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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 12 2006

EAC 03 142 51426

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, counsel asserts that the director previously “agreed” that the beneficiary met two of the regulatory criteria, of which an alien must meet at least three, and that the director provided “no reasonable basis for the denial.” Subsequently, the petitioner submits additional letters, an article about the popularity of original animation cels and notes regarding the sales price of a cels retouched by the beneficiary. While the director failed to address all of the regulatory criteria to which the evidence submitted relates, counsel never claimed, prior to appeal, which criteria the alien purportedly meets. For the reasons discussed below, the petitioner has not established that the beneficiary is eligible for the classification sought. Specifically, while the petitioner has now established on appeal that the beneficiary meets one of the regulatory criteria, an alien must meet at least three to be eligible for the classification sought.

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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as an “artist illustrator.” 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. As stated above, neither counsel nor the petitioner has ever clearly explained which criteria the beneficiary is alleged to meet. The criteria follow.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The director concluded that the petitioner had not established the pool of possible candidates and prestige for the awards won by the beneficiary. Counsel does not challenge this conclusion on appeal and the petitioner does not submit any additional evidence regarding the exhibitions where she won awards.

The petitioner initially submitted a July 20, 1993 letter from Unicef advising the beneficiary that she had made the first cut (from 1,500 to 900) for artwork being considered for reproduction as a Unicef greeting card. First, the record is absent evidence that the beneficiary’s artwork made the final cut and was reproduced on Unicef cards. Regardless, the record is absent evidence that selection by Unicef for reproduction on its cards is a prize or award for excellence.

The petitioner also submitted certificates confirming the beneficiary’s first prize win for a painting at the Artists Network of Great Neck’s Annual Membership Exhibition in 2001 and her first prize for “works on canvas and other support” at the same exhibition in 2002. In addition, the beneficiary received an “Award of Merit” from the same network at their 2002 Annual Membership Exhibition. These exhibitions appear limited to a local area. As such, they cannot be considered nationally or internationally recognized.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Initially, the petitioner submitted evidence of the beneficiary’s membership with the Metropolitan Museum of Art, the National Museum of Women in the Arts, the Art League of Long Island and the

Artists Network of Great Neck. The director did not address this criterion. Without evidence of the membership criteria for these entities, such as copies of the portion of their bylaws that addresses membership, we cannot evaluate whether these memberships can serve to meet this criterion.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

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.

The director's request for additional evidence does not address the evidence already submitted or indicate that the petitioner had already established that the beneficiary meets any criterion. In the final decision, the director acknowledges the submission of "evidence of publication" but does not discuss this criterion further. On appeal, counsel asserts that the director "agreed initially" that the beneficiary meets this criterion. We find no indication that the director ever made such a finding. We will consider the evidence.

The petitioner submitted what purports to be a one-paragraph press release for an exhibition in a newspaper. The petitioner did not submit a *certified* translation as required under 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3)(iii). In addition, the petitioner did not submit evidence of the publication in which this announcement appeared or the circulation of that publication.

The petitioner also submitted an article in *Artis Spectrum* reviewing several exhibitions at the Agora Gallery, one of which featured four artists including the beneficiary. The petitioner submitted no evidence of the circulation of this publication.

The beneficiary had a "Mixed Media" piece of artwork displayed at the 1995 24th Annual National Small Paintings Exhibit sponsored by the New Mexico Art League. A catalog for the Soho South Art Gallery includes limited editions of the beneficiary's paintings. The petitioner submits page 417 of what purports to be a catalog from Art Expo 2003 featuring a painting by the beneficiary.

None of the materials appear to be primarily about the beneficiary, as opposed to exhibitions where the beneficiary was one of several artists. Moreover, the petitioner failed to establish that any of these publications have a national circulation and, thus, can be considered major media. As such, the petitioner has not established that the beneficiary meets this criterion.

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 contains no evidence relating to this criterion.

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

We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. The petitioner submitted several letters from the beneficiary's employers, animators whose work she has touched up and galleries. While all of the letters praise the beneficiary's work, none of the authors explain how the beneficiary has impacted the field of painting as a whole. The beneficiary's work on animated cels does not appear to be original. While the beneficiary also paints original works, the record lacks evidence of the impact of this work. As such, the petitioner has not established that the beneficiary meets this criterion.

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

The record contains no evidence relating to this criterion.

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

The director acknowledges receipt of evidence relating to this criterion but does not address whether the evidence is sufficient. On appeal, counsel asserts that the director "agreed initially" that the beneficiary meets this criterion. We find no indication that the director made any such finding. We will consider the evidence.

As stated above, the petitioner initially submitted a July 20, 1993 letter from Unicef advising the beneficiary that she had made the first cut (from 1,500 to 900) for artwork being considered for reproduction as a Unicef greeting card.

