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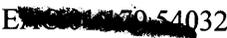
U.S. Department of Homeland Security
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Washington, DC 20529

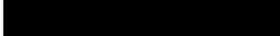
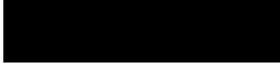
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U.S. Citizenship
and Immigration
Services

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FILE:  70-54032 Office: VERMONT SERVICE CENTER Date: **DEC 22 2004**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

Maui Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability 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 CIS regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a photographer/artist. 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 did not initially indicate which criteria she claimed to meet. In its decision, the AAO discussed all ten criteria, concluding that the petitioner did not establish that she meets any of them. On motion, counsel asserts that the petitioner meets the following four criteria. As such, we will only discuss those four.

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 AAO concluded that the petitioner had not established that *Buffalo Woman's Vision* and the *Somerville News* were major media. Specifically, the AAO noted the lack of evidence that either publication is distributed nationwide. On motion, counsel notes that many publications are available on the Internet, although counsel does not specifically claim that either *Buffalo Woman's Vision* or the *Somerville News* are available online. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material appear in "major media," not merely media with nationwide accessibility. Assuming either or both publications are available online, we cannot conclude that every community newspaper with a website is major media. Local media with online accessibility to those outside the local community cannot compare to media with proven national or international distributions. The distribution is relevant because a publication without a national distribution is unlikely to have a website that attracts significant interest nationally. We do not accept that coverage by a community newspaper that happens to post the coverage on its website is indicative of or consistent with national acclaim.

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

While the AAO noted that opinions from witnesses selected by the petitioner could not, by themselves serve to meet the "extensive documentation" statutory requirement for the classification sought, the AAO ultimately concluded that general praise and vague assertions of contributions to the field were insufficient evidence of specific contributions to the field. On motion, counsel asserts that the AAO should not have simply dismissed letters from experts in the field. The content of witness letters must be evaluated in addition to the source of the letters. Counsel does not address the AAO's concern that the witness letters failed to identify any specific contribution to the field.

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

The AAO noted that all photographers who make their living from photography must display their work, questioned the national significance of the exhibitions where the petitioner had displayed her work and concluded that the petitioner's display of her work was limited to the Northeast and, thus, not indicative of national or international acclaim. On motion, counsel asserts that it is "unreasonable" to conclude that exposure outside the petitioner's state of residence but limited to her region lacks national significance. Counsel further asserts that the Roxbury Community College exhibition included art from nationally recognized artists. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The letter from Walter J. Silva, Dean of Business Administration at Roxbury Community College, however, does not indicate that the exhibition was a juried exhibit of national import.

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

The AAO acknowledged that the petitioner has successfully marketed her work but concluded that the petitioner had not established that her photographs sold for significantly high amounts in comparison with photographs by the nation's top, most acclaimed photographers.

On motion, counsel asserts that not all acclaimed artists sell their work for comparatively high sums. Counsel further asserts that the petitioner's donations of photographs to charity should be considered "in the national interest." We acknowledge that a petitioner need not meet every criterion and that a failure to demonstrate significantly high remuneration does not preclude eligibility. The existence of ten criteria, only three of which must be met, takes into account that acclaim is not always evidenced in the same way. What is at issue, however, is not whether it is possible for an artist to be acclaimed without receiving high remuneration, but whether the petitioner meets this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires that a petitioner demonstrate *comparatively* high remuneration to meet this criterion. We affirm the finding that the record does not contain evidence that the petitioner photographs sell for comparatively high amounts. Finally, philanthropic activities cannot overcome a failure to meet at least three of the regulatory criteria.

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 photographer/artist 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 photographer/artist, 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of August 19, 2003 is affirmed. The petition is denied.