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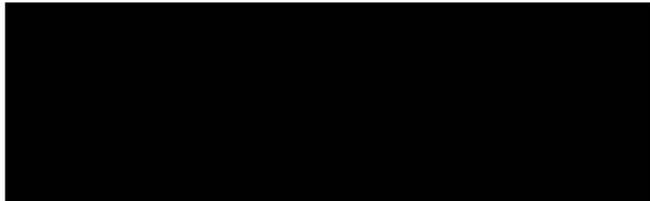


FILE: [Redacted]
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Office: TEXAS SERVICE CENTER Date: **MAY 04 2006**

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a citizen of Colombia who last entered the United States on December 2, 1999 as a nonimmigrant visitor (B2) with authorization to remain in the United States until June 1, 2000. On August 17, 2004, an immigration judge ordered the petitioner removed from the United States pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(1)(B), as an alien remaining in the United States beyond the period of his or her authorized stay. The petitioner filed the instant petition on February 11, 2005 seeking classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts, specifically as a poet and writer. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. Counsel timely filed a motion to reconsider the director's decision. The director declined to grant the motion and forwarded the matter to the AAO. Counsel's brief and the additional evidence submitted with the motion fail to overcome the deficiencies of the petition and the appeal will be dismissed for the following reasons.

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).

We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. Counsel does not claim that the petitioner is eligible under any criteria not discussed below.

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

Counsel claims the petitioner meets this criterion because her work was included on the Poems List of the Poetic Babel 2002, conducted as part of the United Nations World Poetry Day celebration and sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The petitioner submitted a printout from the website of the Italian Commission of UNESCO, which includes the petitioner and her poem, "*Amar Con Libertad*," "To Love With Freedom," in a list entitled "*Poesie*" and contains a profile of the petitioner written in Spanish and an English translation of her poem. The petitioner submitted additional printouts from the website of UNESCO, which discuss the organization's activities, but include no mention of the Poetic Babel. The record contains a letter from [REDACTED], which purportedly attests to the importance of the petitioner's recognition by the UNESCO Poetic Babel, but the English translation of [REDACTED]'s letter was not certified in accordance with the regulation at 8 C.F.R. § 103.2(b)(3). Consequently, we cannot determine whether her letter supports the petitioner's claim. Several other support letters submitted with the petition purportedly mention the petitioner's recognition by UNESCO, but these letters were also submitted with uncertified translations and consequently have no probative value. See 8 C.F.R. § 103.2(b)(3).

On appeal, the petitioner submits a letter from Daniele Luca Biolato, Ambassador of the Italian Commission to UNESCO, who certifies that the petitioner

participated with success to 'Poetic Babel 2002' in the occasion of the UN World Poetry Day celebration. Italian national Commission for UNESCO – appreciating artistic and moral value of her work – was pleased and honoured to include her poem "*Amar con libertad*" ("To Love with Freedom") into 2002 Poems List of the site "*Babele Poetica*," managed by this Commission.

On appeal, counsel states that Poetic Babel is an annual contest hosted by UNESCO that "chooses the best poets, by country. . . . Once chosen as the best poet or poetess to represent their country, their names appear on the UNESCO Poems List "*Babele Poetica*." The record does not corroborate counsel's statements. Amb. Biolato does not state the selection criteria for including poems in the Poetic Babel list and the record contains no other documentation of the parameters, competitiveness or

significance of this purported award. 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).

Counsel also claims that the petitioner meets this criterion because she received two awards from LiArt International, Incorporated (hereinafter "LiArt"). The petitioner submitted copies of two certificates and two letters issued to the petitioner from LiArt and printed in Spanish. These documents were submitted with uncertified English translations. Consequently, we cannot determine whether the documents support the petitioner's eligibility under this criterion. *See* 8 C.F.R. § 103.2(b)(3). On appeal, the petitioner submits a certified translation of the rules for LiArt's Fourth Literary Contest of Stories and Poetry, "New Millennium." While these rules indicate that "New Millennium" is a literary contest and not an invitation to be included in an anthology for a fee, as determined by the director, the record contains no evidence that the New Millennium awards are nationally or internationally recognized. Without such evidence and without certified translations of the petitioner's actual certificates and notification letters, the contest rules alone do not demonstrate that the petitioner has received awards from LiArt or that the awards are nationally or internationally recognized. Accordingly, the petitioner does not meet this criterion.

(ii) 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.

