



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: SEP 06 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.

Maui 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 (AAO) 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 business and the arts. The director determined the petitioner had not established 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 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on September 9, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a "Spanish/English Advertising Creative Writer."

On appeal, counsel states that Citizenship and Immigration Services (CIS) "misinterpreted the field of the beneficiary's endeavor. The Beneficiary is stated to be an alien of extraordinary ability in the field of Creative Writing which falls within the realm of any discipline that requires creativity in writing, such as advertising, copy writing, screenplay writing among others."

The director's reliance on information provided under Part 6 of the Form I-140 petition is not in error. In this section of the I-140 petition, counsel, who prepared the form at the request of the petitioner, listed the "nontechnical description" of the petitioner's job as a "writer of advertising and marketing campaigns for the

Hispanic community.” Furthermore, there is no indication that the director’s decision overlooked the evidence related to the petitioner’s screenplay (for example, page 3 of the director’s decision includes a detailed discussion about “Perfume and Thorns”).

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 pertaining to 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 submitted a letter from [REDACTED] “Director of the Independent Feature Film Market, the founding program of the Independent Feature Project (IFP).” He states:

IFP Market has showcased the work of talented filmmakers living in the U.S. since 1979.

[The petitioner’s] excellent screenplay “PERFUME AND THORNS” was selected from 200 submissions to participate in the IFP Market in 2000. The selection committee felt that the strong lead character and dramatic story indicated good prospects for its potential acquisition for independent production.

The record, however, contains no evidence showing that the petitioner’s screenplay actually went to production.

A letter from Noelle Deschamps, Founder and Vice-President of Association Equinoxe in France, states:

[W]e hold and entirely fund two international screenwriters workshops twice a year.

I had the chance to meet [the petitioner] when her excellent script “PERFUME AND THORNS” was selected over 1,000 scripts to participate in the March 2001 screenwriting workshop. She made it to a short list of 25 and then was finally invited, with a selective group of 8 talented writers from around the world, to attend a week-long session in Bordeaux, France.

The purpose this workshop is to develop the scripts selected with the help of internationally renown [sic] advisors such as writer/producer [REDACTED] (“You’ve got mail”), writers [REDACTED] (“Dances with Wolves”), [REDACTED] (“Unforgiven”) and [REDACTED] (“Driving Miss Daisy”), among others. Once the script has been polished we help the writer produce her movie.

A March 6, 2002, letter from [REDACTED] an internationally renowned film director, states that “Perfume and Thorns’ was selected among 300 scripts to attend the prestigious EQUINOXE workshop in France.” This number is significantly lower than the 1,000 scripts cited in [REDACTED] letter. The petitioner has not resolved this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19

I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

further states that Equinoxe "develops the screenplays of talented young writers all over the world, in order to turn them into movies."

On appeal, the petitioner submits a second letter from dated December 6, 2004, which provides further information about the Equinoxe symposium, stating:

The selected 16 writers that have the opportunity to be granted this experience every year are not necessarily young writers.

* * *

The chosen writers (of whom 300 were initial candidates) are flown to France, lodged in a castle for 5 days and work with some of the most accomplished experts in the industry worldwide, to help the writers polish their scripts.

concludes his letter by acknowledging that the petitioner was unable to find a company to produce "Perfume and Thorns."

The petitioner's selection to participate in the above developmental workshops for amateur screenwriters do not constitute nationally or internationally recognized prizes or awards for excellence in her field. We note that the preceding workshops are intended for novice screenwriters rather than for experienced professionals in the filmmaking industry. The purpose of such workshops is to allow screenwriters to perfect their scripts and to benefit from advice given on an individual basis by experienced professionals. letter does not refer to the petitioner as one "of the most accomplished experts in the industry." As stated previously, the visa classification sought by the petitioner is for that small percentage who have already "risen to the very top of the field of endeavor" (such as and for example). See 8 C.F.R. § 204.5(h)(2). In this instance, we do not accept that participation in a mentoring program (which provides tutorship and consultancy assistance for writers of independent films) elevates the petitioner to the very top of her field or represents national or international recognition for excellence in screenwriting. As noted by the director, there is no evidence showing that the petitioner's independent film was ever produced. While a screenwriter whose independent film wins a prize at the Sundance or Cannes film festivals would most likely satisfy this criterion, in this instance, the petitioner's workshop participation falls well short of distinguishing her from established professional screenwriters whose work actually makes it to a national audience.

