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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 31 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.

Mari Johnson

for 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 sustained and the petition will be approved.

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 advertising, specifically in health care advertising. 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 is a division of a worldwide advertising firm and limits its services to health care advertising. According to the Form I-140, Immigrant Petition for Alien Worker, the petitioner employs the beneficiary as a

vice president and creative director of its pharmaceutical advertising. 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 maintains that the beneficiary meets this criterion based on his receipt of the following awards:

1. Two Gold, one Silver and one Bronze In-Awe awards. The In-Awe awards are sponsored by the Medical Marketing Association (MMA). According to Kerry Parker, Executive Director of the MMA, the awards have been in existence since 1985, and in 2001, received approximately 1000 entries, of which approximately 10% were given awards based on marketing excellence. According to Mr. Parker, entries are typically received from eight to ten countries, and are reviewed by a panel of 50 judges. Several of the letters written in support of the beneficiary cite his receipt of this award as one of his major accomplishments. Vice President of the Management Services Division of the American Association of Advertising Agencies (AAAA), states the In-Awe awards are internationally recognized awards of excellence in the healthcare advertising field. We find that the In-Awe awards are nationally or internationally recognized awards of excellence as required by this criterion.

As evidence of the beneficiary's receipt of these awards, the petitioner submits copies of photographs of the awards. The photographs show that, in 2000, two awards for "Anything Goes" were given. One award has the beneficiary's name on it and the other has the petitioner's. Another photograph shows that a 2000 award for "Journal Advertising" was given to the petitioner for its GloWellcome advertising. A copy of a web page from the RX Club website shows that the petitioner received two gold awards, one for the "Anything Goes" and the other for journal advertising for a Zofran Pediatric Ad. There is no explanation in the record to explain why the beneficiary's name appears on one of the awards and not on the others. Mr. states that the In-Awe awards are given to the agency that submits the entry. The petitioner also submits evidence that the 2001 silver and bronze awards were presented to the petitioner. The director determined that these awards do not assist the beneficiary in meeting this criterion as they were awarded to the team rather than to him individually. From the evidence submitted, it cannot be determined if the In-Awe awards recognize individual achievement or only agency efforts. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In light of the conflicting evidence, the status of the award received by the beneficiary cannot be determined.

2. The Rx Club Awards of Excellence. To establish the significance of this award, the petitioner submitted a copy of an article from *Pharmaceutical Executive*.[1] The article states that the Rx Club has made awards for the creative side of healthcare advertising for over 14 years, and puts on a "grass-roots version of the pharma marketing accolades presented in other programs such as the In Awe Awards." According to the article, in 2000, the club received over 2,000 entries from several countries. Based on the evidence provided and the Rx Club's website, we determine that the Rx Club awards are internationally recognized awards of excellence within the medical advertising field.

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[1] The record is unclear as to the type of print media Pharmaceutical Executive belongs. The Rx Club website provides no additional information. *See* www.therxclub.com.

As evidence of the beneficiary's receipt of these awards, the petitioner submitted certificates indicating that the 1998 Rx Club Award of Excellence was presented to the petitioner with the beneficiary listed as co-art director. The four awards presented in 2001 list the beneficiary as creative director. Mr senior director of marketing for the rheumatology business unit of Amgen, Inc. explains that the three positions commonly listed on advertising awards are the creative director, art director and copywriter. According to Mr. depending on the ad medium, some awards may also list the photographer, illustrator, or other team member who "contributed significantly to the final product." He states that the creative director is "perhaps the most critical member of the creative team because the Creative Director has ultimate responsibility for the success of the creative product." He states further that the art director is "responsible, in partnership with the Copywriter, for the efficient operation of the business as it pertains to the art product. In addition, the Art Director explores and develops art content of a given concept as well as any necessary charts and graphs to support a concept."

The record does not establish when the 2001 awards were presented or whether they were presented prior to the filing date of the visa preference classification petition on September 13, 2001. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Evidence of these awards, presented for the first time with the response to the RFE, raises the presumption that they were awarded after the filing date of the petition and cannot be considered in determining visa preference classification eligibility.

The record further reflects that this award was presented to the petitioner, and as the beneficiary was not the recipient of the award, does not establish that he meets this criterion.

