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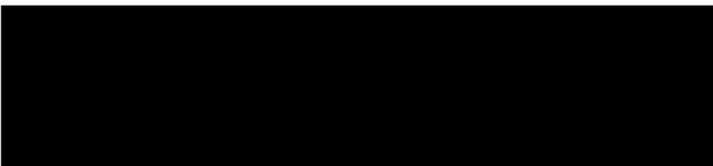
Petitioner:

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 Plunson

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, a design and architectural firm, 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. 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, the counsel argues that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

This petition, filed on July 31, 2006, seeks to classify the beneficiary as an alien with extraordinary ability as a project manager for architectural and design projects. At the time of filing, the beneficiary was employed as a project manager for Pompei A.D., LLC.

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 beneficiary 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.

In a November 15, 2006 letter responding to the director's request for evidence, counsel states that the beneficiary was a winner of the openhousenewyork photography competition. The petitioner submitted information from the openhousenewyork internet site regarding the "focus on architecture: photography competition" stating:

Focus on openhousenewyork sites during the weekend and send us your favorites. All ages are invited to snap away. Categories: interiors, exteriors, details and people.

Judges:

Stanley Greenberg, Photographer, *Invisible New York, Waterworks*

Bob Shamis, Curator of Prints and Photographs, Museum of the City of New York

Margaret Morton, Photographer

* * *

Rules

* * *

- Photographs shall be taken during openhousenewyork weekend at participating sites. . . .

* * *

- Winners will be notified by e-mail with 45 days of the end of the competition and announced in openhousenewyork's e-newsletter. Winners' details and images will be posted on openhousenewyork's website within 60 days of the end of the competition.

The petitioner submitted evidence that the beneficiary's photograph "Scandinavia House" was posted on the openhousenewyork internet site as number 8 of 10 "interiors" photographs. According to the documentation

submitted by the petitioner, there were nine other winners in the interiors category alone plus the winners in each of the “exteriors, details and people” categories. Aside from being posted on the openhousenewyork internet site, there is no evidence that the beneficiary received a prize or award. We cannot ignore that the openhousenewyork contest was a “photography competition” open to children and judged by two photographers and a curator of prints and photographs rather than a competition for professional architects. Selection of the beneficiary’s photograph as a winner in the openhousenewyork competition reflects local recognition in a citywide photography contest rather than a nationally or internationally recognized prize or award for excellence in her field of endeavor. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the beneficiary’s awards be nationally or internationally *recognized* and it is the petitioner’s burden to establish every element of this criterion. In this case, there is no evidence that winning this competition commands significant recognition beyond the contest organizer consistent with sustained national or international acclaim.

The petitioner submitted copies of pages from the 2001 Far Eastern International Digital Architectural Design (FEIDAD) award yearbook and information from FEIDAD’s internet site reflecting that the beneficiary was among 40 contest semi-finalists whose projects were included in the yearbook. The plain language of this regulatory criterion, however, requires the beneficiary’s receipt of nationally or internationally recognized “prizes or awards.” As such, mere selection of the beneficiary as one of numerous semi-finalists included in the yearbook cannot serve to meet this criterion.

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

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

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner submitted evidence that the beneficiary is an “associate” member of the American Institute of Architects (AIA).¹ We note the existence of the more restrictive “Architect Member” category reflecting that

¹ The AIA’s internet site lists the following membership categories:

Architect Member (AIA)

Individuals licensed to practice architecture in U.S. State or Territory.