For the reasons set forth above, the evidence presented by the petitioner fails to show that her participation in the IFP Market in 2000 and the Equinoxe screenwriting workshop in 2001 are "nationally or internationally recognized prizes or awards for excellence" in screenwriting.

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 for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major media*. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner's submission of published materials included copies of several articles with only one-sentence partial English language translations. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a *full English language translation* that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. With the exception of the article in *Correio Braziliense*, the petitioner's Spanish language articles fail to meet this requirement.

We note that the article in *Correio Braziliense* is primarily about [REDACTED] a Brazilian Executive Producer, rather than the petitioner or her work.

The petitioner submitted incomplete translations of articles appearing in *Anuncios* in 1988, 1989, 1990, 1991, and 1992. None of the published materials devote more than a few sentences to the petitioner. In many of the articles, the petitioner herself was clearly not the primary subject of the published material. The plain wording of this criterion, however, requires "published materials about the alien." If the petitioner is not the primary subject of the material, then it fails to demonstrate her individual acclaim. We further note that the statute and regulations require the petitioner's acclaim to be *sustained*. There is no indication that the petitioner has been the main subject of any articles published subsequent to 1992, or that she has received any U.S. media attention subsequent to her arrival in this country in 1994. Finally, there is no quantitative data indicating the volume of readership of the publications that briefly mention the petitioner.

In conclusion, we find that the evidence presented by the petitioner is not adequate to show that she has been the primary subject of *sustained* major media attention.

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 submitted materials indicating that she served as one of 23 members on the judging panel for the Visual Club of New York City's "2nd Annual Hispanic Creative Awards" in 1996. The weight of this evidence is somewhat diminished because there is no evidence of the petitioner's participation as a judge of

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

the work of others in her field subsequent to 1996. One-time participation on a local panel of numerous judges does not automatically demonstrate that the petitioner has earned *sustained* national or international acclaim at the very top of her field. The director's decision noted that "this one instance of acting as the judge of others six years prior to the filing of the petition" was not adequate to satisfy this criterion. The petitioner's appellate submission does not challenge the director's finding.

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

The petitioner submitted letters of support from individuals who have collaborated on various projects with the petitioner or worked with her at one time or another. These letters indicate that the petitioner has performed admirably for her employers and their clients, but her ability to significantly impact her industry in general has not been adequately demonstrated.

The petitioner submitted a January 23, 2002 letter from [REDACTED] who at that time was Creative Director at The Bravo Group, the Hispanic branch of the advertising agency Young and Rubicam. [REDACTED] states:

[The petitioner] has been collaborating with us as a copywriter since 1998, through the company Five, Image Factory, for major clients such as AT&T, Kraft, Advil and Centrum. Her outstanding writing abilities and her insightful understanding of the Hispanic market, made me require her services in 1999 for a project that would become one of the largest accounts in the agency: the Youth Smoking Prevention Campaign (YSP) for Philip Morris.

This print campaign, which is still running in magazines, was aimed to Hispanic teenagers between the ages of 9 and 12 to prevent them from starting smoking. It was a big project that required [the petitioner's] full-time collaboration for a whole year.

* * *

The complete campaign has being [sic] entered in renowned advertising competitions such as Advertising Age's Hispanic Awards and Communication Arts among others.

The record, however, contains no evidence showing that the petitioner's work for the campaign resulted in any major awards.

[REDACTED] Vice President and Group Creative Director, The Bravo Group, states:

For the Bravo Group . . . [the petitioner] was the creator of the Youth Smoking Prevention campaign for magazines that resulted in positioning Philip Morris as the third largest account of the agency. More importantly, her brilliant, creative and persuasive work resulted in reducing youth smoking among Hispanic teens by 38.5%, a major health contribution to the Hispanic community (Documented in the *Teenage Attitudes and Behavior Study* conducted by Philip Morris USA).

The record, however, contains no statements from any Philip Morris executives indicating that the petitioner was primarily responsible for the success of the Youth Smoking Prevention campaign. Nor has the petitioner provided any excerpts from the *Teenage Attitudes and Behavior Study* that specifically credit the petitioner for the reduction in teen smoking.