3. 1995, 1997, and 2001 Finalist for the Globals awards. According to Mr. President of the Globals, the awards were established in 1994 and in 2001, attracted 1369 entrants from an international field. Judges are chosen from all over the world. Mr. states that approximately 10% of the entrants were chosen as finalists in the competition and a smaller percentage were given the top prizes. He states that "[w]inning an award as a Global Finalist is considered to be a major accomplishment." Authors of several of the beneficiary's letters of support refer to his Global awards. However, the list of awardees clearly distinguishes between a Global Award and a finalist certificate. The record establishes that the Global Award is an internationally recognized award within the medical advertising field. However, a finalist certificate is not an award as required by this criterion. Further, the record does not clearly establish that the 2001 certificate was presented prior to the filing date of the visa preference classification petition. Evidence that comes into existence after the filing of the petition cannot establish eligibility. *Id.*

4. A 1996 Healthcare Advertising Agencies Group (HAAG) Best of Health Show Bronze Award. The evidence submitted indicates that the HAAG Awards were established in 1995 to recognize healthcare advertising in the United Kingdom (UK) and Europe. The panel of judges consists of the past year's winners and representatives from outside the UK. According to an article on the *pmlive* website, in 1998, the high standards resulted in no gold award winners for several categories. The evidence establishes that the HAAG Award is a nationally or internationally recognized award of excellence.

The petitioner submits evidence that shows that this award was given to the advertising agency for which the beneficiary worked, with the beneficiary listed as the art director. As the beneficiary was not the named recipient of the award, it does not satisfy the requirements of this criterion.

5. A 1974 Bronze Standard of the Duke of Edinburgh's Award, a 1979/80 Commendation from the Royal Society of Arts and a 1998 Communication Arts Award of Excellence. As evidence, the petitioner submitted certificates showing the beneficiary had received the recognition indicated. Mr. a commercial sports and lifestyle photographer, writes that the Communication Arts Photography Annual is a prestigious publication and the Award of Excellence, which it sponsors, draws thousands of entrants from around the world. However, the petitioner submitted no other independent evidence of these awards regarding the significance of the awards, the selection criteria or that they are nationally or internationally recognized awards of excellence.

6. A 2001 Mobius and a 2001 New York Festivals Finalist Award. According to the evidence, the Mobius Awards were established in 1971 to recognize excellence in advertising. Competition is international and is open to individuals, agencies or design studios, and is judged by industry professionals. The awards service mark is "The World Standard for Excellence in Advertising." The Mobius Award is an internationally recognized award of excellence. The beneficiary received a 2001 Mobius Award in the Pharmaceutical Remedies and Preventives category. The evidence submitted and the Mobius Awards website reflect, however, that this award was presented after the filing date of the visa preference petition. As stated above, it therefore cannot be used to establish visa preference classification eligibility.

The evidence indicates that the New York Festivals has an almost 50 year history, and was originally founded to award international competition in non-broadcast media. It has expanded through the years to include more categories as technology has changed. It has also added other competition to include the Globals for healthcare marketing. The beneficiary received a Finalist Award in 2001 for the "Vascular Map Ad." The record, however, does not establish whether this award was presented after the filing date of the petition. As previously stated, evidence of this award, presented for the first time with the response to the RFE, raises the presumption that it was awarded after the filing date of the petition and thus cannot be considered in determining visa preference classification eligibility. On appeal, the petitioner submits evidence of other awards won by the beneficiary in 2002. These awards also cannot be considered for eligibility under this petition. These awards demonstrate, however, that the beneficiary has continued to receive national (or international) acclaim through the present and corroborate our finding that the beneficiary is an alien of extraordinary ability.

The evidence of record does not establish that the beneficiary meets this criterion. The team awards received by the petitioner under the creative direction of the beneficiary will be considered under a separate 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 achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

With the petition, the petitioner asserted that the beneficiary met this criterion based on his membership in the San Francisco Advertising Club and as a founding member of the Manchester Creative Circle in England. However,

no evidence was submitted to establish that membership in these organizations was based on outstanding achievements. The petitioner did not raise this issue on appeal and we concur with the director that the record does not establish that the beneficiary 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 makes the first assertion on appeal that the beneficiary meets this criterion. It states that the references to the beneficiary's work in the healthcare advertising field and the awards he has won have appeared in industry publications. With the petition, the petitioner submitted an article from the May 2000 edition of *Med Ad News* that names Celebrex as the brand of the year. The article does not mention the petitioner or the beneficiary. The petitioner also includes a list of the top 500 prescription drugs worldwide that appeared in the May 1999 edition of *Med Ad News*. Again, there is no mention of the petitioner or the beneficiary. On appeal, the petitioner submits a copy of an article that the petitioner stated appeared in the July 2002 edition of *Medical Marketing & Media*.[2] The article discusses the 2002 In-Awe Award winners and contains a section on the petitioner's receipt of a gold certificate. The beneficiary is listed as part of the creative team. The petitioner also includes a copy of an April 2003 article from *Med Ad News* about the petitioner and includes a copy of an advertisement that the petitioner attributes to the beneficiary. Neither of these articles is primarily about the beneficiary and both were printed after the filing date of the petition and cannot be considered to determine eligibility. The petitioner does not establish that the beneficiary meets this criterion.

