



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

*Br*



FILE: EAC 04 077 50490 Office: VERMONT SERVICE CENTER Date: SEP 09 2005

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:



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 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 education. 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 in education, specifically in the field of communications. The petitioner submitted 19 supporting documents with her petition, which was received by the Vermont Service Center on January 22, 2004. On appeal, counsel claims that the petitioner submitted additional supporting materials on November 3, 2004 that were not considered by the director in his decision. We have reviewed the entire record and address the evidence submitted and counsel's claims in the following discussion of the regulatory criteria relevant to the petitioner's case.

*(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 petitioner does not claim eligibility under this criterion, but the record contains relevant evidence which merits brief discussion. The record indicates that the petitioner taught communications classes at four academic institutions in Brazil. In her supplementary submission, the petitioner states that the Salgado de Oliveira University also “invited [her] to be part of the examining board to evaluate the theses of the graduating classes,” but the record contains no evidence that she served on this examining board. 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)).

The petitioner’s teaching undoubtedly required her to judge the work of her students. However, 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 the communications field in a manner significantly outside the general duties of her teaching positions and reflective of 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 claims eligibility under this criterion through her accomplishments in seven positions that she held in Brazil. First, on page two of her “Supplementary Presentation,” the petitioner states that she was a traveling consultant and post-graduate professor for the Institute of Advanced Research in Education (IPAE) where she “created and administered courses at-a-distance through the Internet for the state directors of SENAC, the National Learning Services for Commerce, in four states.” The record contains a letter from the President of IPAE, who affirms that the petitioner worked for the Institute as “a traveling Consultant and Professor of Marketing in Education for the Post-graduate Courses of [IPAE], under the sponsorship of the national organization SENAC.” The letter explains that from 1998 to 2000, the petitioner “administered courses with the textbooks she authored: Web writing, Techniques for Creating Internet Texts, Introduction to the Techniques of Publicity and Advertising I and II and Business Communications.” The record contains a “Declaration of Remuneration” stating that the petitioner received \$800 *Reais* from IPAE for teaching the course, Marketing of Education. The petitioner also submitted a document entitled “Web Writing Course: Creative Techniques for the Web by Carmen Brasil.” Although the petitioner has labeled this document as “Evidence of Textbook authorship #2g,” it appears to be a course syllabus and includes headings such as “Prerequisites,” “Class Hours,” and “Maximum Number of Students.” The record contains documents describing textbooks for three of the other courses listed in the IPAE letter. None of these documents are photocopies of actual textbooks and they include no international standard book numbers or other evidence that they represent published textbooks. Even if the described textbooks were published, the petitioner submitted no evidence that the books have been cited or that her work at IPAE was otherwise recognized as making major contributions to her field in a manner consistent with the requisite sustained acclaim.

Second, the petitioner claims that at the Salgado de Oliveira University she “worked in conjunction with the Federal Department of Education & Culture to organize and set up a new department of Social Communications.” The petitioner submitted a “Declaration” from the University stating only that the petitioner was “a professor of Social Communications from august [sic] 17, 1996 to February 22, 2000.” The record

contains no evidence that the petitioner received national recognition in her field for her work at the University or any other evidence that her work there made major contributions to her field.

Third, the petitioner states that she “lectured at the famous ETEC, the Technical School of Communications of Rio de Janeiro, Brazil” and explains that “[t]hrough The Internet, videos and original resources, [she] prepared the students to work in publicity and advertising and creative communications.” The record contains a “Declaration” on ETEC letterhead stationary, which states, “Carmen Vera da Silva Brasil . . . was a Professor of Publicity from February 26, 1996 to December 28, 2000.” The declaration notes that the petitioner “had an excellent moral and professional conduct,” but does not substantively discuss her work as a professor or any contributions that she made to her field while employed by ETEC.

Fourth, the petitioner claims that “[t]hrough the Virtual School of Rio de Janeiro, I have credit for being one of the first persons in Brazil to implement and coordinate courses entirely through the Internet.” The petitioner submitted printouts from the website of the Virtual School that contain course descriptions for “Business Communication” and “Publicity Techniques.” The petitioner is listed as the “Author” for both of these courses, but the record does not corroborate the petitioner’s claim of being a pioneer of courses taught through the Internet in Brazil. 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)).