The petitioner's appellate submission includes a paid promotional piece in the "Special Advertising Section" of *Advertising Age*, which consists of various testimonials from Bravo Group clients, including one from [REDACTED] Sansone, Senior Communications Manager, Youth Smoking Prevention Group, Philip Morris USA, who states:

We hired Bravo in 1998 to help us with the complex problem of convincing kids not to smoke.

* * *

What impresses me about Bravo is my sense that I have the resources of their whole creative department behind my project. I meet a new creative person at nearly every meeting. They seem to open the project up to everyone in the agency, and if someone has a good idea, they incorporate it.

My team leader is [REDACTED] . . . who is a great asset in focusing the team. Along with his right-hand person [REDACTED] (account supervisor), the two of them manage the process and keep us on track. The head creative on our account, [REDACTED] (VP-creative director), brings an intensity and spirit to the work.

* * *

[REDACTED] (creative supervisor) does a lot of the writing, and she sometimes brings me to tears with some of her writing. Another person who's made an impact is [REDACTED] . . .

They make up the core of our team, but there are many others who contribute to the effort.

[REDACTED] does not indicate that the petitioner served as a "core" team member on the Youth Smoking Prevention campaign. We cannot ignore that [REDACTED], rather than the petitioner, is the individual who is credited with doing "a lot of the writing" for this campaign.

[REDACTED] President and Creative Director, [REDACTED] Design Group, states:

I have known [the petitioner] since she arrived in this country in 1994. The extraordinary quality of her writing work and her extensive experience in the Hispanic advertising market, drew me to team up with her in many advertising projects for clients such as AOL and Amtrak.

Three years ago we started a prolific collaboration as creative directors under the name "El Equipo" – The Team.

* * *

Arnold Worldwide entrusted us with the creation of the first print and radio campaign from Amtrak targeted exclusively at the Hispanic market. The client praised our creativity and the ads appeared in many newspapers and radio stations throughout the U.S. Amtrak told us that it was one of the most successful campaigns they have ever run.

The record, however, contains no information from senior officials at Amtrak to corroborate the preceding assertion.

We accept that the petitioner is an effective advertisement copy writer, but there is no evidence indicating that the petitioner's impact on the industry extends beyond her immediate employers and their clients. Many of the witness letters describe the petitioner as a talented creative writer, but the information provided is not adequate to demonstrate that the petitioner's individual contributions have significantly influenced the film or advertising industries. The issue here is not the skill level, professional experience, or educational qualifications of the petitioner, but, rather, whether any of her past endeavors would qualify as a contribution of major significance in her field. In this case, the record does not indicate the extent of the petitioner's influence on other writers/filmmakers outside of her immediate circle of collaborators.

We cannot ignore that all of the letters of support were from individuals affiliated with creative projects involving the petitioner. With regard to the personal recommendation of individuals with ties to the petitioner, the source of the recommendations is a highly relevant consideration. Such letters are not first-hand evidence that the petitioner has earned sustained acclaim for her contributions outside of the organizations with which she is affiliated. If the petitioner's reputation is primarily limited to those with whom she has worked, then she has not achieved national or international acclaim regardless of the expertise of her witnesses. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. In conclusion, we find that the documentation presented in regard to this criterion is not adequate to support a finding that the petitioner's work as creative writer is nationally or internationally acclaimed throughout the film or advertising industries as a major contribution.

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

This particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for advertisement copy writers such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Given that the petitioner is a copy writer in the advertising industry, the petitioner would not satisfy this criterion simply by demonstrating that her work has been featured in the print or broadcast media.

Documentation in the record indicates that the alien is the beneficiary of an approved O-1 nonimmigrant visa petition. However, extraordinary ability in the nonimmigrant context means distinction, which is not the same as sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes the nonimmigrant O-1 criteria less restrictive for a beneficiary in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel CIS to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or binding precedent that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien already holds an O-1 nonimmigrant visa. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church of Scientology Intl.*, 19 I&N Dec. 593, 597 (Comm. 1988).

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. In this case, the petitioner has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself as a creative writer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at the national or international level. 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.