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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [Redacted] SRC 06 010 50527

Office: TEXAS SERVICE CENTER Date: DEC 03 2007

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:



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

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 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 the arts. 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, the counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and has submitted other comparable evidence of her extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4).

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 she has sustained national or international acclaim at the very top level.

This petition, filed on October 14, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a "Fine Artist." 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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to 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 evidence showing that her alma mater, New York State College of Ceramics School of Art and Design at Alfred University,¹ awarded her a Stephen John Hill Memorial Scholarship in Art and Design in April 1992 and April 1993. According to the documentation submitted by the petitioner, this scholarship “is presented to a deserving international student enrolled in the School of Art and Design.” This award reflects institutional recognition rather than national or international recognition. There is no evidence that the petitioner faced competition for this scholarship from students outside of Alfred University’s Art and Design program. Further, being honored for achievement as a student does not constitute the petitioner’s receipt of lesser nationally or internationally recognized prizes or awards *for excellence in the field of endeavor*. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. The preceding educational honor is intended to recognize student accomplishment rather than to recognize excellence among professional artists already active in the field.

The petitioner submitted an event program from “The Festival of Women in the Arts, Santa Fe, June 2-4, 2000,” an exhibition sponsored by American Women Artists, “a non-profit organization dedicated to the Inspiration, Celebration, and Encouragement of Women in the Visual Arts.” The event program, which lists the petitioner among the 49 “competition winners,” states: “Nedra Mateucci Fine Art will host the Members’ Show; and Contemporary Southwest Gallery will be the site of the Competition Exhibition, showing the works of forty-nine *aspiring* women.” [Emphasis added] The petitioner’s receipt of an “aspiring” artist award is not an indication that she “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 petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

With regard to the preceding awards, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of a given criterion. In this case, the petitioner has not

¹ The petitioner earned her Master of Fine Arts (MFA) degree from this educational institution in May 1993. Information submitted by the petitioner from the School of Art and Design’s internet site states: “The New York State College of Ceramics has offered the MFA in Ceramic Art since 1943. Today this program is ranked number one by *U.S. News and World Report*.”

shown that her awards command recognition beyond the presenting organizations consistent with sustained national or international acclaim at the very top of her field.

The petitioner submitted a July 23, 2001 letter of support from [REDACTED] Director, Santa Fe Art Institute, stating that the institute selected the petitioner for an artist-in-residence position from September 2000 to March 2001. The petitioner also submitted a June 14, 2004 letter of support from [REDACTED] President, Shidoni Foundry, Inc., indicating that she has worked there as a sculptor-in-residence. The plain language of this regulatory criterion, however, requires the petitioner's receipt of "nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The petitioner's acceptance of work as an artist-in-residence or sculptor-in-residence is not tantamount to her receipt of "prizes or awards" for excellence in the field.

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

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.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted an interview of her in the January 1987 issue of *Ceramic Magazine* (a German-language publication), but the author of this article was not identified as required by this regulatory criterion. On appeal, the petitioner submits information printed from the magazine's internet site in 2006 stating: "Going beyond German-speaking countries, *KeramikMagazinEuropa* is a technical journal with a European focus. . . . NOW ALSO AVAILABLE ENTIRELY IN ENGLISH." The self-serving information posted on this magazine's internet site in 2006 is not adequate to demonstrate that it qualified as a major trade publication in 1987. The record includes no circulation statistics or other evidence to establish the extent of this magazine's distribution at the time of the petitioner's published interview.

The petitioner submitted a 1989 article published in an unidentified Dutch newspaper entitled "[The [REDACTED] Exhibition at the Gallery [REDACTED]" but the author of this material was not identified. The petitioner also submitted an article published in the *State of Brabant's Daily Newspaper* on September 14, 1989 entitled "East German shows in Nederhemert." The record, however, includes no evidence (such as circulation statistics) showing that the preceding publications qualify as "professional or major trade publications or other major media."

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance cannot serve to spread an individual's reputation outside of that county.

The petitioner submitted what is alleged to be a poem written by her about her mother that appeared in the Dance section of the February 21, 1993 issue of the *New York Times*. The plain language of this regulatory criterion, however, requires “published material about the alien.” This poem is not about the petitioner.

