

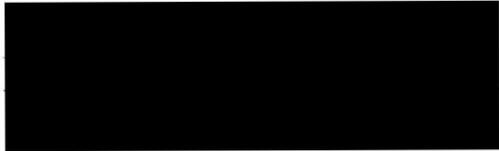
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 23 2008

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.

Mari Johnson

St 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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. Specifically, the director concluded that the petitioner did not meet any of the regulatory criteria, of which an alien must meet at least three. The director rejected the sufficiency of the evidence rather than inquiring as to the petitioner’s recent recognition in the field at the national level.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold several of the director’s findings. We further find, however, that the director failed to consider some of the evidence that relates to three criteria. As the petitioner need only meet three criteria, we will remand the matter to the director for additional consideration in accordance with the discussion below. In considering this evidence, the director shall inquire as to whether the petitioner is able to demonstrate *sustained* national or international acclaim in 2003 when the petition was filed, an inquiry the director does not appear to have previously pursued. Specifically, prior to final adjudication, *the director shall request additional evidence of the petitioner’s accomplishments and recognition after 2001.*

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 sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a hairdresser. 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. Initially and in response to the director's request for additional evidence, prior counsel addressed the evidence as it relates to the regulatory criteria for a nonimmigrant visa in a similar classification, set forth at 8 C.F.R. § 214.2(o)(3)(iv). The nonimmigrant criteria differ significantly from the immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3). Thus, evidence that relates to or meets the nonimmigrant criteria may not necessarily relate to or meet the immigrant criteria.

Regardless, while Citizenship and Immigration Services (CIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications). 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 Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

On appeal, counsel addresses the immigrant regulatory criteria for the first time in this matter. We concur with the director on 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 L'Oreal Turkey confirming that the petitioner "was a member of HCF Artistic Team, representing Turkey Haute Coiffure Francoise (HCF), during the show at Paris Olympia Stadium, in September 2000 and he was awarded with a golden pin by the [REDACTED]

[REDACTED] According to Ozlem Sen of L'Oreal Professional, HCF operates in 45 countries and presents new hair trends from an individual country twice a year. Thus, a country is only able to send a team of presenters approximately once every 20 years. The petitioner also submitted a photograph captioned "Oscars of Coiffeurs Award Ceremony" by L'Oreal Professional Paris. The photograph shows at least seven individuals with trophies.

The petitioner also submitted another photograph labeled as the L'Oreal Professional Paris Forum 2000 "Best Saloons [sic] of Turkey." A final photograph is labeled the L'Oreal Professional Paris Show "Color Optic Nisan 2000." [REDACTED] asserts that these events took place in Istanbul and that L'Oreal Professional requested that the petitioner take a leading role in these events "in training other professionals."

An undated article references a Turkish color trophy competition organized by L'Oreal Professional Paris. It concludes that the petitioner "is the winner of another competition named 'The Best Red Hair' which was also held at the same night." Prior counsel asserted that this competition was divided by region and that the petitioner won for the Marmara region. [REDACTED] notes that Marmara includes Istanbul and, thus, "represents the most concentrated urban center in the nation with the greatest number of artistic hair dressers."

The director concluded that while the petitioner had won awards, they were not nationally or internationally recognized. On appeal, counsel discusses the distinguished reputation enjoyed by L'Oreal and cites a non-precedent case by this office for the proposition that the recognition enjoyed by an award is related to the reputation of the entity that issues the award.

The record lacks evidence that the HCF event in Paris was a competition where stylists competed for prizes or awards. Rather, the event appears to be a forum for presenting styles from different countries. We do not question that the petitioner was selected to participate through a rigorous process, but find that this team selection is not an award or prize and, thus, is better considered under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii).

The petitioner has not demonstrated that the Turkish competitions sponsored by L'Oreal, while awards, are nationally recognized. Non-precedent decisions are not binding on this office. Regardless, while the decision on which counsel relies asserts that an award from a relatively insignificant organization cannot serve to meet this criterion, that statement does not imply the inverse: that all prizes from significant organizations are qualifying. It is certainly plausible for a recognized organization to sponsor a regional or local award, as is the case in this matter with the "Best Red Hair" recognition received by the petitioner from L'Oreal in a regional competition.

In light of the above, we concur with the director that the petitioner has not established that he 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 petitioner submitted news articles and letters affirming his participation in television shows. The director concluded that the published materials submitted were about the petitioner's employers and individuals with whom the petitioner has been associated. The director further concluded that the petitioner had not demonstrated that the television shows on which he worked were well received.

On appeal, counsel asserts that while hairstylists are rarely covered in the media, the petitioner has been the subject of media coverage. Counsel references a newspaper article purportedly discussing the petitioner's participation in the 1999 studio opening festivities and his domestic and international awards. The article, however, actually names four partners, including the petitioner and states that "the styles created by Studio officials" have received awards. The article is primarily about the opening festivities.

The articles submitted appear to be primarily about events in which the petitioner has participated rather than the petitioner himself. Regardless, while not raised by the director, the record lacks any evidence of the circulation for any of the news articles. Thus, the petitioner has not established that any of the articles appeared in major media, media with a national circulation.

In light of the above, we concur with the director that the petitioner has not established that he meets this criterion.

Regarding the remaining criteria claimed, the director failed to consider certain evidence under the criteria to which it relates, only some of which was submitted for the first time on appeal. Therefore, this matter will be remanded for consideration of the following evidence. The director should consider, pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the evidence submitted on appeal from HCF's website stating that being part of "this elite club represents an important form of recognition in the professional milieu." In addition, while styling hair for models is inherent to the petitioner's occupation, the director should consider, pursuant to the regulation at 8 C.F.R. § 204.5(3)(vii), the 2000 HCF event in Paris, which was specifically designed to feature the styling work of six Turkish stylists, including the petitioner. The petitioner's appearances on "Life is Beautiful" also appear designed to showcase the petitioner's artistic talent. Finally, the director should consider, pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii) whether the petitioner's joint ownership of a Turkish hair salon constitutes a leading or critical role for an entity with a distinguished reputation.

While we are remanding this matter for consideration of the above evidence, we note that none of it relates to any accomplishments or recognition after 2001. The director, however, did not raise this

issue in the request for additional evidence or in the final decision. As such, the petitioner has not had an opportunity to demonstrate that any acclaim he enjoyed in Turkey was sustained as of the date of filing in 2003. Thus, the director shall request evidence of the petitioner's accomplishments and recognition after 2001 such that the petitioner can address the issue of *sustained* national or international acclaim.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.