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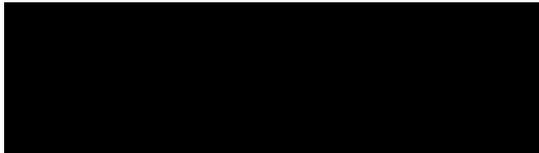


FILE: WAC 02 260 50548 Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2005

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a jewelry designer. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, s*he claims, meets the following criteria.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Counsel initially asserted that the petitioner's selection as a candidate for inclusion in "Who's Who of Professionals" served to meet this criterion. The director requested evidence that inclusion is a nationally or internationally prestigious honor. The petitioner's response did not address this criterion and the director concluded that the evidence was insufficient. Counsel does not challenge that determination on appeal. We concur that inclusion as one of numerous other successful individuals in a frequently published directory such as "Who's Who of Professionals" is not a nationally or internationally recognized prize or award for excellence.

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.

Initially, counsel asserted that the petitioner was invited to join the International Colored Gem Association (ICA). Counsel asserted that membership "was limited only to those individuals who have been recognized by their peers as amongst the most talented designers in the world." The petitioner submitted a letter from Hans-Georg Wild that states:

I met [the petitioner] at the Hong Kong Jewelry and Gem Fair in 2000, and attended her private, invitation only showing at the Grand Hyatt Royal Suite. It was there that Mr. Hatta, the ICA (International Colored Gem Association) Ambassador to Taiwan and myself, also a member, invited [the petitioner] to join our selective institution.

The director requested evidence of the ICA's membership requirements. The petitioner's response does not address this criterion. Counsel does not challenge this conclusion on appeal. We concur with the director that the assertion by Mr. Wild that the ICA is "selective," is insufficient to establish that it requires outstanding achievements of its members as judged by national or international experts. The record lacks the ICA's bylaws or other official information from the ICA documenting its membership requirements and selection process.²

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director concluded that the petitioner 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 reference letters from associates in the jewelry business. Desley Keys, Owner and Managing Director of Bali Artworks, who markets the petitioner's work, asserts that her contributions to the art of jewelry making are "invaluable." Ms. Keys elaborates that the petitioner has "resurrected many of the gold carving techniques of Balinese artisans that would have been heretofore lost to the ages without royal patronage." Henry and Char Gray, General Managers of the Amandari Hotel in Bali, Ken Oschipok, Sales and

² The ICA's website, www.gemstone.org, indicates that members must demonstrate operation of a business in colored gemstones for two years. Making a living in one's field is not an outstanding achievement indicative of national or international acclaim.

Marketing Director of Dorite International, Debora Gardner, owner of suites and a shop in Bali, also assert that the petitioner's contribution to the industry is "invaluable." These letters all also refer to the petitioner's incorporation of "carving and granulation techniques inherent in ancient Egypt, India and classical Greece." While the signatures on the letters indicate that the authors affirm the content of the letters, the use of boilerplate language suggests that the language is not their own.

In response to the director's request for additional evidence, the petitioner submitted more letters. Mara Hotung, the Asian Regional Marketing Manager for Van Cleef & Arpels, asserts that she previously worked for Sotheby's. Ms. Hotung characterizes the petitioner's pieces as "exquisite one of a kind creations," but does not identify the petitioner's alleged "significant contribution to the world of jewellery [sic] and jewellery [sic] making." This letter is not on Van Cleef & Arpels letterhead. Claudia Florian, the former Vice President and Director of Jewelry for Sotheby's Auctioneers, Hong Kong, states:

Having spent many years working in this industry[,] I commend the crafting techniques used by [the petitioner.] Her designs are unique in the field of modern fine jewelry and offer clear distinction from those produced by her contemporaries. For these reasons, [the petitioner's] work constitutes a contribution of major significance to the field of jewelry design compared to others in the field.

Finally, Alan Friedman, designer and owner of a Beverly Hills manufacturer, distributor and retailer of extremely high-end natural colored diamond jewelry, asserts that he has recently become acquainted with the petitioner's work through a mutual client, that the petitioner's designs are "original and beautiful," and that "her contributions have been recognized by CNBC and CNN."

The director concluded that the unique nature of the petitioner's jewelry could not be considered a contribution of major significance, but that the evidence must demonstrate an impact upon the field of jewelry design at the national or international level. The director noted the business relationship between the petitioner and most of the references and concluded that the record lacked evidence "showing that the petitioner's claimed contributions to the field have been widely recognized by other jewelry designers."

On appeal, counsel asserts that the director should not have discounted the opinions of "individuals who work and have worked at the finest [auction] houses in the world." Counsel further asserts the letters from Mr. Friedman, Mr. Kazanjian, and Ms. Keys "clearly show that they consider [the petitioner's] work as having a demonstrable impact in the field of jewelry design at a national or international level."