Counsel initially claimed that the petitioner met this criterion through her membership in the Cove Rincón Corporation (hereinafter "Cove Rincón"). The record contains a copy of the petitioner's Cove Rincón membership certificate dated July 1, 2000, four certificates recognizing the petitioner's participation in events sponsored by Cove Rincón, and evidence that Cove Rincón is a non-profit organization registered in Miami, Florida. The petitioner submitted no documentation of the organization's membership criteria. On appeal, the petitioner submits a letter from [REDACTED] Associate Director of the Latin American and Caribbean Center at Florida International University, who confirms that the petitioner was a member of the Board of Directors of Cove Rincón. [REDACTED] explains that the Cove Rincón is "an organization of growing prestige and membership both in Miami and Latin America [, whose members] include authors and visual artists. Their monthly meetings and their annual gala event take place at this university with our sponsorship."

On appeal, the petitioner also submits a letter dated June 14, 2005 from [REDACTED], Executive Director of Cove Rincón, who confirms that the petitioner served on the organization's Board of Directors for three years and explains, "We have certain requirements to be able to be one of our Officers, actually, even to be nominated, since the people running for this position are elected once a year by our members. . . . We have an image to protect and so we must be careful who represents us." [REDACTED] lists notable individuals that the organization has worked with and states that, in her opinion,

the petitioner “has prestige and extraordinary ability in her field to be able to work hand in hand with us in our organization and to deal with individuals of this caliber.”

While the record documents some cultural events organized by Cove Rincón in Miami, the record does not establish that this organization requires outstanding achievements of its members, as judged by recognized national or international experts. [REDACTED] describes Cove Rincón Corp. as an organization of “growing prestige and membership” and [REDACTED] does not specify the “certain requirements” that the organization demands of its officers or its members. Accordingly, the petitioner does not meet this criterion.

(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.

The petitioner submitted copies of articles purportedly about her and her work published in Spanish on the Cove Rincón website and in various Spanish-language periodicals between 2002 and 2004. All but one of these articles were submitted without certified English translations. Without translations certified pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine whether the evidence supports the petitioner’s claim. The single article submitted with a certified translation, “Maria del Pilar Casas Flies With Her Own Wings,” does not identify its source or date, as required by this regulatory criterion. Moreover, the record contains no evidence that the sources of any of the articles are professional, major trade publications or other major media.

On appeal, the petitioner submits a certified translation of an article from *Diario Las Americas* about the source of one of the previously submitted reports about the petitioner, *Florida Exclusive*. The *Diario Las Americas* article states that *Florida Exclusive* “is on its way to excel in the promotion of the growing cultural events in the South of Florida – which is another way of expressing the cultural force of Hispanic Americans in this region” and that the magazine “reaffirms and gives impetus to the cultural activity in Miami.” These statements indicate that *Florida Exclusive* is a regional periodical. On appeal, the petitioner also submits a letter from Enrique Córdoba, Director of *Cita con Caracol* Radio in Miami, who states that *Florida Exclusive* is a cultural magazine that “sponsors diverse artists from around the world” and is “a meeting place for great talents at a national as well as an international level.” The record contains no documentation, however, that *Florida Exclusive*, has a national and/or international circulation and the petitioner submitted no other evidence that publication in this magazine is consistent with national or international acclaim. Regardless of the magazine’s purported national or international renown, the record contains no certified translation of the article about the petitioner that was published in *Florida Exclusive*. Hence, the article does not evidence her eligibility under this criterion. See 8 C.F.R. § 103.2(b)(3).

On appeal, the petitioner submits a certified translation of another article about the petitioner and her work published on June 22, 2005 in *El Nuevo Herald*. We cannot consider this evidence because it arose after the 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). Even if the article had been published prior to filing, we note that the record contains no evidence that *El Nuevo Herald* is a form of major media. On appeal, counsel states that *El Nuevo Herald* is “a newspaper of major circulation in Florida and South America,” but counsel submits no documentation of the newspaper’s circulation or other evidence to support his claim. Again, 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. *Obaigbena*, 19 I&N Dec. at 534; *Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506. 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.

Counsel claims that the petitioner meets this criterion through her published books and other writings. The record shows that the a book of the petitioner’s poetry entitled *Volando con Alas Propias* was published in 2004; that the petitioner co-authored the autobiography of the Cuban writer, Silvia Rok, which was also published in 2004; that the petitioner’s poetry has been included in anthologies of Spanish poetry; that she has written forewords for several books; and that the petitioner has written numerous articles that have been published in *Florida Exclusive*, *Miami Exclusive*, *Iberoamericana Internacional*, the *Cove Rincón* magazine and other Spanish-language publications. However, 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. Frequent publication of a writer’s work is inherent and routine to the author’s occupation. The record in this case does not establish that the petitioner’s work has received substantial critical acclaim or has been widely recognized as making original, major contributions to her field in a manner consistent with sustained national or international acclaim. As discussed above under the third criterion, all but one of the media articles about the petitioner and her work were submitted with uncertified translations and consequently cannot be considered as evidence of her eligibility. See 8 C.F.R. § 103.2(b)(3). The single article submitted with a certified translation does not state the source or date of its publication, hence, we cannot determine if the article reflects sustained national or international acclaim.