> *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 this criterion is met based on the beneficiary's sitting as a judge for the Globals and HAAG awards and the West Cumbrian Views Photographic Competition. As evidence of the beneficiary's participation in the photographic competition, the petitioner references a letter from Mrs. [redacted], senior contract manager for the Facilities Management Group at British Nuclear Fuels plc in Sellafield, in West Cumbria. She states that she was a judge with the beneficiary at the West Cumbrian Views Photographic Competition, which was a nation-wide photographic competition. No evidence of the selection process for the judges or the competitors was submitted. This evidence does not establish that the beneficiary was chosen to participate as a judge in this competition based on his national or international acclaim within the advertising field.

The record reflects that the beneficiary participated as a judge of the Globals and HAAG awards. The evidence indicates that the beneficiary was chosen to judge these awards based on his leading role in the receipt of these internationally recognized awards in the previous year by his advertising agencies. The record reflects that the beneficiary was selected to judge the 2002 Mobius Awards based on his receipt of a 2001 award. Although

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[2] The petitioner's unsupported statements are not evidence. 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).

evidencing continued acclaim, the beneficiary's participation as a judge of the Mobius Awards is subsequent to the filing date of the petition, and cannot be used to establish eligibility for visa preference classification. *See Matter of Katigbak, supra.* We find that the evidence is sufficient to establish that the petitioner meets this criterion.

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

As evidence that the beneficiary meets this criterion, the petitioner relies on letters of recommendation and references from "prominent business and advertising professionals and experts" in the field of healthcare advertising. The authors of these letters all speak highly of the beneficiary's exceptional talents as an art director and creative director. They highlight the successful advertising campaigns in which he has been involved and call attention to the many awards that he and his creative teams have received. Mr ft, the Executive Director of McCann-Erickson Manchester in the UK, states the beneficiary made a "huge contribution" to the rapid growth of McCann-Erickson's healthcare advertising agency and its receipt of many awards. None of the authors of the letters of recommendation state or imply that the beneficiary has made a contribution of major significance to the field of advertising or healthcare advertising. The evidence 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 is vice president and creative director for the petitioner. The petitioner states that in this role, the beneficiary manages the petitioner's creative department and is "critical to the development of successful advertising campaigns. The Creative Director oversees the entire creative concept of a campaign from conceptualization to final execution, taking overall responsibility for creative standards while working closely with clients to ensure that their expectations are met." M also states that the creative director "is responsible for coordinating and overseeing the entire creative process as it relates to the advertisement," and "reviews and approves art and copy materials developed by staff and presents final layouts to the client for approval." The evidence establishes that the beneficiary plays a leading role for the petitioner.

The record reflects that the petitioner is ranked by *Med Ad News* as one of the top advertising agencies in terms of U.S. income. The petitioner also has several high profile clients, and has won several prestigious international awards for its advertising campaigns. The record establishes that the petitioner enjoys a distinguished reputation within the field of healthcare advertising.

The beneficiary served as art director for in the UK. Although Mr. credited the beneficiary with being a major contributor to the early and rapid success of the company's growth in healthcare advertising, there is no evidence in the record to establish that the beneficiary was the only or senior art director at the agency. The record does not establish that the beneficiary played a leading role at

The director determined that the petitioner had not established that the beneficiary meets this criterion. We find that the beneficiary meets this criterion based on his employment with the petitioner, and withdraw the director's determination.

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 first addresses this criterion in the response to the RFE. In its cover letter with the petition, the petitioner stated that the beneficiary earned $132,000 per year. In response to the RFE, the petitioner submitted a statement from the Survey Group, which concluded that the beneficiary's salary was greater than the weighted average salary for similar positions in the San Francisco area for those with 12 years of experience. The petitioner also submitted a 2001 career and salary survey whose source is identified by counsel as the *Medical Marketing & Media* magazine, and which shows that the average salary for a creative director is $130,200. The assertions of counsel are not 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 petitioner must establish that the beneficiary's salary is high in relation to others in the field and not just those with a certain amount of experience or in a particular geographic area. Another survey, the source and year of which are unidentified, indicates that the average salary for creative directors is $107,800 and the high $210,000. This evidence reflects that the beneficiary's salary is not significantly higher than that of others in the field. Further, the petitioner did not submit independent evidence of the beneficiary's salary. The petitioner does not address this criterion on appeal, and the record does not establish that the beneficiary meets this criterion.

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 evidence indicates that the beneficiary was the creative director for advertising projects for companies that won major international awards, recognized in the industry as awards for excellence. Although the beneficiary was not the recipient of the awards and the evidence was not applicable under the first criterion, we find that these awards are appropriately considered under this provision. We further find that the evidence is sufficient to establish that the beneficiary does meet this provision.

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.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.