

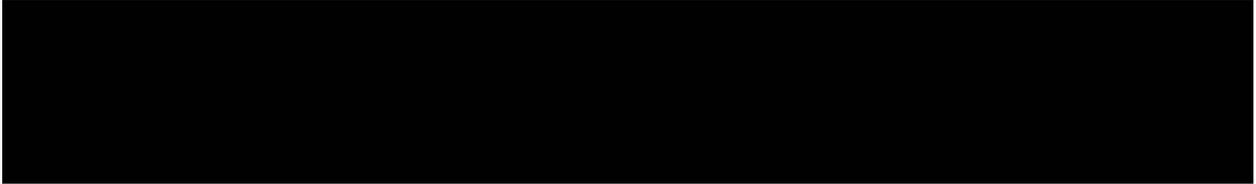
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U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAY 25 2007**
EAC 04 033 50279

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.

Maura Deadrick
Robert P. Wiemann, Chief
for Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) rejected a subsequent appeal in error. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decision of the AAO will be withdrawn, and the appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 business.¹ The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the evidence submitted with the petition “satisfies the criteria for qualification as an Alien of Extraordinary Ability as enumerated at 8 C.F.R. § 204.5(h).”

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.

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, 60898-9 (November 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 the beneficiary has sustained national or international acclaim at the very top level.

¹ The petitioner was initially represented by attorney Ann E. La Rue. In this decision, the term “previous counsel” shall refer to An E. La Rue.

This petition, filed on November 17, 2003, seeks to classify the beneficiary as an alien with extraordinary ability in “corporate banking marketing and cross-selling.” At the time of filing, the beneficiary was employed as a “Marketing and Cross-Selling Manager in the Corporate Banking North America unit of BNP Paribas, holding the rank of Vice President.”

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 a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. 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.

On appeal, the petitioner does not challenge the director’s finding that the beneficiary fails to meet this criterion.

The petitioner submitted evidence showing that the beneficiary holds a Master of Science degree in Finance from the University of Paris IV Dauphine (1995) and a Master of Business Administration degree in Finance and Investment from Baruch College, City University of New York (1997). In an “Index of Exhibits” accompanying the petition, previous counsel referred to these degrees as “prizes.” University study is not a field of endeavor, but rather training for future employment in a field of endeavor. Earning an advanced degree reflects a student’s fulfillment of academic coursework requirements at a particular university, but it does not constitute receipt of a nationally or internationally recognized prize for excellence in one’s field of endeavor. Thus, 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.

On appeal, the petitioner does not challenge the director’s finding that the beneficiary fails to meet this criterion.

In order for published material to meet this criterion, it must be primarily about the beneficiary 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

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, cannot serve to spread an individual’s reputation outside of that county.

The petitioner submitted a Fall 2001 issue of *GOAL North America*, a BNP Paribas informational newsletter, which includes the beneficiary's photograph on page 3 and a proposed timeline reflecting her involvement with implementing a cross-selling methodology at various locations in North America. The petitioner also submitted a Summer 2003 issue of *In Brief: The Newsletter for BNP Paribas in North America*. This newsletter, however, does not mention the beneficiary's name. Neither of these BNP Paribas internal newsletters qualifies as "professional or major trade publications or other major media." Further, the author of the material was not identified as required by this criterion.

The petitioner submitted copies of articles published in the *Wall Street Journal*, *The Lawyer*, *Business Week*, *The Financial Times*, *The Times* (London), and *Knight-Ridder Tribune Business News*. These articles, which include no mention of the beneficiary's name, are about the BNP and Banque Paribas merger rather than the beneficiary herself.³ The plain language of this criterion, however, requires "published materials about the alien." If the beneficiary is not the primary subject of the material, then it fails to demonstrate her individual acclaim at the national or international level. Without evidence demonstrating that the beneficiary has been the primary subject of major media attention, we cannot conclude 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 beneficiary'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, evaluating the work of accomplished professionals as a member on a national panel of independent experts is of far greater probative value than evaluating one's coworkers or subordinates.

Previous counsel argued that the beneficiary meets this criterion through performing the role of Secretary of BNP Paribas' Asset Liability Management Committee, serving as a member of BNP Paribas' North American Integration Executive Committee, providing advice and analysis on North American Operations, evaluating and restructuring the bank's business units, updating the bank's infrastructure to ensure compliance with Federal Reserve Bank and National Association of Securities Dealers mandates, monitoring the performance of the salesforce in the realization of cross-selling opportunities, improving client service methodology and procedures, ensuring that corporate banking clients are visited by the salesforce regularly and that visit reports are generated, making sure that follow-up actions are implemented in good time, making sure data is properly entered into the client service database, ensuring the validation and execution of cross-selling opportunities, and other general

³ The record includes no contemporaneous evidence showing that the petitioner was a key executive primarily responsible for this merger (such as [REDACTED] who, unlike the beneficiary, is actually mentioned in the articles).

managerial responsibilities inherent to her position as Marketing and Cross-Selling Manager in the Corporate Banking North America unit of BNP Paribas.

In addressing counsel's argument, the director's decision stated: "The record . . . contains no evidence that the beneficiary has participated as a judge of the work of others in the field, beyond that required by her current employment." On appeal, the petitioner does not challenge the director's finding.

We concur with the director's finding that the beneficiary activities are not tantamount to judging the work of others in one's field for purposes of this criterion. The preceding duties are limited in scope to the beneficiary's immediate employer and do not involve judging others in the field. We do not find that duties inherent to one's job duties are indicative of sustained national or international acclaim at the very top of the field. The record includes no evidence showing the names of the individuals evaluated by the beneficiary or contemporaneous documentation of her specific assessments. Further, there is no indication that the beneficiary, rather than her corporate superiors, held final authority over her decisions.

