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



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **APR 12 2005**
EAC 04 098 51036

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

Robert P. Wiemann

S 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 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. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner is a hair stylist who claims to be an "alien with extraordinary ability" presumably (though never stated) in the arts. The petitioner submitted evidence of numerous awards earned while he was a hair stylist in Argentina, two reference letters and three letters attesting to his work in Argentinean television and film. On appeal, the petitioner submits one additional letter and an article about the petitioner published in a Spanish newspaper on June 4, 2004. Because this article was published four months after the filing of the petition, it will not be considered. A petitioner must establish eligibility as of the date of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The remaining evidence and counsel's contentions are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The director correctly determined that the petitioner's hair styling awards earned in South America were insufficient to meet this criterion. A letter from [REDACTED] of the Federation of Hairdressers of Argentina (FAPYA) states that the petitioner obtained 14 awards between 1968 and 1993 for various hair styling events. The petitioner also received two first-place awards at the Iberoamerican Festivals of Hairstyle and Color in 1981 and 1982. The petitioner provides no information regarding the competitors, selection criteria, or national or international recognition of these awards. The petitioner also received a *Martin Fierro* award in 1994 and a *Blanca Podesta* award for his hairstyling and makeup work for Argentinean television programs. However, the record is unclear whether the *Blanca Podesta* award is for television or theater. The letter of [REDACTED] (facsimile dated May 13, 2004) describes the award as "like the Tony award, but for Buenos Aires theater." However, a letter of [REDACTED] on the letterhead stationery of "Te Le Fe" suggests that the award was granted for the petitioner's work on a television program. The record does not explain this conflicting information regarding the *Blanca Podesta* award although the burden is on the petitioner to resolve such inconsistencies by independent objective evidence and doubt cast on any aspect of the petitioner's proof may entail a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In addition, the record contains no independent evidence of the competitors, selection criteria, or national recognition of the *Martin Fierro* and *Blanca Podesta* awards. Most importantly, even if these awards reflect the petitioner's past national and international acclaim in Argentina and South America, they do not establish that he sustained that acclaim over the ten years since his departure from Argentina and prior to the filing of his petition.

Counsel contends that the petitioner need only show acclaim that has been "'sustained' over a period of years," not necessarily sustained to the time of filing. Counsel further maintains that "[t]his should especially be when considering the career of a person who, because of general economic or other reasons in his home country, is forced to seek a career elsewhere." Counsel's contention is without merit and is refuted by both the law and the record. The statute and regulation require acclaim that is sustained to the time of filing. The plain language of the statute is clear. The word "sustain" is defined as "to support or maintain," *Black's Law Dictionary* 1461 (Bryan A. Garner ed., 7th ed., West 1999), and "to keep ... going continuously." *Oxford American Dictionary* 927 (Eugene Ehrlich et al. eds., Heald Colleges ed., Oxford U. Press 1980). "Continuously" is defined as "continuing, without a break." *Id.* at 186. Furthermore, if the statute required only a discrete period of past acclaim, it would be internally inconsistent. An alien who has not sustained his acclaim because of an inability to work in his field would be unable to meet the statutory requirement that he "enter the United States to continue work in the area of extraordinary ability." Section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii). In fact, the petitioner has been working as a hair stylist in the United States since at least 2000, four years prior to the filing of his petition. The absence of any awards since 1994 suggests that the petitioner has not been able to earn or sustain national or international acclaim as a hair stylist over the last decade preceding the filing of his petition. The petitioner's past awards are thus insufficient to meet 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.

The director correctly concluded that the petitioner presented no evidence to meet this criterion. In his reply to the director's request for evidence, counsel stated that the petitioner was "not only a member but an officer of the Argentinian [sic] Federation of Hairstylists." The only evidence that might support this claim is the letter from [REDACTED] (facsimile dated May 13, 2004). Although the letter confirms that the petitioner was a FAPYA member, such membership does not appear to be exclusive. [REDACTED] describes FAPYA as a "national professional organization ... which has over 3,000 members." FAPYA is thus a trade organization for hairdressers, mere membership in which cannot meet this criterion. No evidence was submitted to show that FAPYA requires outstanding achievements of its members.

Published material 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 director correctly found no evidence to meet this criterion. On appeal, the petitioner submits an article about him from a Spanish newspaper. The petitioner provides no circulation or other information about the newspaper that warrants its consideration as major media. Most importantly, as previously stated, the article was published after the petition was filed and consequently cannot be used to establish the petitioner's eligibility at the time of filing. *Matter of Katigbak*, 14 I&N Dec. at 49.

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 director found no evidence in the record regarding this criterion. However, the record contains one relevant letter. The letter of [REDACTED] (facsimile dated May 13, 2004) states that the petitioner served as a judge for FAPYA competitions approximately 20 times between 1980 and 1990 and served as president of the FAPYA Artistic Committee that judges all FAPYA competitions. [REDACTED] explains that the petitioner was chosen by "his peers ... as the head of the judging committee, showing their opinion that he was qualified to judge national and international competitions." Although that position indicates the petitioner's past acclaim as a hairstylist in Argentina, it does not establish that he sustained that acclaim in the decade succeeding his work as a FAPYA judge and preceding the filing of his petition. Consequently, the petitioner does not meet this criterion.

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

The director found no evidence that the petitioner's work had been displayed at artistic exhibitions or showcases. Although this category relates most directly to the visual arts, counsel claims that the petitioner has met this criterion by giving master classes. By definition, a master class is educational and not readily equivalent to an artistic exhibition or showcase. Even if we accepted a master class as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4), we would still find the record deficient. The petitioner submitted evidence of only one master class, a flier for a class given by the petitioner in 1992 in Peru. This class occurred over a decade prior to the filing the petition and is insufficient to indicate sustained national or international acclaim. Accordingly, the petitioner fails to meet this criterion.

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

The director correctly determined that the petitioner did not meet this criterion. [REDACTED] states (in the undated letter submitted on appeal) that the petitioner's past presidency of the FAPYA Artistic Committee was "a critical position in our organization and [REDACTED] was one of our highest-ranked official [sic]." Yet the petitioner apparently held that position over a decade ago and the record contains no evidence of FAPYA's distinguished reputation.¹ Counsel also maintains that the petitioner's work in television and film meets this criterion, but the evidence does not support his assertion. The record contains three short letters that merely verify the petitioner's work as a hair stylist and makeup artist for television and film companies in Argentina. Two letters verify the petitioner's receipt of the *Martin Fierro* and the *Blanca Podesta* awards for his work on television programs. Yet these awards do not show that the petitioner played a leading or critical role for the television or production companies. Indeed, one letter states that the petitioner was employed as a contractor. In addition, no evidence is offered to show the distinguished reputation of the companies for which the petitioner worked.

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

The director correctly concluded that the petitioner did not meet this criterion. The only evidence of the petitioner's remuneration is a letter from [REDACTED] entitled "Contract Management." The letter states that the petitioner earned a monthly salary of \$3,500 from 1993 to 1996 as a "Stylist and Artistic Makeover [sic]" for three shows. Petitioner presents no documentation of how his salary compared to that of others in his field in Argentina at that time. On appeal counsel states that petitioner's remuneration "constituted a high salary in relation to others in the field in Argentina in those years," but we cannot accept counsel's unsupported assertion as evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the petitioner was a successful hair stylist in Argentina in the 1980s and early 1990s, but the record does not establish that he sustained the national or international acclaim required for aliens of extraordinary ability. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ None of the evidence submitted states when the petitioner held the FAPYA position, but the record indicates that he must have held the position while working as a hair stylist in Argentina in the 1980s and early 1990s.