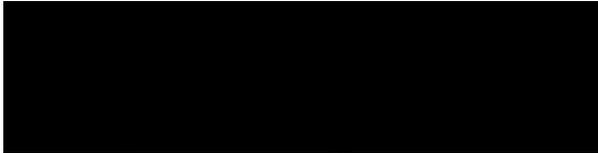




U.S. Citizenship
and Immigration
Services

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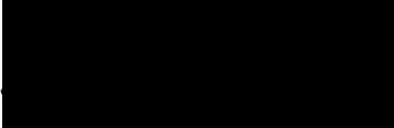
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 18 2005
EAC 04 050 53097

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:



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

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.

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.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability as a food and beverage manager. The petition was first mailed on November 21, 2003, but was rejected on December 2, 2003 for lack of an original signature. The petition was resubmitted with the original signatures of the petitioner and counsel and received on December 10, 2003. Counsel contends that the petition was filed on November 24, 2003, the date the petition was first delivered to Citizenship and Immigration Services (CIS). All applications and petitions submitted to CIS must be signed by the applicant or petitioner. 8 C.F.R. § 103.2(a)(2). Acceptable signatures must be handwritten unless the application or petition is submitted electronically. *Id.* An application or petition is properly filed only when it is signed, executed and accompanied by the proper filing fee or a fee

waiver is granted. 8 C.F.R. § 103.2(a)(7). In addition, “[a]n application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions . . . will not retain a filing date.” In this case the petition was filed on December 10, 2003, the date the properly signed Form I-140 petition was received by CIS.

The petitioner initially submitted supporting evidence of her professional training, the hospitality industry in Israel, newspaper articles that mention the petitioner, information about three places where the petitioner has worked, documentation of her salary, and letters addressed to the petitioner and her former employer expressing gratitude and appreciation for her work. On appeal, the petitioner submits additional evidence including two support letters from independent experts in her field, letters from three of her former employers, another thank-you letter for the petitioner’s work and documentation relating to the salaries of food and beverage managers at two hotels in Israel. The evidence submitted on appeal and counsel’s contentions do not overcome the deficiencies of the petition and the appeal will be dismissed. We address the evidence submitted and counsel’s claims in the following discussion of the regulatory criteria relevant to the petitioner’s case. The petitioner does not claim eligibility under any criteria not discussed below.

(iii) 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 record contains copies of numerous articles that mention the petitioner, some of which contain her photograph, that were published in Israel between 1995 and 2001. The record contains no evidence that any of these articles were published in professional, major trade publications or other major media in Israel. Moreover, the majority of these articles discuss events held at venues where the petitioner worked and only briefly mention the petitioner as a manager of the event. On appeal, counsel contends that the petitioner “became a recognizable name and face in Israel, based upon her accomplishment in the field of food and beverage management” and that “[h]er fame, due solely to her work as a top Food & Beverage Manager in newspapers of general circulation in Israel is *prima facie* evidence of having reached the top of her field.” The submitted evidence indicates otherwise. Eleven articles identify the petitioner as a young manager, one of only three women in similar positions in Israel, and describe her attractive appearance and personality. For example, an article published in the February 3, 2000 edition of *Yediot Hayfa* states, “Makom ba-Yam is managed by the beautiful and gorgeous [redacted] and an article published in the March 18, 2000 edition of *Shavua Tov* notes, “Mor is the youngest woman in her field (26).” While the petitioner’s obtainment at a young age of a managerial position which few Israeli women hold is commendable, the majority of the articles that mention these facts do not substantively discuss the petitioner’s work or career in any depth, except to describe events and venues that she has managed.