As also stated above, the petitioner submitted a foreign language newspaper that includes a one-paragraph press release for an exhibition of the beneficiary's work. As noted above, the petitioner did not submit a *certified* translation of this document as required under 8 C.F.R. § 103.2(b)(3). Similarly, the petitioner submits a foreign language certificate confirming the beneficiary's participation in a joint national exhibition in Sofia in 1984 and a sole exhibition at the AMX Gallery in 1986. The translation is not certified by the translator as required under 8 C.F.R. § 103.2(b)(3). The petitioner also submitted an invitation addressed to the beneficiary to participate in an art auction with 30 other artists in Bogota, Colombia. The petitioner did not submit a certified translation of this invitation.

Finally, the petitioner submitted certification that the beneficiary "executed parts of the illustrations" for a Brothers Grimm book. Once again, the translation is not certified. That said, the petitioner submitted the title page for the book, which does list the beneficiary as one of two illustrators. The petitioner also submitted the beneficiary's illustrations for a book cover and a newspaper, *El Tiempo*.

In addition, we noted above that the petitioner submitted an article in *Artis Spectrum* reviewing several exhibitions at the Agora Gallery, one of which featured four artists including the beneficiary. The petitioner also submitted a promotion for this show in *Gallery Guide*.

The petitioner submitted page 38 from what purports to be the International Art Expo in New York in 2001 listing the beneficiary as one of the artists represented by the petitioner.

In 1995, the beneficiary exhibited her work at the Baldwin Public Library in New York City. Finally, as stated above, the beneficiary exhibited her work at the Artists Network of Great Neck's Annual Membership Exhibitions at the Great Neck Library in 2001 and 2002.

The beneficiary had a "Mixed Media" piece of artwork displayed at the 1995 24th Annual National Small Paintings Exhibit sponsored by the New Mexico Art League. A catalog for the Soho South Art Gallery includes limited editions of the beneficiary's paintings. A letter from a representative of the gallery confirms exhibiting and selling the beneficiary's work and representing her at Art Expo in 2003 and 2004. The petitioner submits page 417 of a catalog is from Art Expo 2003 featuring a painting by the beneficiary.

The petitioner, a distributor of animated cels, giclees (replicas of originals using ink-jet technology on "museum quality paper"), sericels, model sheets and original drawings, includes giclees of the beneficiary's work in their catalog. The beneficiary claims to have worked on limited edition Garfield and [REDACTED] artwork. [REDACTED] the President of the petitioning corporation, asserts that the beneficiary restores vintage animation cels, produces custom hand-painted backgrounds to pair with vintage animation cels, is commissioned to paint original paintings and produces giclees for sale by the petitioner. [REDACTED] animator of Betty Boop, confirms that the beneficiary "was given the opportunity to work on various projects with Betty Boop and Popeye under my direction."

[REDACTED] Vice President of Operations for Marlin Art, confirms that the beneficiary has worked on restorations for them and also that they have sold her original art. The petitioner submits lists of items auctioned by Marlin Art in November 2004, after the date of filing. This evidence is not relevant to the beneficiary's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner submits similar letters confirming exhibitions of the beneficiary's work prior to the date of filing from several galleries in New York, Florida and Bogota.

All artists who make a living in their field must exhibit their work for sale. The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim in order to meet that criterion. The petitioner failed to submit evidence regarding the significance of the beneficiary's exhibitions. Thus, the petitioner has not submitted evidence that the beneficiary meets this criterion.

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

At issue for this criterion are the role the beneficiary was hired or selected to fill and the reputation of the entity that hired or selected her. The beneficiary has exhibited her work and performed restoration services for several galleries. The record establishes that the petitioner enjoys a distinguished reputation nationally. Prior to the appeal it was not clear where the beneficiary fit within the petitioner's hierarchy. On appeal, [REDACTED] President of the petitioning gallery, confirms that the beneficiary is the petitioner's exclusive restorer. As such, we are satisfied that the beneficiary meets this single criterion.

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

As noted by the director, the petitioner has not submitted evidence demonstrating the prices her paintings command or data that would allow us to compare those prices with those commanded by the top artists nationally. On appeal, the petitioner submits catalog entries for cels it has sold. The preprinted catalog does not identify the beneficiary as the artist who touched up the cels. Handwritten notes confirm the beneficiary's work on these cels and list the final purchase price for a Mickey Mouse cel as \$65,000. The record lacks evidence regarding how much of this amount the beneficiary received. As such, the petitioner has still not established the beneficiary's personal remuneration in comparison with other art restorers.

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

The beneficiary is a visual artist, not a performing artist. The record contains no evidence directly relating to this criterion. Even if we were to consider the commercial success of the cels retouched by the beneficiary, the petitioner has not established that the commercial success of the cels is attributable to the notoriety of the artist retouching the cels as opposed to the worldwide recognition of the animated characters, such as Mickey Mouse.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as an artist or illustrator 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 indicates that the petitioner shows talent as an artist and illustrator, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. 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.