

PUBLIC COPY

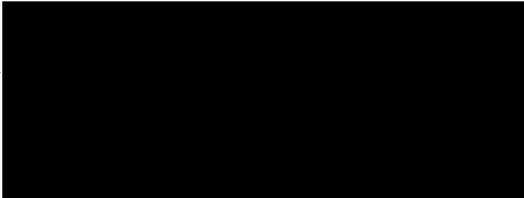
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

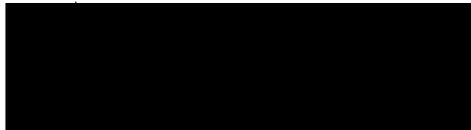
Handwritten initials/signature



FILE: EAC-02-198-52721 Office: VERMONT SERVICE CENTER

Date: **SEP 30 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:

SELF-REPRESENTED

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, Vermont Service Center, and is now before the Administrative Appeals Office 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. The director determined the petitioner had not established that the beneficiary enjoyed 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 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 as a stonemason.¹ 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, according to the petitioner, meets the following criteria.

¹ Despite claims by the petitioner's clients that what the beneficiary does constitutes "art," the record does not establish that stonemasonry falls within one of the fields of science, art, education, business, or athletics. Rather, it appears to be a trade. Thus, it is not clear that the beneficiary's occupation qualifies him for consideration under the classification sought.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In response to the director's request for additional documentation, the petitioner submitted a 1999 Honorary Diploma awarded to the beneficiary by the Monuments Protection Committee attached to the Armenian government. The diploma recognizes the beneficiary as the "I Prize Winner at the Competitions [sic] of qualified Builders, Sculptors and Designers for 'designing exclusive ideas.'" The director accepted the diploma as meeting this criterion. The record, however, lacks any documentation of the significance of this award, such as how nominees are selected. We note the Chairman of [REDACTED] signed the diploma. Another certification by the Chairman of this entity indicates that the beneficiary worked there from May 1998 to June 1999. Thus, it appears that the diploma may be employer recognition, and not a national award to which the most experienced and acclaimed masons in Armenia aspire.

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.

The petitioner claims that the beneficiary meets this criterion for the first time on appeal. He submits a certificate from the Chairman of the Monuments Preservation Association confirming that the beneficiary was a member in 1998 and 1999. The petitioner asserts that the association was a "very select association in Armenia which oversaw the reconstruction of Armenian churches and historical monuments in Armenia." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record contains no official materials from the association, such as their bylaws, specifying their membership requirements and selection process. Thus, we cannot determine whether membership requires outstanding achievements as judged by recognized national or international experts.

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.

Subsequent to the filing the petition, the petitioner submitted a July 14, 2002 article about the beneficiary in the Home and Family section of the *Cape Cod Times*. It is noted that the article postdates the filing date of the petition, May 9, 2002. On November 4, 2003, the director requested additional documentation, noting that the *Cape Cod Times* is not a major newspaper. In response, the petitioner asserted that the paper is a major paper in the Cape Cod, Martha's Vineyard, and Nantucket areas and references an upcoming article in *Cape Cod & Islands Home*, confirmed by an initialed letter from Laurel Kornhisser, Senior Editor for that publication.

The director concluded that neither Cape Cod publication constitutes major media. On appeal, while the petitioner requests that we look again at the article, he does not specifically contest the director's conclusion.

We concur with the director. The evidence submitted to meet a particular criterion must be indicative of or consistent with national acclaim. An article in a local newspaper without national circulation, regardless of the publication's readership in its locality, cannot be considered major media such that coverage in that paper is indicative of or consistent with acclaim on a national level. Moreover, we note that the article was published after the date of filing. A petitioner must establish eligibility 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. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 for the first time on appeal that the beneficiary meets this criterion. The petitioner submits a 2004 certificate from the Director of [REDACTED] that states:

This is to certify that [the beneficiary] representing [REDACTED] and being a member of the Monuments Preservation Association at the Government, in May 1999 was engaged as a constructor-designer in the Head Commission of nine (9) members founded by the Government on reconstruction design works of [REDACTED] of [REDACTED] and Taush regions.

The petitioner asserts that the commission members were "used as judges of projects submitted by t[h]ree or more individuals or companies who competed in the design of restoration." As stated above, going on record without supporting documentation is insufficient. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. The record contains no evidence from the association regarding the selection process for the commission members and their duties. The only evidence to support the petitioner's claim that the beneficiary served on the commission defines the beneficiary's position with the commission as "constructor-designer," which does not imply any judging or evaluation responsibilities.

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

In response to the director's request for additional documentation, the petitioner refers to "awards" from [REDACTED] Block and Northeast Pine, notes the beneficiary's Armenian award, and claims that these serve to meet this criterion. The record does not contain the [REDACTED] Block and Northeast Pine "awards." We note that the beneficiary's Armenian award has already been considered above. As stated above, the evidence submitted to meet each criterion must be indicative of or consistent with national acclaim. In the United States, the beneficiary designs and constructs stone patios and similar structures for private residences and businesses. The record contains several photographs of his work. It is inherent to the work of any stonemason performing such work, however, that his completed projects will be visible to the client and visitors to those homes and businesses. A home or business is not an artistic exhibition or showcase. Thus, the "display" of the beneficiary's work at the homes and businesses of his clients cannot serve to meet 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.

In response to the director's request for additional documentation, the petitioner submitted a letter from Eric Oman of the [REDACTED] asserts that the beneficiary "commands premium price." The petitioner also submitted the beneficiary's personal tax return for 2002 reflecting \$80,200 in gross income for the petitioning business (the beneficiary's sole proprietorship.) The beneficiary's total income after expenses, however, was only \$16,386. The director concluded that the petitioner had not demonstrated how the beneficiary's income compared with other stonemasons.

On appeal, the petitioner submits a new letter from [REDACTED] asserting that the pay scale for stonemasons on Cape Cod is from \$15 to \$25 per hour and that he pays the beneficiary \$45 per hour. The petitioner also submits Internet materials from the Bureau of Labor Statistics (BLS) indicating that the mean hourly wage for stonemasons is \$17.08. The mean annual wage is \$35,530. The BLS data is more persuasive than [REDACTED] letter. We note, however, that the BLS wages refer to wages an employee would receive from an employer. They do not include payment a business receives from a client, even if organized as a sole proprietorship. The beneficiary's \$80,200 gross income includes payments to his business that cover the business' overhead costs, including \$800 in cost of labor presumably paid to another worker and \$27,950 in materials and supplies. These are costs that a stonemason being paid wages by a stonemasonry company would not have to incur out of those wages. The beneficiary's actual income from stonemasonry after business expenses is only \$16,386, well below the mean annual wages for a stonemason.

Finally, we note that the beneficiary had been in the United States for almost two years when the petition was filed. Thus, in order to demonstrate sustained national acclaim, he must demonstrate national acclaim in the United States. The record contains no evidence indicative of or consistent with acclaim outside of the Cape Cod area.

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 beneficiary has distinguished himself as a stonemason 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 beneficiary shows talent as a stonemason, but is not persuasive that the beneficiary'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.