The petitioner submitted an article published in the *Evening Tribune* on April 23, 1993, but this material was not primarily about the petitioner. The petitioner also submitted an article published in the *Bremer Weekly Newspaper* in October 1998. The authors of the preceding articles were not identified as required by this regulatory criterion. Further, there is no evidence showing that the preceding newspapers qualify as “professional or major trade publications or other major media.”

The petitioner submitted additional local articles published since 2000 in the *Santa Fe New Mexican*, *Albuquerque Journal* (Venue North), *Journal Santa Fe*: “A zoned publication of the *Albuquerque Journal*,” *THE Magazine*, *The State*, and *Santa Fean* magazine. The record, however, includes no evidence showing that the preceding publications qualify as “professional or major trade publications or other major media.”

In light of the above, the petitioner has not established that she 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends 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). For example, serving on the jury of a national exhibition for professional artists is of far greater probative value than judging a local art contest for students or amateurs.

The petitioner submitted instruction contracts from Santa Fe Community College reflecting that she was appointed as a “part-time” instructor of four classes in 2003 and 2004 to teach Ceramic Throwing I, Arts Camp, Kids Clay, and Fundamentals of Clay. On appeal, counsel states: “Teachers are, by their very nature, judges of the work of others.” We cannot conclude that teaching beginner-level art classes is tantamount to judging the work of others in the petitioner’s or an allied field. For example, it has not been established that the young children who participated in the petitioner’s Kids Clay class work in the petitioner’s field. There is no evidence that the petitioner judged the work of others in her or an allied field in a manner significantly outside the general duties of her position and consistent with sustained national or international acclaim. 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.³ The petitioner's involvement in evaluating student performance at the local community college where she was employed part-time is not indicative of sustained national or international acclaim and does not fulfill this criterion.

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

The petitioner submitted an art program from the State Sponsored Exhibition of Young Artists of the German Democratic Republic (1981). The petitioner's name and biography appear on page 28 of the program along with those of four other young artists whose last names also begin with the letter "K." Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The preceding material was not accompanied by an English language translation.

The petitioner submitted an art program for an exhibition entitled "[REDACTED] and her Students" (August 1982). The petitioner's student biography and photograph appear on page 44 of the program.

The petitioner submitted an art program from the State Sponsored Exhibition of Young Artists of the German Democratic Republic (1984). The petitioner's name and biography appear on page 28 of the program along with those of eight other young artists.

The petitioner submitted an art program from the State Sponsored Exhibition of Young Artists of the German Democratic Republic (1987). The petitioner's name, photograph, and biography appear on page 34 of the program.

With regard to the preceding exhibitions, there is no evidence that such displays limited by their terms to "young artists" and "students" are indicative of sustained national or international acclaim at very top of the petitioner's field.

The petitioner submitted an invitation pertaining to an exposition of the work of her and [REDACTED] at the Galerie de Mijt in Nederhemert, Netherlands. The preceding material was not accompanied by an English language translation as required by 8 C.F.R. § 103.2(b)(3). Further, there is evidence of the reputation of this gallery.

The petitioner submitted a playbill indicating that she worked on scenic design, art design, and poster and program design for the Alfred University Division of the Performing Arts' production of [REDACTED] (1991-92). The petitioner also submitted an event program indicating that she worked on concept, costume, set, and lighting design for the Alfred University Division of the Performing Arts' production of "Risks and Pleasures." We acknowledge the petitioner's work on artistic productions at her alma mater, but there is no

³ This is true with all duties inherent to an occupation. For example, publication is inherent to the occupation of scientific researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim in that field. The petitioner must demonstrate that the articles have garnered national or international acclaim, for example, by being widely cited.

evidence that such displays of the petitioner's work were consistent with sustained national or international acclaim at the very top of her field.

The petitioner submitted a promotional flyer for a group exhibition of the work of the petitioner and 39 other artists in Germany entitled "The Wind" (August 1994). The petitioner also submitted an event program listing numerous artists entitled "[REDACTED]" (June 1995). The preceding materials were not accompanied by an English language translation as required by 8 C.F.R. § 103.2(b)(3). Further, there is evidence of the reputation of these exhibitions, nor information regarding the work on display by the petitioner.