Associate Member (Assoc. AIA)

Assoc. AIA is open to individuals who meet one of the following criteria:

the top of the beneficiary's field is a level above her own level of achievement. The petitioner also submitted evidence of the beneficiary's membership in the Turkish American Architects, Engineers and Scientists organization (MIM), the Moon and Stars Project (Highlighting Turkish Arts and Culture), and Mensa: The High IQ Society. With regard to the latter two organizations, there is no evidence that they constitute associations in the field for which classification is sought, architecture. Nor is there evidence (such as membership bylaws or official admission requirements) showing that the preceding four organizations require outstanding achievements of their members, as judged by recognized national or international experts in the beneficiary's field. As such, the petitioner has not established that the beneficiary 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 general, 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

The petitioner submitted articles discussing the Philadelphia International Airport printed in *Architecture*, *Centerlines*, and *Style*, "Philadelphia's Premier Magazine for Lifestyle and Fashion." None of these articles are about the beneficiary. The articles in *Centerlines* and *Style* do not mention the beneficiary by name and the Article in *Architecture* only mentions her name in passing as one of numerous project participants. The plain language of this regulatory criterion, however, requires "published material about the alien." The preceding articles do not meet this requirement.

The petitioner also submitted material from the *Defining Digital Architecture 2001 FEIDAD Award* yearbook. This 2001 yearbook, which includes at least eighty digital architecture projects from students and professionals, presents a project by the beneficiary on pages 152 to 154. This material represents a project submitted by the beneficiary to the FEIDAD award committee rather than published material about her. Further, there is no evidence (such as circulation statistics) showing that this yearbook and *Style* qualify as professional or major trade publications or other form of major media.

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- Recent graduate with a degree in architecture, or
 - Currently enrolled in the Intern Development Program (IDP) and working towards licensure, or
 - Currently work under the supervision of an architect or hold a degree in architecture, or
 - Faculty member in a university program in architecture.

See http://www.aia.org/join_categories, accessed on January 14, 2008.

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.

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

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The 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 professors as a member on a national panel of experts is of far greater probative value than evaluating the work of local undergraduate students.

The petitioner submitted documentation indicating that the beneficiary served as co-curator for an “after work group show” at Pompei A.D.’s C3:Gallery. Counsel’s November 15, 2006 letter responding to the director’s request for evidence states: “[The beneficiary] served as co-curator for the employee exhibition at Pompei A.D. She had to review and select other coworkers’ work for the final exhibition.” There is no evidence that the beneficiary’s curatorship was tantamount to participation as a judge of the work of others in her field. Further, we cannot conclude that performing such a role for her immediate employer (which is a local or institutional function) is indicative of sustained national or international acclaim in architecture or design.

The petitioner also submitted an October 31, 2005 letter from [REDACTED], Adjunct Professor, New York Institute of Technology, thanking the beneficiary for reviewing the work of students in the School of Architecture and Design. The November 15, 2006 letter from counsel states that “the final projects that [the beneficiary] was a jury member for are used by the architectural students in their portfolios to submit for employment opportunities.” There is no evidence showing the specific work judged by the beneficiary, the names of those evaluated, documentation of her assessments, and the level of prestige associated with serving as a reviewer. Without evidence showing, for example, that the beneficiary’s participation involved judging experienced, licensed architects at the national or international level or was otherwise consistent with national or international acclaim, we cannot conclude that she 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 letters of support from the beneficiary’s professor at the Pratt Institute, a professional acquaintance of hers who works for the Jones Apparel Group, and her superiors at Kohn Pedersen Fox Associates and Pompei A.D. These letters describe the beneficiary as a talented architect and designer and discuss a few of her projects, but they fail to establish that the specific work attributable to her represents original contributions of major significance in architecture and design.

Principal, Kohn Pedersen Fox Associates, states:

As a principal of Kohn Pedersen Fox Associates, I have had the opportunity to direct an incredible staff of talented individuals towards the successful completion of increasingly diversified and complex projects. [The beneficiary], first hired as an intern, and then sponsored as a permanent employee, is among that talented group that has enabled KPF to aspire towards a greater height of accomplishment.

