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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]
WAC 04 133 51250

Office: CALIFORNIA SERVICE CENTER

Date: NOV 28 2005

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

R 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 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, counsel submits a brief but no additional evidence. We uphold the director's decision for the reasons discussed below.

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 in the arts as a visual artist and graphic designer. At the time of filing, the petitioner was employed in the United States by Art Territory, LLC (hereinafter, "Art Territory") as an art director. The petitioner submitted supporting documents including evidence of his academic credentials, his exhibitions, copies of his artwork, newspaper articles and 16 letters of recommendation. On appeal, counsel submits a four-page, unsigned brief and no additional evidence. Counsel's claims do not overcome the deficiencies of the petition and the appeal will be dismissed. We address

the evidence submitted and counsel's contentions 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.

Counsel initially claimed that the petitioner met this criterion because his work was included in the "Wild Thornberrys Movie" and because he created graphic designs for compact discs, books and other commercial products. Counsel misreads the regulation. Published work *by* the alien does not meet this criterion, which pertains only to published material *about* the alien.

As additional evidence of his eligibility under this criterion, the petitioner submitted copies of numerous newspaper articles purportedly about him. All but one of these articles is printed in Lithuanian. The petitioner submitted English translations of one to five sentences from seven articles, but these translations are not complete or certified by the translator. Because the petitioner failed to submit complete and certified translations of the Lithuanian articles, we cannot determine whether these documents support the petitioner's claim. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner submitted one article printed in English. This article was published in the October 1, 2003 edition of the *Armenian Observer* and is entitled "Hollywood Stage Variety Show to Showcase Two Local Armenian Talents." The article states that the show will include an art exhibition with the work of the petitioner and five other visual artists, but does not otherwise discuss or focus on the petitioner's work. In addition, the record contains no evidence that the *Armenian Observer* is a form of major media. Accordingly, the petitioner 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.

On appeal, counsel claims that the recommendation letters attest to the petitioner's "great contributions to the field of art" and that the director did not accord the letters the proper weight. Counsel contends that the letters "show that not only has the Petitioner made significant contributions in his field, but that he is a leading innovator in both commercial and exhibition art." The record does not support these claims. The petitioner submitted 16 support letters from individuals who have worked with him or are familiar with his work. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

[REDACTED] firm that the petitioner was a background designer and character layout artist for [REDACTED] on the "Wild Thornberrys Movie." While they attest to the petitioner's talent, creativity and artistic skills, none of these individuals identify any

original, major contributions that he has made to the animation field. Lev Moross and Jerry Solomon of Art Territory, a fine art printing studio and the petitioner's employer, commend the petitioner's talent and "exceptional work" as art director for their company. Similarly, Andrew Laspino of Evolution Art Group, LLC, an art publishing company, states that he has worked with the petitioner at Art Territory and praises the petitioner's artistic, creative and professional abilities. Yet Mr. Moross, Mr. Solomon and Mr. Laspino do not identify any original, major contributions that the petitioner has made to the field of art printing and publishing.

Other letters describe the petitioner's accomplishments in his native Lithuania and are dated in 2001. Lolita Varanaviciene, Director of TYTO ALBA Publishing House, praises the petitioner's skills and states that he designed covers for the Lithuanian editions of several foreign books published by TYTO ALBA that helped the books sell well. Aivaras Laukaitis, Director of *Mažasis Vyturys*, Ltd., and Eglė Drevinskienė, Director of AB *Baltogji Arka*, also affirm the petitioner's successful design work for publishing houses in Lithuania. Edvinas Pocius, Director of the UAB Verda VI Tele Bim Bam Club, states that the petitioner did design work for the children's television program, "Tele Bim Bam" and its parent company. Rimantas Pupeikis, Director of the Vilnius Record Studio, states that the petitioner also designed the covers of several successful classical music recordings for his studio. Daiva Šniukaitė, Baby Friendly Hospital Initiative (BFHI) Program Director for the Lithuanian National Committee for the United Nations Children's Fund (UNICEF), states that the petitioner designed several placards for the BFHI and was selected to create a design for the UNICEF Kosovo Campaign in 2000. While these letters indicate that the petitioner was a successful graphic designer in Lithuania, they do not establish that he made any original contributions of major significance to graphic design in Lithuania or abroad.

Two other letters attest to the petitioner's contributions to Lithuanian-American cultural activities since his arrival in the United States. Stasys Maksvytis, President of Lithuanian-American Community, Inc. states that the petitioner plays an important role in the community's cultural events. [REDACTED] and [REDACTED] of the Lithuanian Los Angeles Drama Ensemble, state that the petitioner has made a "great contribution to the success" of their theatrical productions. Again, neither of these letters demonstrates that the petitioner has made original and major contributions to his field.

The record contains no evidence to corroborate the letters' assessments of his achievements. The petitioner submitted unlabeled printouts of his animation work, photographs of his mixed media artwork, copies of his compact disc, book cover and other graphic designs, and copies of cards for three exhibitions of his work in Los Angeles. The record contains no evidence that any of this work has been critically acclaimed in Lithuania or the United States, has significantly influenced other visual artists or graphic designers, or has otherwise made a substantial impact on the petitioner's field. The evidence submitted does not establish that the petitioner has made original, major contributions to his field in a manner consistent with sustained national or international acclaim. 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.