Fifth, the petitioner claims she was frequently invited to lecture at various educational and business establishments. The record contains a list of five lectures given by the petitioner in Rio de Janeiro, Brazil between 1995 and 1998, but the petitioner submitted no corroborative documentation of these lectures or any other evidence that her presentations had a major impact in her field throughout Brazil.

Sixth, the petitioner states that as director and editor of the Perform Publishing Company of Rio de Janeiro, she “was responsible for the publications of large institutions.” The record documents just one example of this work, a copy of *Nova Imagen*, a monthly magazine published by the Association of the Employees of the Worker Justice Department in Rio de Janeiro. The submitted copy of the first edition of *Nova Imagen* lists the petitioner as “Responsible Head Editor” and “Journalist” and contains a forward and four articles written by the petitioner. Yet the record contains no evidence that this single edition of *Nova Imagen* made a major contribution to the petitioner’s field in Brazil.

Finally, the petitioner claims that as the Communication Resource Specialist for the Bizzi Communications and Marketing Company, she used “advertising, merchandizing and sales promotion techniques for a variety of businesses,” but the record documents her work for only one company. The record contains a copy of a promotional brochure for the Clinical Hospital of the Lagos Region, which identifies the petitioner as “Responsible Head Editor.” The petitioner submitted no evidence that this brochure or any of her other purported work for the Bizzi company made a major impact in her field.

The record documents the petitioner’s employment as an instructor for academic institutions and as an editor of one edition of a magazine and one promotional brochure. On appeal, counsel contends that the director did not consider “the merit and influence of petitioner’s publications and other achievements in Brazil.” Counsel submits no additional evidence to corroborate this alleged “merit and influence,” but simply cites evidence previously submitted, which we addressed in our above discussion. Beyond verifying the petitioner’s

employment, the record does not indicate that the petitioner has made any major contributions to her field in a manner consistent with the requisite sustained acclaim. Accordingly, she does not meet this criterion.

*(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

As discussed above under the fifth criterion, the record contains copies of an undated edition of *Nova Imagem* which lists the petitioner as "Responsible Head Editor" and "Journalist" and contains a forward and four articles written by the petitioner. The record contains English translations of only the forward and an interview conducted by the petitioner. Neither of these manuscripts are scholarly articles in the petitioner's field of communications. Rather, the forward is a three-paragraph introduction to the first edition of *Nova Imagem*, a periodical of the Association of the Employees of the Worker Justice Department, and the second is the transcript of an interview with a labor union leader. In addition, the submitted English translation of this magazine does not include the periodical's publisher, publication or circulation information and the record contains no other evidence that *Nova Imagem* is a professional or major trade publication in Brazil.

As further evidence under this category, the petitioner cites the promotional brochure for the Clinical Hospital of the Lagos discussed above under the fifth criterion. This brochure lists the petitioner as "Responsible Head Editor," not author. Yet even if the petitioner wrote the brochure's text, it does not constitute a scholarly article in her field. Rather, as the petitioner explains in her supplemental letter, the brochure was used "as a marketing tool." Hence, the brochure is an example of the petitioner's work product. It is not a scholarly article in her field that was published in a professional, major trade journal or other major media.

The petitioner also claims eligibility under this criterion through her "authorship" of communications courses and textbooks. As discussed above under the fifth criterion, the record contains copies of syllabi for three courses taught by the petitioner at various academic institutions in Brazil and documents that summarize the contents of four textbooks allegedly written by the petitioner. One of these documents, entitled "Web Writing Course: Creative Techniques for the Web," appears to be a course syllabus even though it is labeled, "Evidence of Textbook authorship #2g." None of the course syllabi or "textbook" documents include any evidence that they were printed in professional, major trade publications or other major media.

Finally, the petitioner submits a list including five articles which she purportedly authored that were published in the *Communication Newsletter* of the Salgado de Oliveira University in Rio de Janeiro. The record contains no copies or other documentation of these articles or evidence that *Communication Newsletter* is a professional or major trade publication in Brazil.

On appeal, counsel notes that "although some of her publications may not be considered 'articles,'" the petitioner's work warrants "consideration under the evidentiary catchall of 8 C.F.R. § 204.5(h)(4)." Despite counsel's characterization, this regulatory provision of 8 C.F.R. § 204.5(h)(4) is not an "evidentiary catchall." To the contrary, the comparable evidence provision is invoked only when the criteria listed at 8 C.F.R. § 204.5(h)(3) "do not readily apply to the beneficiary's occupation." Counsel does not explain and the record does not demonstrate that the petitioner's occupation is unique, abstruse or otherwise warrants the consideration of comparable evidence. In fact, the record in this case shows that at least five of the criteria at 8 C.F.R. § 204.5(h)(3) are applicable to the petitioner's occupation as a communications educator and professional.