The petitioner submitted an article published in the *Bremer Weekly Newspaper* in October 1998 as evidence that her work was displayed in "the offices of [REDACTED]." The article states: "[REDACTED] plans, designs and presents art. . . . [The petitioner's] show is open until Friday, November 13. The exhibition is in the offices of [REDACTED]. Opening hours are during business hours from 7 AM until 6 PM. Pieces are for sale."

The petitioner submitted letters dated December 8, 2000 and January 11, 2001 from [REDACTED] President of the [REDACTED] Fine Art Gallery in Germany, who also identifies himself as an art consultant, and art appraiser. [REDACTED] January 11, 2001 letter states that his gallery sold contemporary art works by the petitioner in 1998, 1999, and 2000. The record, however, includes no evidence of the reputation of this gallery.

The petitioner submitted a promotional flyer stating: "El Museo Cultural de Santa Fe invites you to 'One of a [REDACTED] a community-wide collage show February 11, 2000 through March 4, 2000.'" The flyer identifies the petitioner as one of 19 "Exhibiting Artists" at the community event. Participation in such a show reflects local acclaim rather than national or international acclaim.

As discussed previously, the petitioner submitted an event program from "The Festival of Women in the Arts, Santa Fe, June 2-4, 2000," an exhibition sponsored by American Women Artists, "a non-profit organization dedicated to the Inspiration, Celebration, and Encouragement of Women in the Visual Arts." The event program states that the "Contemporary Southwest Gallery will be the site of the Competition Exhibition, showing the works of forty-nine *aspiring* women." [Emphasis added] The petitioner's name appears among the 49 winners of the aspiring women artist competition. This exhibition's classification of the petitioner as an "aspiring" woman artist indicates that the top of the petitioner's field is a level above her own level of achievement.

The petitioner submitted January 2001 articles in the *Santa Fe New Mexican* and *Albuquerque Journal* (Venue North) as evidence that her work was displayed at the Santa Fe Art Institute on the College of Santa Fe campus. These articles show that the petitioner's installation entitled "I traded cups for food" attracted local media attention, but there is no evidence that this display garnered her national or international acclaim in her field.

The petitioner submitted evidence showing that she designed a door for an auction presented by the Cultural Council of Richland and Lexington Counties, Columbia, South Carolina. A June 8, 2004 letter of support

from [REDACTED], former Executive Director of the Cultural Council of Richland and Lexington Counties, states:

I first became acquainted with [the petitioner] four years ago while attending the American for the Arts Conference in Nashville, Tennessee. During the conference I announced a new public art project being planned in Columbia, South Carolina. This project was to include local artists commissioned to decorate entry doors which were salvaged from the demolition of a federally subsidized housing community. In addition to local artists, we planned to invite three celebrity artists to participate. The celebrity invitations included [REDACTED] was out of the country at the time but the other two world class artists were eager to participate. [The petitioner] approached me at the conference and expressed her desire to also participate in the project. Everyday during the conference, [the petitioner] would search me out and tell me how important it was for her to be included as the salvaged doors represented freedom to her. She simply wanted to express to others, through this project, that the freedom she was experiencing in our country was cherished by her. After reviewing her portfolio, our executive board invited [the petitioner] to participate.

The door created by [the petitioner] . . . is now proudly displayed at the International School of Business at the University of South Carolina From this project [the petitioner] has met others in our community and although she lives in Santa Fe, New Mexico, she has collaborated with our Columbia Classic Ballet Company to use her art, depicting our dancers, in a fundraiser to benefit the organization.

The petitioner submitted further material from the salvaged door auction at the South Carolina State Fairgrounds stating: "Director of the Cultural Council [REDACTED] attended an American for the Arts Conference in Nashville. She told the audience about the door project. [The petitioner] approached Ms. Ryall on a daily basis repeating that she needed to design a door, that she knew what a door was all about." There is no indication that the sponsors of this local fundraiser were aware of the petitioner's reputation as an artist prior to her repeated requests to participate.