Frequent exhibition or display of artwork is intrinsic to most artistic professions. 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. In this case, the record documents four exhibitions of the petitioner's work in Los Angeles at the Women's Club of Hollywood, "Lithuanian Community," and the Klasky Csupo Gallery

between 2002 and 2003. The record contains no evidence that these exhibitions were critically acclaimed, received recognition across the United States, or were otherwise notably recognized by the visual arts field in the United States or abroad. The petitioner submitted no evidence that he has participated in major national or international exhibitions in a manner consistent with the requisite sustained acclaim. Accordingly, he 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.

Counsel claims the petitioner meets this criterion because the recommendation letters state that he has worked with UNICEF, is “one of the most famous and popular artists of his time” in Lithuania and “has worked for several leading animators in the United States.” The record does not support this claim. As explained under the fifth criterion, recommendation letters alone cannot suffice to demonstrate an alien’s eligibility for immigrant classification as an alien with extraordinary ability without significant corroborative evidence of the alien’s achievements. In this case, the recommendation letters state that the petitioner has done valuable work for certain organizations and companies in Lithuania and the United States that contributed to the success of some of these establishments or some of their individual projects, but the letters do not establish that the petitioner performed a leading or critical role for the organizations and companies as a whole.

Ms. Šniukaitė, affirms that the petitioner has created designs for the Lithuanian National Committee for UNICEF and has “revealed himself to be a right, responsible and creative artist to fulfil [sic] the specific tasks in specific areas.” [REDACTED] does not state that the petitioner performed a leading or critical role for the Lithuanian National Committee for UNICEF as a whole and the record contains no other evidence of the petitioner’s involvement with UNICEF.

Director Drevinskienė, of *AB Baltogji Arka*, states, “Our success for selling books (we sell twice more than similar publishing houses in Lithuania) belongs to the genius of Sigitas Šniras.” Director Pupeikis, of the Vilnius Record Studio, also states that “[t]he art of SIGITAS ŠNIRAS was a passport to success of Lithuanian CDs.” The record contains no corroborative evidence of the petitioner’s role at *AB Baltogji Arka* and the Vilnius Record Studio or that the commercial success of these companies is directly attributable to the petitioner’s work. Even if documented, the petitioner’s role at these companies is not consistent with the requisite sustained acclaim. Both letters are dated in May 2001, four years before this petition was filed, and the record contains no evidence that the petitioner continued to work for either company after his departure from Lithuania to the United States. In addition, the record contains no independent evidence that either *AB Baltogji Arka* or the Vilnius Record Studio has a distinguished reputation.

Ms. Malanitchev and Mr. Lurie, of Klasky Csupco, affirm that the petitioner worked on “The Wild Thornberrys Movie.” Ms. Malanitchev states that the petitioner’s “talent contributed greatly to the successful look of our film.” Mr. Lurie similarly states that the petitioner’s “talent contributed greatly to the successful outcome of our film.” Yet even if the petitioner played a critical role in the production of “The Wild Thornberrys Movie,” the record contains no evidence that he performed a leading or critical role for Klasky Csupco as a whole, beyond the company’s work on this single animated film. The record also contains no independent evidence of Klasky Csupco’s reputation within the animation industry.

The evidence submitted indicates that the petitioner has made valuable contributions to successful companies in Lithuania and one animated film in the United States, but the record does not demonstrate that he

performed a leading or critical role for any organization or establishment in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Although this criterion pertains to the performing – not visual – arts, counsel claims the petitioner is eligible under this category. The regulation at 8 C.F.R. § 204.5(h)(4) allows consideration of comparable evidence of an alien's eligibility only when the ten criteria listed at 8 C.F.R. § 204.5(h)(3) “do not readily apply to the beneficiary’s occupation.” Counsel does not demonstrate that the other criteria do not readily apply to the petitioner’s occupation and in fact, claims that the petitioner meets four of the other criteria at 8 C.F.R. § 204.5(h)(3).

Even if we considered the relevant material as comparable evidence of the petitioner's eligibility under this category, the record does not support counsel’s claim. On appeal, counsel claims the petitioner satisfies this criterion because he “worked on the *Rugrats* and *Wild Thornbury’s* [sic] movies,” yet the record only verifies the petitioner’s work on “The Wild Thornberrys Movie.” Counsel continues, “The officer states that there has been no evidence of the commercial success of those movies. Certain notorious facts that are common knowledge may be used to asses [sic] the validity of a claim. The movies mentioned in the submission are widely known and were viewed by the masses.” While “The Wild Thornberrys Movie” may have been shown across the United States, its wide distribution is not *prima facie* evidence of the film’s commercial success. As the director correctly stated, the record is devoid of any evidence of the commercial success of “The Wild Thornberrys Movie” and counsel’s mere assertion is inadequate. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, the letters of Ms. Malanichev and Mr. Lurie do not persuasively demonstrate that the alleged success of “The Wild Thornberrys Movie” was directly attributable to the petitioner’s work. 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 has been successfully employed as a graphic designer in Lithuania and as an animator and art director in the United States. However, the record does not establish that the petitioner has achieved sustained national or international acclaim as a visual or graphic artist placing him at the very top of his field. He 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 his 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.