The record contains no evidence that the petitioner has written scholarly articles in her field that have been published in professional, major trade publications or other major media. Consequently, she 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 petitioner claims to meet this criterion by virtue of her former affiliations with IPAE, SENAC, Salgado de Oliveira University and the Virtual Internet School. The record verifies the petitioner's employment with IPAE as a traveling Consultant and Professor of Marketing in Education for graduate courses, under the sponsorship of SENAC. Yet even if IPAE and SENAC have distinguished reputations, the record does not demonstrate that the petitioner played a leading or critical role for either organization. The only documentation of the petitioner's work is the aforementioned letter from IPAE, which simply verifies the petitioner's employment. The letter does not substantively discuss the petitioner's work or otherwise describe the petitioner as performing a leading or critical role for the Institute as a whole. The petitioner also submitted a printout from the website of SENAC, but the document does not identify her and states that the institution employed 15,571 professors in 2003.

Similarly, the record verifies the petitioner's employment as a Professor of Social Communications at Salgado de Oliveira University from 1996 to 2000, but does not corroborate the petitioner's claim that she "set up their new department of Social Communications." Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Similarly, the record shows that the petitioner taught two courses for the Virtual Internet School, but does not corroborate the petitioner's claim that she "was their communications' [sic] specialist both for formal courses and special training for business enterprises." Again, simply going on record is not sufficient to meet the burden of proof in these proceedings. *Id.* On appeal, counsel contends that the petitioner "was one of the first people in Brazil to pioneer the technology of the internet for use not only in the classroom, but as a classroom, and The Virtual School has been a major organization in Brazil's technological transition." The submitted printout from the website of the Virtual School does not confirm this statement and the record is devoid of any other evidence to corroborate counsel's claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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 a document indicating that the petitioner received a gross income of \$1,076.46 *Reais* for November 2000 as a professor at the Virtual School and a receipt affirming that the petitioner received \$800 *Reais* for teaching a class for IPAE on November 11, 2000. In her supplementary statement, the petitioner states that at that time "the regular salary in Brazil was R\$151.00 a month for forty hours." Yet the relevant comparative income is not the regular Brazilian salary, but the income of other educators in the petitioner's field. The record contains no evidence that the petitioner's remuneration was significantly higher than other educators in her field or comparable to educators at the very top of her field. Moreover, even if the petitioner's income was significantly high in November 2000, the record contains no evidence that she continued to

command a similar salary in the three subsequent years prior to the filing of this petition. Accordingly, the petitioner does not meet this criterion.

The record also contains several documents regarding the petitioner's activities since her arrival in the United States in 2001. Congressman Michael H. Michaud states that the petitioner "has contributed significantly to the social and cultural fabric of this ever changing, and diverse community. Her multicultural and multilingual communication skills are very rare indeed and are much needed as this community continues its growth and diversification. We need more individuals like Carmen to help us foster mutual understanding and tolerance in these ever [sic]." Jill Moreau, Lewiston Maine Even Start Family Literacy Program Coordinator, states that the petitioner has participated in her program for a year and that the petitioner "has the capability and resources to meet the growing need we have as a community." Christine M. Adler of Androscoggin Head Start and Child Care explains that the petitioner attended a five-week training at Androscoggin for substitute caregivers. These letters indicate that the petitioner has been an active and valued member of her community in Lewiston, Maine and that she continues to seek opportunities in her field in this country. However, the letters do not demonstrate that the petitioner has achieved any recognition for her work in the United States outside of the city where she currently resides. The record thus indicates that the petitioner did not achieve sustained national acclaim in Brazil and has not garnered national acclaim for her subsequent work in the United States.

The record also includes support letters from Charlie Swett of the Internal Revenue Service and Anita Clearfield, Television Producer at Maine Public Broadcasting Corporation. We cannot consider this evidence because the record indicates that the petitioner's accomplishments discussed in the letters arose after her petition was filed. The 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* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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 taught communications courses for academic institutions in Brazil and also worked as an editor. However, the record does not establish that the petitioner has achieved sustained national or international acclaim placing her 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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.