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FILE: [REDACTED]
SRC 05 011 51533

Office: TEXAS SERVICE CENTER Date: **SEP 21 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:

SELF-REPRESENTED

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.

5 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 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 or her 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 he has earned sustained national or international acclaim at the very top level.

This petition, filed on October 15, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a handbag designer. The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since December 1999. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a handbag designer in this country.

In support of the petition, the petitioner submitted six photographs of what are alleged to be his handbags. This evidence, however, was not sufficient to demonstrate the petitioner's sustained national or international acclaim, or that his achievements have been recognized in his field of expertise. On November 3, 2004, the

director denied petition, finding that the petitioner's evidence did not satisfy any of the criteria at 8 C.F.R. § 204.5(h)(3).

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. On appeal, the petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner submits an August 2002 calendar of events for The City Gallery in Leicester, England. Citing an exhibition entitled "Shoe" scheduled "Until 24th August 2002" the calendar of events states: "From [the petitioner's] [redacted] Handbag' to [redacted] there's something here for everyone." It must be stressed that an individual does not satisfy this criterion simply by arranging for his work to be displayed; otherwise most, if not all, designers would satisfy this criterion, rendering it meaningless. Without a letter of confirmation originating from an official of The City Gallery, we are not persuaded that the petitioner's work was displayed there. We note that this gallery is located in England and that in 2002 the petitioner was residing in the United States under an expired B-2 nonimmigrant visa.¹ Even if we were to accept that the petitioner's work was featured at this one gallery, the evidence is not sufficient to show that his handbag exhibition enjoyed a national or international reputation. Nor is there any indication that having one's work displayed at The City Gallery is a privilege extended to only top national or international contemporary artists or designers. Finally, we cannot ignore the statute's demand for *sustained* national or international acclaim. In this case, there is no evidence showing the petitioner's regular participation in exclusive exhibitions in the years leading up to the petition's filing date. The petitioner's alleged participation in a single gallery exhibition in 2002 is not evidence of *sustained* national or international acclaim.

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

The petitioner re-submits five photographs of what are alleged to be his handbags. On appeal, the petitioner has listed a dollar amount under each of these photographs. The record contains no evidence showing that the petitioner actually earned the dollar amounts appearing under the photographs. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). There is no evidence showing that the petitioner's compensation is significantly higher than that of other handbag designers.

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

¹ The petitioner's Korean passport bears an entry stamp indicating that he entered the United States as a B-2 nonimmigrant visitor for pleasure on December 23, 1999. According to the petitioner's Form G-325A, Biographic Information form, he has been residing in Atlanta, Georgia since that time.

The petitioner claims that the five photographs discussed under the preceding criterion are evidence of his commercial success. The plain wording of this criterion, however, indicates that it is intended for "performing" artists such as musicians and actors rather than the petitioner's occupation. Nevertheless, the regulation calls for commercial success in the form of "sales" or "receipts"; simply asserting that one's work sells a particular price work cannot satisfy criterion. The record contains no evidence of documented "sales" or "receipts" showing significant national distribution of the petitioner's handbags or their widespread commercial success.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise." Subsequent to his arrival in December 1999, there is no evidence showing that the petitioner's primary occupation in the United States involves designing handbags.

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. The petitioner in this case has failed to demonstrate that he 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 himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.