In their letters submitted on appeal, Michael Walsh, publisher of *Food and Beverage International*, and Guy Heksch, Chief Executive Officer of Pure Hospitality with the Hotel Gansevoort in New York City, both explain that it is rare for food and beverage managers to be credited in press coverage of events that they have managed and that acclaim in this field is generally limited to hotel owners and peers within the industry. Yet neither Mr. [redacted] nor [redacted] state that they are familiar with the current hospitality industry in Israel. [redacted] explains that he was born in Israel to a family of hoteliers, but received his training in the United States, where he remained to work in restaurant and hotel management. Even if food and beverage managers are rarely identified in press coverage of events they oversee in Israel, the record does not establish that the petitioner became a well-known figure in Israel primarily due to her professional accomplishments because the majority of the submitted articles note her attractive appearance and personality, age and gender when identifying her as the

manager of the reported events. The record thus does not establish that the submitted articles were published in major media or are about the petitioner's work in a manner reflective of the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(iv) 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 record indicates that the petitioner has held positions of substantial responsibility where she supervised numerous employees. On appeal, counsel claims that the petitioner's "hiring, firing and supervising a large staff of mid-level managers" meets this criterion. Yet duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The petitioner submitted no evidence that she has judged of the work of other individuals in her field in a manner significantly outside the general duties of her managerial positions and reflective of sustained national or international acclaim. Accordingly, she does not meet this criterion.

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

The petitioner did not initially claim eligibility under this criterion. On appeal, counsel claims the petitioner satisfies this criterion through her work at the Place of the Sea banquet and convention center and because "[n]umerous articles confirm [her] influence in the food & beverage industry, where she became a brand – a [redacted] event' became top-drawer event [sic]." The record does not support this claim.

In a letter dated October 2000 and submitted on appeal, Yossi Pitussi, owner of the Place at the Sea, states, "The personal relations and professionalism Mor exhibited, and the satisfaction of the clients, turned 'Place at the Sea' [in]to an overnight hot spot in the banqueting sector in the North of Israel, and the financial success arrived soon after, due in largely [sic] to Mor's contribution." While [redacted] clearly values the petitioner's work for his center, he does not specifically describe her accomplishments and their impact on the field or otherwise state that her work for the Place at the Sea made an original, business-related contribution of major significance to the field of food and beverage management. [redacted] states that the petitioner's management of Place at the Sea made a major contribution to her field because she was responsible for the development of the venue as a whole. Yet the record does not show, and [redacted] does not state, that other food and beverage managers were influenced by the petitioner's work at Place at the Sea or that her work otherwise had a major impact on her field. Numerous newspaper articles report the opening of the Place at the Sea and credit the petitioner as the manager. Yet these articles were all published nearly four years before the petition was filed and do not reflect the requisite sustained acclaim.

The record also does not support counsel's claim that the petitioner became a brand name in the food and beverage industry in Israel. As discussed above under the third criterion, numerous newspaper articles identify the petitioner as the manager of notable events, but the record contains no evidence that these articles were printed in major media in Israel, publication in which would reflect national acclaim. Moreover, apart from descriptions of the events themselves, the articles do not discuss the petitioner's work in detail, discuss her career in-depth or otherwise identify major contributions that she has made to her field. Similarly, the assessments of [redacted] summarize the petitioner's accomplishments as documented in the

record and note that she has become a relatively well-known figure in Israel, but they do not persuasively identify any contributions of major significance that she has made to her field.

The record indicates that the petitioner had a successful career as a food and beverage manager in the Israeli hospitality industry. Yet an alien's documented success in his or her profession is not *prima facie* evidence that he or she has made original contributions of major significance to his or her field. In this case, the record does not show, for example, that the petitioner's work elevated food and beverage management to a new level in Israel or that other managers in her field were significantly influenced by her work. Accordingly, the petitioner does not meet this criterion.

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

On appeal, counsel claims the petitioner meets this criterion because "[t]he venues are arguably 'artistic showcases' – and her work appeared in each one of them." The record does not support this claim. This criterion generally applies to visual artists. The petitioner submitted no evidence that she is a visual artist or that her field is the culinary arts, rather than food and beverage management within the hospitality industry. Moreover, comparable evidence of an alien's eligibility is only accepted when the other criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the alien's occupation. 8 C.F.R. § 204.5(h)(4). As evidenced by the record in this case, at least three of the criteria at 8 C.F.R. § 204.5(h)(3) apply to the petitioner's occupation. Accordingly, the petitioner does not meet this criterion.

