeared in major trade publications, this dearth of published material is not indicative of sustained national or international 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.

The petitioner did not initially claim that the beneficiary met this criterion. In response to the RFE and on appeal, counsel stated that the beneficiary, as a recipient of the 2002 CUES Marketer of the Year Award, would be one of the panel who would select the 2003 winner. The petitioner also submitted evidence that the beneficiary was the speaker at several credit union conferences held in 2003 and has been requested to speak at more. The petitioner does not explain how being a speaker at a conference equates to judging the work of others in the field. Furthermore, all of the evidence presented by the petitioner to satisfy this criterion occurred subsequent to the filing date of the visa preference petition. Eligibility must be established at the time of filing. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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

The petitioner's claim that the beneficiary meets this criterion is based primarily on her successful campaign to make the public and credit union membership aware of and accepting of the petitioner's name change. This successful marketing campaign resulted in her winning the 2002 CUES Marketer of the Year Award and the CUNA Marketing Council 2002 Best Practices Award. These awards are discussed in a specific criterion above. As more evidence, the petitioner cites the April 2002 article from *Credit Union Management*. Even if we accepted the petitioner's assertion that the article "highlighted" the beneficiary's work "as a case study for how to effectively do a name change," there is no evidence that the beneficiary has made a major contribution to the field of credit union marketing. The same article discusses another credit union that also underwent a successful name change without "studying" the beneficiary's methods.

The petitioner also states that the beneficiary meets this criterion based on her work in putting forth an initiative for a cooperative advertising program to educate the public and dispel the myths surrounding credit union membership. The beneficiary states that she obtained some success with the program in Canada. The record does not reflect the success of this program either in Canada or the United States, or how its success has had a significant impact on the credit union industry.

David L. Chatfield, President and CEO of the California Credit Union League, credits the beneficiary with "initiating and directing the world's most successful credit union public awareness program in her native country." No evidence to support this statement appears in the record. The petitioner also indicated that the beneficiary "spearheaded" a partnership between the petitioner and the National Endowment for Financial Education's (NEFE) High School Financial Planning Program at a local high school, and that the beneficiary

is a sought after speaker at credit union conferences. None of this establishes that the beneficiary has made a major contribution to the field and does not establish that the beneficiary meets this criterion.

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

The beneficiary serves as senior vice president in charge of marketing and communications with the petitioner. Under her guidance, the petitioner had a very successful name transition and its marketing team has won several credit union awards. The evidence establishes that the beneficiary performs a leading role for the petitioner. Whether or not the beneficiary meets this criterion turns on whether the petitioner is an establishment with a distinguished reputation.

The petitioner states that it is the 3rd largest credit union in California and the 10th largest in the nation. The petitioner submits evidence of its association with the Torrance Chamber of Commerce and the National Credit Union Administration, and its membership with the Federal Home Loan Bank of San Francisco, Financial Services and Banking Benchmarking Association and STAR Financial Institutions. It also submits evidence of its inclusion as a member of the Filene Research Institute and that it has a representative office at Autoland in Woodland Hills, California. The petitioner does not explain how its membership and association with these various organizations and establishments distinguish it at the national or international level.

The petitioner cannot establish that it is an organization with a distinguished reputation simply by pointing to its membership and assets. The record contains brief discussions of the petitioner in general terms relating to the company's "prestige" and participation in the NEFE high school program. The record does not address the petitioner's reputation in business, finance, philanthropic endeavors or community relations and goodwill at the national or international level. The petitioner presented no evidence, for example, of its stature in the field as indicated by a rating in *Forbes*, *Fortune* or other financial or trade publication. The evidence only establishes that the petitioner is a large federal credit union that had a very successful marketing strategy that earned it recognition in 2002. It does not distinguish the petitioner among other large federal credit unions.

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

The petitioner states that the beneficiary's salary of $170,000 without benefits and incentives is considerably above the average salary of $135,531 earned by her peers. With the petition, the petitioner submitted a copy of the U.S. Department of Labor's (DOL) wage report for "Private Sector Executives," which showed an average annual salary of $136,531 in the Los Angeles area. In response to the RFE, the petitioner submitted two salary surveys comparing salaries of senior marketing personnel. The first survey was based on reports of 27 credit unions with assets of over a billion dollars, and showed the average base salary of a vice president of marketing position at $112,100 and the high at $133,500. Patelco performed the second survey, and other than limiting the survey to credit unions with over a billion dollars in assets, the survey contains no qualifying data or explanation of its methods. It shows that the average base salary of the top 25% senior marketing positions was $166,175 and the projected base salary for 2003 was $173,423. The director determined that the surveys were unreliable as they were tailored to credit unions over a billion dollars and limited the survey to credit unions. He determined that the petitioner also did not establish the accuracy of these surveys.

On appeal, the petitioner submits a report from the DOL's wage report reflecting that in 2003, the average salary for marketing managers was $103,338, and for private sector executives $140,733 in the Los Angeles area. The petitioner must establish that the beneficiary's salary is significantly high compared to all others in the marketing field, and not just in the local area. The petitioner also submitted several vice president of marketing job announcements listed on Monster.com; however, this evidence lacks reliability as it only reflects a discrete subsection of the market – those who advertise on Monster.com. It does not include evidence of salaries offered by those firms who seek assistance through headhunters such as Korn Ferry and through whom the petitioner indicates it originally sought candidates for the beneficiary's position. While the evidence submitted is subsequent to the filing date of the petition, we will accept that salaries have not declined.

In order to indicate that the beneficiary is among the top in her field, the petitioner must establish that the beneficiary's salary is high compared to other high earners in the field. The record reflects that the beneficiary's salary is comparable to that of approximately one fourth of those in senior marketing positions. The evidence does not establish that the beneficiary is compensated at a rate that is among the very top of those in her field.

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 her field of endeavor.

Review of the record, however, does not establish that the beneficiary has distinguished herself as a marketer 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 beneficiary is a talented credit union marketer, but is not persuasive that the beneficiary'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.