The petitioner submitted May 14, 2002 and July 3, 2002 letters from the Women's Alliance of Santa Fe. The May 14, 2002 letter states:

We are inviting you to participate in "Egg" as part of a selected group show of 40 artists to paint draw, sculpt or photograph your version and vision of "egg." The show will be held . . . November 1 - 7, 2002 at the [REDACTED], [REDACTED]. All cookie sheets will be sold for \$250 with 20% of the proceeds going to the artist, though you are invited to contribute that as well to Women's Alliance, and 80% to Women's Alliance.

* * *

Now we can bring into today's household the meaning of cookie sheet as the symbol for coming home, mother, community, and respect for self through your version of creating egg and new beginnings on this ancient symbol.



The July 3, 2002 letter from the Women's Alliance of Santa Fe states:

Women's Alliance has a supply of . . . cookie sheets of various sizes. You are welcome to come and select one.

* * *

We are looking for EGGS that are saleable – figurative rather than abstract, creative, magical, grounded in physicality. We do not want to appear controlling but our goal is to sell these cookie sheets. In order to celebrate Egg: New Beginnings, we request appropriate imagery – i.e. no fetuses, no genitalia – just a simple statement of the architecture and archetypal feeling of egg – poached, fried, egg in a nest, illusionistic Russian Easter egg with a rural landscape in it, calligraphy poem over egg.

* * *

At the end of the show we will send you a letter about the amount of money that was generated by the show and an accounting of whether your cookie sheet was sold. You will be given the choice of receiving 20% from the sale of your piece or donating the whole amount to Women's Alliance. If your cookie sheet was not sold it is yours.

We look forward to hearing from you regarding picking up your cookie sheet.

The record, however, includes no images of the petitioner's piece at this benefit or other evidence demonstrating her actual participation in this show in November 2002.

The petitioner submitted a photograph and letters from the Cathedral Church of St. Francis of Assisi in Santa Fe dated October 20, 2004 and May 16, 2006 indicating that she created a bronze sculpture that was donated to the church by  but there is no evidence that its display at this local church is tantamount to an artistic exhibition or showcase that is consistent with sustained national or international acclaim.

With regard to the preceding art venues, it must be stressed that an artist does not satisfy this criterion simply by arranging for her work to be displayed. In this case, the petitioner has not submitted evidence showing that her works have been displayed at significant artistic venues consistent with sustained national or international acclaim at the very top of her field. There is no indication that the petitioner's works have regularly been featured along side those of artists who enjoy national or international reputations, that she has participated in shows or exhibitions at significant venues devoted primarily to the display of her work alone, that renowned art museums have often displayed the petitioner's works, or other evidence of the display of her work that is consistent with sustained national or international acclaim in her field.

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

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

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted evidence that her artwork appeared on the cover of the 2002 Santa Fe Opera Program Book, but there is no evidence that she performed in a leading or critical role for this organization. In response to the director's request for evidence, the petitioner submitted a May 8, 2006 letter from the General Director of the [REDACTED] stating:

For the 2002 season, I personally chose the artwork of [the petitioner] for the cover of the Santa Fe Opera Program Book. Not only is the program cover a leading role for a fine artist, it is also a unique and coveted role.

* * *

To many it is considered a collector's item. Additionally, limited edition prints of the artwork are for sale in the Opera gift shop.

* * *

The Program Books serve as a virtual guide and reference tool capturing the significant culture and history of our distinguished organization.

We do not find that providing artwork for the cover of the Santa Fe Opera Program Book is tantamount to a leading or critical role for the organization. It is reasonable to conclude that audiences attend the opera to enjoy the singers, musicians, and performers rather than to view the artwork on a program book. There is no evidence showing, for example, that the petitioner's role was of commensurate importance to that of the General Director, Music Director, or company performers. Nor is there evidence showing that the petitioner played a primary role in the success of the 2002 opera season. Further, there is no evidence that the sales of the petitioner's prints in the gift shop represent a substantial portion of the opera's total revenue.

