

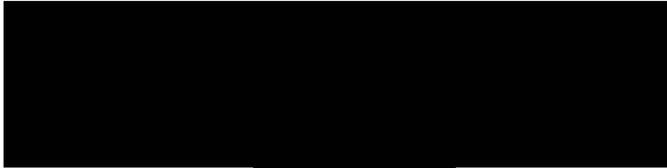
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U.S. Citizenship
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FILE: [REDACTED]
EAC 06 042 50242

Office: VERMONT SERVICE CENTER

Date: **MAR 14 2008**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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.¹ 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 petitioner argues that he “submitted the required supporting documentation that clearly establishes [his] eligibility to be classified as an alien of extraordinary ability.”

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

¹ It is noted that the petition was prepared by an “immigration consultant.” The record includes no Form G-28, Notice of Entry of Appearance by an Attorney or Representative, establishing that this immigration consultant is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner’s behalf. *See* 8 C.F.R. § 292.1.

This petition, filed on November 17, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a fashion designer. At the time of filing, the petitioner was employed as a fashion designer at Check Group Inc. in New York City. A February 20, 2007 letter from the Human Resources/Payroll Coordinator at [REDACTED], of Secaucus, New Jersey states that the petitioner “has been employed with [REDACTED] since October 2, 2006 as a designer/technical designer” for the Dockers and Levi’s Division.

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 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 a November 15, 2005 letter accompanying the petition, the petitioner’s unaccredited representative states:

[The petitioner] is currently a designer for Check Group, LLC. His clients include Phat Farm, Puma, Ecko, Plugg, Outkast, Akademiks, Apple Bottoms, Vokal and the National Basketball Association (NBA). He has also designed fashions for such iconic names as Vivienne Westwood, Ellis Bridals, John Charles eveningwear, and Nicole Farhi. These globally recognizable names . . . singled out [the petitioner] to design and provide designs for their fashion lines.

The record includes recommendation letters indicating the petitioner worked as a fashion designer for the Check Group and [REDACTED]s evening wear, and as an assistant fashion designer for [REDACTED]. The record includes no evidence of the petitioner’s employment with [REDACTED]. Nor is there evidence to support the assertion that the aforementioned clients of the Check Group “singled out” the petitioner to design and provide designs for their fashion lines rather than seeking the services of his employer, who then assigned and oversaw the petitioner’s work for the above clients. For example, there are no statements originating from the Check Group’s clients, such as the NBA or Puma, indicating that it was the petitioner’s particular services they sought as opposed to those of the Check Group in general. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nevertheless, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii) requires “membership in associations in the field . . . which require outstanding achievements.” The preceding companies are not associations with a body of membership, but rather businesses who have employed the petitioner or utilized his services. With regard to the petitioner’s

work as fashion designer for the Check Group and its clients, as an “Assistant Fashion Designer” at [REDACTED] and [REDACTED] and his freelance work for Ellis Bridals and John Charles evening wear, we cannot conclude that such employment is tantamount to “membership in associations in the field” requiring outstanding achievement.

In this case, the petitioner has not established that he holds membership in associations in the field requiring outstanding achievements of their members, as judged by recognized national or international experts in his field or an allied one. As such, the petitioner has not established that he 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 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 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

In addressing this criterion, the director’s decision stated:

[T]he petitioner has provided excerpts from fashion magazines relating to fashion shows, new products, and advertisements which purportedly show his designs. The petitioner asserts that this constitutes published material in major trade publications or other major media. However, most of the excerpts do not associate the petitioner with the particular designs. Further, the petitioner has not provided any articles that are actually written about him or his career as a fashion designer.

On appeal, the petitioner does not address the director’s finding that this criterion has not been met. We concur with the director’s observations. The plain language of this regulatory criterion requires that the published material be “about the alien.” A magazine photograph of apparel designed by the petitioner is not published material about him. The record includes no evidence of published material about the petitioner in professional or major trade publications or other form of major media.

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

The petitioner submitted several letters of recommendation.

[REDACTED], Chief Operating Officer, Check Group Inc., states:

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's] outstanding abilities as a fashion designer at Check Group Inc[.] are indispensable to maintain its public image of stylistic creativity and artistic originality as we present every year the latest creations of our clothing apparel.

His impressive international background in Haute Couture and sport[s]wear, added to his creativity and productivity make him an essential asset to any top American or international company.

[REDACTED], Personnel Manager, [REDACTED], London, England, states: "This is to certify that Vivienne Westwood has frequently worked with [the petitioner] during the last years [sic]. We have always appreciated his great professionalism, his seriousness and of course his creativity. He is a very reliable partner for any fashion project."

[REDACTED], Chief Executive Officer, [REDACTED] evening wear, London, England, states:

It is our pleasure to recommend [the petitioner], one of the most talented fashion designers I have had the privilege to meet and work with.

* * *

This letter confirms that [the petitioner's] ability provided far beyond what was required in his assignment.

He brought outstanding creativity which speaks to his many years of experience that transcends national borders.

[REDACTED] Personnel Manager, [REDACTED] Paris, France, states: "Each of our projects [the petitioner] has been involved with has set new standards of creativity and innovation in the fashion industry I can highly recommend him to anyone who is interested in a standard of professionalism, productivity, and creativity of the highest order."

