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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[redacted]

FILE: EAC 01 271 50213 Office: Vermont Service Center Date: JAN 22 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 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 Citizenship and Immigration Services (CIS) 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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. A subsequent motion to reopen was granted and the director reaffirmed his previous decision.[1] 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

[1] There appears to be some confusion regarding the director's action on the motion to reopen and reconsider. The petitioner filed a motion to reopen and reconsider on December 4, 2002. The motion was granted and in a letter dated March 21, 2003 the director reaffirmed his decision. The petitioner appealed that decision on April 21, 2003. The director reissued his decision on May 27, 2003 in an apparent effort to clarify clerical errors in his original letter. To "preserve [his] rights", on June 16, 2003, the petitioner also appealed the decision letter dated May 27, 2003. No new issues or evidence were presented in the petitioner's second appeal.

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 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.

In the original petition and on appeal, counsel simply asserts that the petitioner "substantially met more than three of the . . . criteria", without discussing how the evidence satisfied any of the criteria. However, in response to the director's request for evidence (RFE) dated November 9, 2001, counsel claims the petitioner meets the following criteria.

> *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 advertisements for clothing from several different printed media, none of which mention the petitioner by name. Additionally, the petitioner submitted an article from a December 28, 1995 edition of the *Daily News Report* featuring a photograph of the petitioner along with a brief outline of a division of the company for which he worked and identifying him as a designer for the division. The petitioner also submitted a copy of an article from the February 18, 1988 edition of *Men's Wear* announcing the launching of a mail order catalog by GUS/Kay Home Shopping, Ltd., and identifying the petitioner as "freelance designer" for the Kit for Men section of the catalog. The advertisements are not published material about the alien as required by the regulation. The brief articles in two print media also are not articles about the petitioner and his work, but about the companies where he worked with a brief mention of the petitioner's name. These articles do establish the

petitioner as a designer at the top of his profession through published material. No other evidence was submitted showing that he has been the subject of major media coverage.

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 claims to have met this criterion based on his selection to judge designs for a project sponsored by his employer at the Royal College of Arts Fashion School. The petitioner chose the design from among those submitted to be included in his employer's fashion collection. Counsel indicates that a letter from the Royal College of Arts confirming the petitioner's participation in the project would be submitted. The petitioner has not submitted this letter into the record. 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). Further, a one-time act as an evaluator for one's employer does not substantiate that the petitioner has met this criterion. He was selected by his employer to select a design for his company as part of his job as assistant fashion designer for the company, and not as a result of his stature in the field as a fashion designer. The petitioner has not shown sustained national or international acclaim through judging the work of others in the field.

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

Counsel states that the petitioner performed leading and critical roles for several establishments that have a distinguished reputation in the field of design. Among those accomplishments, counsel notes, the petitioner designed the signature "d" for Alfred Dunhill; was Executive Design Director for Marchpole London, Ltd., where he was responsible for three important menswear licenses; was Senior Design Director for Fabian Couture Group International, where he established the Fumagalis license, and designed and manufactured Nicole Miller's men's sports coats; and served as Vice President of Brescia & Company.

Although the petitioner appears to have held impressive positions, the evidence of record does not establish that he performed in a leading or critical role for the firms for which he worked. Steven Brescia, founder of Brescia & Company, submitted two letters of support for the petitioner, neither of which confirms that the petitioner was a major factor in the success of the company. Other than counsel's assertions and the petitioner's curriculum vitae, the only other evidence in the record that would tend to confirm the petitioner's role in the companies he specifies is Mr. Brescia's letter and a letter from a fashion designer executive search firm. Certainly, there is

nothing in the record establishing that he played a leading or critical role in these companies. As noted above, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Comparable evidence.

Counsel also asserts that the petitioner submitted other "comparable evidence to establish [his] eligibility." 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." [Emphasis added] 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. Nonetheless, we will address counsel's claim that the petitioner has established eligibility with comparable evidence.

The petitioner submitted several letters of support, reference and recommendation from others who are well credentialed in the fashion world. They describe his work as "unique", and his cashmere designs as "the best around." The petitioner is described as "highly skilled", "outstanding", and "exceptionally" talented. While it appears that members of his profession hold the petitioner in high esteem, these "testimonial" letters are insufficient to establish that the petitioner has made a major contribution to his field or has otherwise achieved sustained acclaim. The letters provide general praise for the petitioner's work without the objective specificity one might expect from a fashion designer at the top of the field.

All of the letters were written in support of the petitioner's request for visa preference, and none describe him as one of the elite few at the very top of the design profession. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. In fact, absent letters prepared in support of this petition, the industry does not seem to have otherwise publicly recognized the petitioner's talents and skills.

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 fashion designer 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 shows talent as a fashion designer, 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.