As previously discussed, the petitioner submitted letters from the Cathedral Church of St. Francis of Assisi in Santa Fe dated October 20, 2004 and May 16, 2006 indicating that she created a bronze sculpture that was donated to the church by [REDACTED]. Similarly, the petitioner submitted a September 1, 2005 letter indicating that she was commissioned by [REDACTED] Catholic Community church in Albuquerque, New Mexico to create a sculpture of [REDACTED] for the church's entryway. According to the September 1, 2005 letter, the petitioner's sculpture was "expected to be delivered in April 2006." The completion date of this sculpture occurred subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). We acknowledge that the petitioner created sculptures for these two Catholic parishes in New Mexico, but there is no evidence that she performed in a leading or critical role for these churches.

The petitioner submitted a January 14, 2003 letter from the Education Coordinator of the [REDACTED] reflecting that the museum retained the petitioner's services to lead a two-hour "Family Program" on February 15, 2003 entitled "[REDACTED] A Father of Modernism and the Readymade." There is no evidence that the petitioner's involvement in leading this two-hour instructional session was tantamount to a leading or critical role for this museum.

As previously discussed, the petitioner submitted a July 23, 2001 letter of support from [REDACTED] stating that the Santa Fe Art Institute selected the petitioner for an artist-in-residence position from September 2000 to March 2001. There is no evidence that this six-month temporary position was tantamount to a leading or critical role for the Santa Fe Art Institute.

The petitioner submitted a June 14, 2004 letter of support from [REDACTED] stating:

I was raised in the arts by a sculptor father whose vision created a driving force business called Shidoni Foundry, Inc., a nationally honored and respected fine art foundry I have been involved in all of the foundry processes and am now the President of the Foundry and its affiliate gallery. We've been in business for 33 years

As a sculptor-in-residence, [the petitioner] has worked on a number of her sculptures on the premises here and I've had the opportunity of a lifetime in being able to observe her working and helping her to achieve her artistic objectives.

A 2004 article in *Santa Fean* magazine describes the [REDACTED] as "one of the most innovative and expert foundries in the world." This article discusses the leading and critical roles played by [REDACTED] and Scott Hicks and other individuals such as [REDACTED] and former partner [REDACTED] but there is no mention of the petitioner and the importance or her role to the success of the foundry.

With regard to the preceding organizations, there is no evidence that the petitioner was responsible for their success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. As such, the petitioner has not established that she meets this criterion.

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 submitted her U.S. Individual Income Tax Returns reflecting a "total income" of \$7,568 in 2003 and \$3,568 in 2004. As discussed previously, the petitioner also submitted documentation of her contracts with the Santa Fe Community College the [REDACTED] Museum. The plain language of this regulatory criterion requires the petitioner to submit evidence of "a high salary or other significantly high remuneration in relation to others in the field." The petitioner offers no basis for comparison showing that her earnings were significantly high in relation to others in her field.

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

In this case, the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Beyond the preceding regulatory criteria, the petitioner submitted evidence of her Bachelor of Arts and Master of Fine Arts degrees. The petitioner also submitted several letters of support from her educational and professional contacts. The preceding documentation, however, is not sufficient to demonstrate that the petitioner has sustained national or international acclaim and that her achievements have been recognized in her field of expertise. Many of the letters of support have already been addressed above in the context of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). These letters discuss the petitioner's talent as an artist, educational background, and activities in her field, but they are not adequate to establish that the petitioner is one of that small percentage who have risen to the very top of her field of endeavor. In general, recommendation letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from the petitioner's professional contacts is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. While the evidence shows that the petitioner has garnered a successful reputation in the arts community of New Mexico and in some other localities where she has worked, the record lacks substantive evidence that she has earned sustained national or international acclaim at the very top of her field.

On appeal, counsel argues that the petitioner's academic record and letters of support should be evaluated as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence," but only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Documentation in the record indicates that the alien was the beneficiary of three approved O-1 nonimmigrant visa petitions filed in her behalf since 2001. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, "The term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines 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). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner's prior receipt of O-1

nonimmigrant classification is not evidence of her eligibility for immigrant classification as an alien with extraordinary ability.

While CIS approved three prior O-1 nonimmigrant visa petitions filed on behalf of the petitioner, those prior approvals do 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).

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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the petitioner, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a 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.