[The beneficiary's] notable work at KPF includes an educational facility: the Baruch Academic Complex for CUNY's Baruch University, and three airport projects at Dulles, Philadelphia, and Logan International Airports. Much of her efforts at KPF included the new International Terminal for the Philadelphia Airport. With over 800,000 square feet of complex programmed space, this new international terminal was among the largest and most complicated projects KPF had designed to date. Due to the length of time the project was in our office, upwards of 5 years, there was a significant evolution within the leadership. All of which challenged project consistency and added stress to the remaining project members. During this time, [the beneficiary] was a constant. She proved to be invaluable during the sometimes difficult transition of leadership, and was crucial in the organization of project documents.

Co-founder and Chief Executive Officer, Pompei A.D., states:

I can state that from April 2004 to present, [the beneficiary] has been an outstanding employee at my firm. [The beneficiary] has provided a significant impact on our firm by inspiring our organization with compelling ideas in design and professional practice. She has also provided important contributions on key projects, one of which I would like to highlight.

When I first met [the beneficiary], I was intrigued by her diverse background, and also by her extraordinary achievements. Based upon her interview and resume, we realized she would be an excellent compliment to our team. In her first assignment at Pompei A.D., [the beneficiary] was tasked with assisting in the design and project management of the Anthropologie retail brand environments in Portland, Oregon and Naples, Florida. As Anthropologie is one of our most important clients, these projects demanded the highest degree of design, organization, dedication, and follow through, and [the beneficiary] delivered on all of these elements and exceeded expectations. She was integral in creating a cohesive structure to the assorted elements of each of the locations in a consistent and relevant manner, and at the same was able to respond to issues in a professional way, with a very demanding client. Her sense and attention for detail, along with her capability to understand the global picture of the entire design, are the qualities necessary in bringing the projects to a successful conclusion, and lives up to the highest design standards expected from the Anthropologie organization.

, Senior Retail Designer, Jones Apparel Group, states:

I was especially impressed after my visit to the Anthropologie stores in Birmingham and Portland, I found the way the store design was handled and executed to be truly innovative. [The beneficiary] definitely has a unique approach in creating new, inviting and engaging retail spaces, thereby creating a unique experience for the customer.

We acknowledge that the beneficiary has assisted with design and project management for the Anthropologie retail brand and worked in a subordinate role for projects such as the International Terminal for the Philadelphia Airport, but we cannot conclude that she has made original contributions of major significance in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the beneficiary's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the beneficiary is a skilled architect and designer who has clearly earned the admiration of her employers, there is no evidence showing that the specific work attributable to her was original or that it had a substantial impact beyond her employers and their clients such that it can be considered an artistic or business-related contribution of major significance in the field. For example, the record does not indicate the extent of the beneficiary's influence on other architects and designers nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

With regard to the personal recommendations from the beneficiary's educational and professional contacts, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the beneficiary has achieved recognition for her contributions outside of her circle of acquaintances consistent with the requisite "sustained national or international acclaim." See section 203(b)(1)(A)(i) of the Act. The opinions of experts in the field, 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 (Commr. 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 experts supporting the petition 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. Thus, the content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. 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 original contributions of major significance that one would expect of an architect or designer who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the beneficiary's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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.

The petitioner submitted letters from the beneficiary's superiors at Kohn Pedersen Fox Associates and Pompei A.D. discussing her work for those firms. Aside from self-serving promotional material printed from Pompei A.D.'s internet site, there is no evidence showing that these firms have distinguished reputations. Nor is there evidence demonstrating how the beneficiary's role differentiated her from the other architects,

designers, and more senior management employed by the preceding firms. While the beneficiary has managed client projects in her current position, there is no indication that she has consistently exercised substantial control over crucial personnel, business, and creative decisions for Pompei A.D. as an organization. With regard to the beneficiary's work for Kohn Pedersen Fox Associates and Pompei A.D., the petitioner has not established that the beneficiary was responsible for her employers' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

In this case, 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.

Documentation in the record indicates that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition filed in 2005.³ 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 has approved an O-1 nonimmigrant visa petition filed on behalf of the beneficiary, that 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).

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).

³ In the instance of the approved O-1 nonimmigrant petition, the beneficiary was classified as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Act.

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 beneficiary, 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 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 a 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.