The petitioner also submitted numerous support letters from various individuals. In a letter dated October 25, 2004, Carmenza Jaramillo, Consul General of Colombia in Miami, states that the Consulate knows of the petitioner’s work and that the petitioner:

has been a writer and a poet and have [sic] represented Colombia with her creations in different events and institutions around the world. That [the petitioner] it’s [sic] consider [sic] one of the must [sic] recognized writers and her different achievements have giving [sic] her the respect and admiration of all of those who have follow [sic] her career.

The Consul General's letter does not, however, discuss the impact of the petitioner's work on her field in Colombia or otherwise indicate that she has made original, major contributions to contemporary Colombian poetry or literature in a manner consistent with sustained national acclaim.

Marilyn A. Reyes, Jaime Valencia, Blanca Esther Pereda and Ricardo Kellerman all praise the petitioner's talents and summarize her accomplishments, yet none of these individuals discuss the impact of the petitioner's work on her field or otherwise indicate that she has made original contributions of major significance to her field in a manner consistent with sustained national or international acclaim. The petitioner also submitted letters from Marisol Correa, AnaHilda Garcia, Elena González Blanco, Luis Javier Claro Peñaranda, Marcela Pulido Ovalle, Luz Nancy Monroy Church, Vicente Torrijos R., Enrique Cordoba, Adriana Herrera Tellez, and Cecilia Cadena Ramos. However, because the petitioner failed to submit certified translations of the documents, we cannot determine whether the letters support the petitioner's eligibility under this criterion. *See* 8 C.F.R. § 103.2(b)(3).

The evidence indicates that the petitioner has published her work and has received limited recognition in her field. The record does not establish, however, that she has made original, artistic contributions of major significance to her field in a manner consistent with sustained national or international acclaim. Accordingly, the petitioner 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.

The record shows that the petitioner has published two books, several forewords to other books and numerous articles for various Spanish-language periodicals in the United States. The petitioner's poetry has also been published in six anthologies. However, as explained above under the fifth criterion, 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. As frequent publication of a writer's work is inherent to an author's occupation, publication alone does not necessarily satisfy this criterion. The record contains no evidence that the petitioner's work has been critically acclaimed or otherwise influenced other writers or artists in Colombia, the United States or other countries. As noted above under the third criterion, articles that purportedly review and discuss the petitioner's work were submitted without certified translations and consequently cannot be considered as evidence of her eligibility. *See* 8 C.F.R. § 103.2(b)(3). The petitioner submitted evidence that the New Century Dance Company in Miami performed choreography based on her poetry in 2004, but the record does not indicate that this work was critically acclaimed or recognized throughout the United States or abroad. While the evidence documents the publication of the petitioner's work, it does not establish that her publication record is consistent with sustained national or international acclaim in her field. Accordingly, the petitioner 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 does not claim that the petitioner meets this criterion, but the record contains relevant evidence, which merits brief discussion. In a letter dated May 25, 2005, [REDACTED] Director of *Florida Exclusive*, states that the petitioner is a writer who is “an integral and essential part of [his] staff.” [REDACTED] further explains, “[The petitioner] is a key member of our staff and without her invaluable collaboration we would surely be lacking a great cultural link at a local and international level.” While [REDACTED] letter attests to the petitioner’s critical role as a writer for his magazine, the record does not persuasively establish that *Florida Exclusive* has a distinguished reputation or that the petitioner’s role at the magazine is consistent with national or international, rather than regional, acclaim. Accordingly, the petitioner does not meet this criterion.

Comparable Evidence Submitted Pursuant to the Regulation at 8 C.F.R. §204.5(h)(4).

Counsel requested that the testimonial support letters be considered as comparable evidence of the petitioner’s eligibility pursuant to the regulation at 8 C.F.R. §204.5(h)(4). Comparable evidence will only be considered when the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) “do not readily apply to the beneficiary’s occupation.” 8 C.F.R. §204.5(h)(4). Counsel has not explained or documented why the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the petitioner’s occupation as a poet and writer. To the contrary, the record indicates that at least six of the criteria at 8 C.F.R. § 204.5(h)(3) are applicable to the petitioner’s profession. Moreover, we have considered the support letters in our discussion of the petitioner’s eligibility under the first, second, fifth, and eighth criteria.

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 record in this case does not establish that the petitioner has achieved sustained national or international acclaim as a poet or writer 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.