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

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

The petitioner submitted six letters of reference discussing the beneficiary's work at BNP Paribas, but there is no evidence showing that the work attributable to her has had a substantial national or international impact beyond her immediate employer such that it can be considered a contribution of "major significance in the field." While the beneficiary is admired within her company for adeptly handling her job responsibilities, the evidence submitted by the petitioner is not adequate to demonstrate that the beneficiary is recognized throughout the greater field for original contributions of major significance in the corporate banking field. The record does not indicate the extent of the beneficiary's influence on others in the corporate banking field, nor does it show that this field has somehow changed as a result of her work.

The director's decision noted that the record included copies of BNP Paribas' "corporate analyses, strategy papers, business models, and financial reports." The director's decision further stated: "These documents, however, do not bear the name of the beneficiary as author anywhere in the exhibit. Instead, they appear to be reflective of the work of a team of management analysts who have compiled reports for the employer as a normal course of business." The director's decision also stated that "the record does not establish that the beneficiary's accomplishments have been . . . recognized as having advanced the field to a far greater degree than the accomplishments of others involved in similar pursuits." On appeal, the petitioner does not challenge the director's findings.

With regard to the personal recommendation of individuals who have worked with the beneficiary in New York, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the beneficiary has earned sustained acclaim for her contributions outside of those who are close to her. The statutory requirement that an alien have "sustained national or international acclaim," however, necessitates evidence of recognition beyond direct acquaintances of the beneficiary. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than

preexisting, independent evidence of major contributions that one would expect of a business executive who has sustained national or international acclaim. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires “extensive documentation” to establish eligibility. *See* section 203(b)(1)(A)(i) of the Act. Without extensive documentation showing that the beneficiary’s work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that she 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.

On appeal, the petitioner does not challenge the director’s finding that the beneficiary fails to meet this criterion.

The petitioner submitted evidence of BNP Paribas’ business reports, action plans, policies and procedures, and budget documents. In addressing this evidence, the director’s decision noted that these documents had not been identified as the work of the beneficiary and that, even if they were attributable to the beneficiary, the documents were “internal work products . . . created as part of her duties for her employer.” The plain language of this criterion requires the beneficiary’s work to appear “in professional or major trade publications or other major media.” The petitioner’s evidence does not meet this requirement. Further, we do not find that these internal business documents constitute “scholarly articles.” Therefore, the petitioner has not established that the beneficiary meets this criterion.

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

Previous counsel argued that the beneficiary’s presentations to coworkers, various internal committees, and clients meet this criterion. The director, however, found that this criterion “does not appear to be applicable in this instance.” On appeal, the petitioner does not challenge this finding.

In this case, the beneficiary’s field is not in the arts. The plain language of this criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to business executives such as the beneficiary. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Given that the beneficiary is an executive in the corporate banking field, she would not satisfy this criterion simply by demonstrating that she made business presentations to her coworkers, internal committees, and clients.

In light of the above, the petitioner has not established 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.

The record adequately establishes that BNP Paribas is an organization with a distinguished reputation. In order to establish that the beneficiary performed in a leading or critical role for BNP Paribas, the petitioner must distinguish the beneficiary from the numerous other executives employed by this organization. Otherwise, the phrase “leading or critical role” is meaningless.

On page 2, the director's decision stated:

The record contains a copy of material about BNP Paribas, the beneficiary's employer, with several references to their activities in the United States. The company is said to employ 2000 people [in North America]. Particularly noteworthy is the fact that the beneficiary is not identified as one of the listed "Key Executives" or as a member of the executive committee. The beneficiary is not specifically named in any portion of Exhibit 8 [Report entitled "BNP Paribas in the U.S."], nor is she named in the 2002 annual report or the 2002 annual results for BNP Paribas (exhibit 13).

On appeal, the petitioner does not challenge the director's finding that the beneficiary fails to meet this criterion. According to the documentation submitted by the petitioner, BNP Paribas employs numerous Vice Presidents. There is no indication that the beneficiary's role BNP Paribas is more important than that of the numerous other executives employed by this organization, including "Key Executives" such as [REDACTED] Head of the North American Territory, [REDACTED] Head of Corporate Banking, or [REDACTED] Chief Executive Officer. The record does not demonstrate that the beneficiary was responsible for the organization's success or standing to a degree consistent with sustained national or international acclaim or with the meaning of "leading or critical role." Therefore, the petitioner has not established that the beneficiary 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.

On appeal, the petitioner does not challenge the director's finding that the beneficiary fails to meet this criterion. The record includes no supporting evidence (such as payroll records or income tax forms) showing the beneficiary's actual earnings for any specific period of time. Further, the plain language of this criterion requires the petitioner to submit evidence establishing that the beneficiary has earned a high salary "in relation to others in the field." The petitioner, however, offers no basis for comparison showing that the beneficiary's compensation was significantly high in relation to others in her field. There is no evidence that the beneficiary earns a level of compensation placing her among the highest paid executives in the corporate banking field. Therefore, the petitioner has not established that the beneficiary meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Prior counsel argued that much of the preceding evidence should be evaluated pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). This regulation 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 beneficiary's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the beneficiary 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 beneficiary's achievements set her significantly above almost all others in her field at the national or international level. Therefore, the petitioner has not established the beneficiary's 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.