[REDACTED] Director, D-Roox Street Wear By MD Diffusion, Paris, France, states that he was "extremely satisfied with the quality of [the petitioner's] extraordinary work and intuitive creativity. His very pleasant personality ha[s] been appreciated by every fashion team he has worked with."

[REDACTED] Human Resources and Payroll Coordinator, [REDACTED] states that the petitioner's "outstanding abilities and leadership as designer/technical designer are indispensable to maintain and set higher standards for the worldwide brand image of Levi's/Dockers." The record, however, includes no commentary from corporate executives at Levi Strauss and Company or other documentary evidence to support this assertion. As discussed previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). Further, we note that the petitioner did not begin working for Andrew Marc's Dockers and Levi's Division until October 2, 2006. A petitioner,

however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the AAO will not consider the petitioner's design work for Levi Strauss and Company product lines in this proceeding. Even if we were to address the petitioner's fashion designs for the Levi's and Dockers product lines, there is no evidence that they are contributions of major significance in the fashion industry.

The preceding letters of recommendation discuss the petitioner's talent as a fashion designer, experience, and creativity, but they fail to demonstrate that he has made original contributions of major significance in his field. The letters include no substantive discussion as to which of the petitioner's specific achievements rise to the level of original contributions of major significance in the fashion industry. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien'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 petitioner is clearly admired by his current and former employers, there is nothing to demonstrate that his work has had major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other fashion designers nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. 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 petitioner'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 a musician who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

In addressing this criterion, the director's decision stated:

The petitioner claims that his work has been displayed at artistic exhibitions and showcases. The petitioner references a Levi's display booth at the Magic Show in Las Vegas. The petitioner has also provided evidence which indicates he participated in the Xuly Bet Puma line fashion show in Paris, France. Finally, the petitioner claims that his works have appeared in countless other exhibitions, fashion shows, advertisements, etc. and that the individuals who purchase the items showcase his work daily.

The fact remains that the petitioner is a fashion designer and it is reasonable to assert that displaying one's designs at fashion shows is a routine and common practice in the fashion industry. The petitioner has not otherwise established that these were his own fashion shows or that he was the featured designer at these shows. Further, the record is absent any evidence that the petitioner has garnered any national or international acclaim as a result of these shows.

We concur with the director's observations. There is no evidence establishing the significance and prestige of the venues where the petitioner's fashions were on display. Further, it appears that the petitioner displayed his work among that of numerous other designers and it has not been shown that participation in these shows was limited to top fashion designers of national or international repute. As such, the petitioner has not established that he 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 he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

In addressing this criterion, the director's decision stated:

The petitioner refers to his work for Levi's as well as other fashion labels in which he has provided designs including Phat Farm, Vivienne Westwood, Ellis Bridals, Outkast Clothing Company, and the National Basketball Association. It appears that the petitioner has successfully provided designs for these organizations, which would be expected of any similarly employed designer. It is noted that the petitioner has failed to distinguish himself from other designers, officers, and key employees in these organizations.

We concur with the director's observations. On appeal, the petitioner asserts that the letter from the Human Resources and Payroll Coordinator for Andrew & Suzanne Inc. and his documentation relating to the Levi's line book demonstrate his critical role for Levi Strauss and Company. As discussed previously, the petitioner's work for Andrew & Suzanne Inc.'s Dockers and Levi's Division occurred subsequent to the petition's filing date.³ A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 45, 49. Accordingly, the AAO will not consider the petitioner's role for Levi Strauss and Company in this proceeding. With regard to the clients for which the petitioner has performed design work such as Levi Strauss and Company, Phat Farm, Puma, Ecko, Plugg, Outkast, Akademiks, Apple Bottoms, Vokal and the National Basketball Association, the record includes no letters of support or other evidence originating from senior management at these companies indicating that the petitioner performed in a leading or critical role on their behalf. We note that the petitioner was not an immediate employee of the preceding organizations and that his work for these clients was only temporary or contractual.

³ According to the letter from Isabel Lopez, the petitioner commenced employment with Andrew Marc on "October 2, 2006 as a designer/technical designer for [the] Dockers and Levi's Division."

The petitioner submitted evidence that he worked for Check Group, Vivienne Westwood, Ellis Bridals and John Charles evening wear, Xuly Bet Group, and MD Diffusion, but the record includes no evidence showing that these companies have distinguished reputations. Nor is there evidence demonstrating how the petitioner's role differentiated him from the other fashion designers employed by these companies. The petitioner has not established that he was responsible for 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 he 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 his Form W-2 Wage and Tax Statement for 2005 from the Check Group reflecting earnings of \$61,615.32. On appeal, the petitioner submits a March 1, 2007 earnings statement and his 2006 W-2 and Earnings Summary from Andrew & Suzanne Inc. The petitioner also submits evidence of compensation from his freelance work for Johnny's Signature Inc. in October 2006, BBC Apparel Group in June 2006, Phat Wholesale in March and April 2006, and Gromwell LLC in 2006. The petitioner earned this compensation 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); *Matter of Katigbak*, 14 I&N Dec. at 45, 49. Accordingly, the AAO will not consider the petitioner's earnings from 2006 and 2007 in this proceeding.

The plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation in 2005 or any other prior year was significantly high in relation to others in his field. There is no indication that the petitioner has earned a level of compensation that places him among the highest paid fashion designers in the United States or any other country.

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

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

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.