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

The record shows that the petitioner was employed as a manager at four venues in Israel between 1996 and 2002. The petitioner is identified in the submitted newspaper articles as the banquet manager and later the food and beverage manager of the Palm Beach Hotel in Acco, the food and beverage manager of the Daniel Hotel in Hertzlia, and the manager for the Place at the Sea in Acco. The petitioner submitted printouts from the websites of the Palm Beach and the Daniel hotels and letters from three patrons and two mayors thanking the petitioner for her work at the Palm Beach Hotel. However, the record contains no evidence from either of these hotels specifically describing the petitioner's position and affirming her purportedly leading or critical role. In addition, the documents related to the petitioner's work at the Palm Beach Hotel are dated between 1996 and 1999, at least four years before her petition was filed, and do not reflect the requisite sustained acclaim. On appeal, the petitioner submits a letter from Doron Keren, Chief Executive Officer of the Jordan River Hotel in Tiberia, who knew the petitioner as a hotel management student and later as the "Head of the Banquet Department at Dan Hotel chain. [REDACTED] states that the petitioner's "highly professional services increased the revenues of the hotel and placed it at the highest level of Banquet and Convention centers." The record contains no corroborative evidence of the petitioner's work for the "Dan Hotel chain" or any explanation that this name refers to the Daniel Hotel where the petitioner was employed as the food and beverage manager.

Many of the submitted newspaper articles discuss the Place at the Sea, report on notable events held at this venue and credit the petitioner as the manager of the establishment. In their letters submitted on appeal, Mr. [REDACTED] and [REDACTED] owners of the Place at the Sea, affirm the important role that the petitioner played in the establishment and development of this establishment. However, both [REDACTED] state that the petitioner's employment with the Place at the Sea ended in October 2000, nearly four years before this petition was filed and the relevant newspaper articles are also dated between 1999 and 2000. Hence, even if the

petitioner performed a leading or critical role for the Place at the Sea, the record does not establish that the acclaim she achieved in that role was sustained through her subsequent work at other establishments. Accordingly, the petitioner does not meet this criterion.

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

The record contains excerpts from the petitioner's employment contracts. The first contract is dated July 20, 1999 and memorializes the petitioner's employment as the general manager for Hof Zur Acco Limited at a "base gross salary of 11000 NIS a month" with additional benefits of 600 NIS each month for gas expenses and 3000 NIS a year for clothing. The second contract is between "the Danielle Hotel Ltd." and the petitioner and states, "made and signed this ... day of ..., 2000." The contract secures the petitioner's employment as the food and beverage manager for "a monthly gross salary of 8,000 NIS" with additional compensation of 750 NIS a month for overtime and the same amount for weekends and holidays, and "A Bonus of 1,500 NIS (Gross) a month." The third contract is dated November 25, 2001 and was executed between "Sun R.I.T. Properties Ltd." and the petitioner, for her employment as a general manager at a base salary of "15500 NIS once a month" to be increased to "16800 NIS" after six months.

On appeal, the petitioner submits a second letter from Mr. Keren confirming that the gross salary including benefits of the food and beverage director at the Jordan River Hotel in Israel as of January 2005 was 9200 Israeli shekels per month. Another letter submitted on appeal from Sharon Alon, General Manager of the Magic Sunrise Club states that the food and beverage director's salary at this club is 10,000 Israeli shekels per month. The submitted printout from the website of Fattal, the hotel chain that owns the Magic Sunrise Club, describes the club as "A Luxury Resort Village Between Desert and Sea The Magic Sunrise Club Eilat is a deluxe, 5-star two-story resort." This evidence shows that the petitioner commanded a salary above that of a food and beverage director at one five-star resort and another hotel in Israel. Yet the record does not persuasively demonstrate that the petitioner's documented salaries were consistently above those of other food and beverage or general managers, or comparable to such managers at the top of their field in Israel. The record thus does not establish that the petitioner has been compensated in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), 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 evidence in this case indicates that the petitioner was a successfully employed food and beverage manager in the hospitality industry in Israel who was mentioned in numerous Israeli newspaper articles. However, the record does not establish that the petitioner achieved sustained national or international acclaim as a manager at the very top of her field. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.