While we will give appropriate weight to the opinion of experts, general assertions of contributions to the field without any explanation of what those contributions are and examples of how they have impacted the field are not persuasive. We concur with the director that the record lacks evidence of the petitioner's impact on other jewelry designers and the field of jewelry design in general. While other designers such as Mr. Friedman may admire the petitioner's work, they do not claim to be influenced by it. In fact, Mr. Friedman works with diamonds, a gem the petitioner avoids according to the published material submitted.

The record lacks evidence from jewelry designers who have decided to incorporate similar ancient Egyptian, Indian and Greek techniques based on the notoriety of the petitioner's work. The record also lacks testimony from jewelry design teachers who have incorporated these techniques into their jewelry design courses. Thus, while the petitioner's work may be unique and while she may have revived ancient techniques appreciated by

her clientele, the record lacks evidence that these techniques have impacted the field to such a degree as to constitute a contribution of major significance.

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

According to the press releases submitted, the petitioner has displayed her work at the Asian Artworks Gallery and the Ambassador Suite at the Regent Hotel in Singapore. The Asian Artworks Gallery exhibition was by appointment only. Henry and Char Gray assert that they featured the petitioner's work in their Bali hotel and intend to do so at their Mexico hotel. Ms. Gardner also asserts that her shop in Bali sells the petitioner's jewelry. One of the petitioner's references asserts that the editor of Space Magazine, Singapore, decided to cover the petitioner's work after viewing it at a private exhibit at the Ritz Carlton royal suite. Ms. Florian indicates that Sotheby's highlighted the petitioner's work "as part of [its] contemporary designers category" for the 1998 Important Jewels Auction in Asia. While Ms. Florian asserts that Sotheby's "rarely chooses contemporary designs," her own letter indicates that the 1998 auction included an entire category for contemporary designers.

The director acknowledged this evidence but noted that it is "an accepted business practice to display the work of several artists/designers as a means of attracting potential buyers." The director concluded that the record lacked evidence that the petitioner's work was featured more prominently than the work of other artists. On appeal, counsel asserts that the director improperly applied to strict an interpretation of this criterion. Counsel further asserts that private viewings suggest the petitioner's work was featured more prominently.

We do not find that the petitioner must demonstrate that her work was featured more prominently to meet this criterion if the exhibit itself is indicative of national or international acclaim. While we withdraw that determination by the director, we concur that any jewelry designer, in order to make a living in the field, must display her work for sale. The petitioner's work is handcrafted and the time-consuming labor alone necessitates a high price. Thus, the petitioner must necessarily display her work at locations where those with the means to purchase her work will see it. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires a display at an artistic showcase or exhibition. A business arrangement to display and sell one's work at a luxury resort is not the type of juried approval to display one's work in an exclusive artistic showcase or exhibition contemplated by the regulation. Specifically, the former represents an ability to work in the field while the latter is indicative of national or international acclaim. The record contains insufficient information about the Sotheby's auction, such as the number of other contemporary jewelry designers included in the category and the selection process for those designers. Finally, the claims that the petitioner's jewelry has appeared in films cannot serve to meet this criterion. Jewelry is designed to be worn, not every piece of jewelry that is worn in a film is on display in an artistic showcase or exhibition designed to showcase jewelry.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Counsel asserted that the petitioner earned \$250,000 in 2001. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The published articles submitted indicate that the petitioner's work is priced at between 7,000 and 500,000 Hong Kong dollars,³ which amounts to between \$897 and \$66,667 according to publicly available exchange rates for July 2000.⁴ Jon Jacobs, President of Golden Shadow Pictures, asserts that while the petitioner was in "training" in 1988, he commissioned jewelry from her for three of his movies, but does not provide the cost. He further asserts that he is "personally aware" that the petitioner sold work priced at \$50,000 to Jerry Speyer and \$20,000 "to the Taubmans of Sotheby's." The letters from Ms. Florian and Ms. Hotung, the only individuals who claim to have worked at Sotheby's, do not indicate whether the petitioner's items sold at the Sotheby's auction and, if so, the amount paid.

Counsel asserted that the prevailing wage for Level 2 jewelry designers in Los Angeles is \$24,086. The petitioner must demonstrate that her income compares with the income of the most experienced and acclaimed in the field nationally. The evidence submitted reflects that the 90th percentile for jewelers and precious stone and metal workers is \$44,120.

The director concluded that the evidence did not compare the petitioner's income with independent designers who own their own business outside the United States. More significantly, the director stated, "the record contains no evidence of the **actual** prices paid for any of the petitioner's work." On appeal, counsel asserts that the petitioner's income should be compared to her U.S. counterparts. Counsel does not address the director's concern that the record lacks receipts, tax returns, or other evidence establishing her claimed income in 2001 or any other year.

The petitioner's income should be compared with other top jewelry designers. Mr. Friedman, who characterizes his business as similar to the petitioner's, does not attest to his own income. Regardless, we concur with the director's concern that the record lacks evidence of the petitioner's income. The absence of evidence of the petitioner's income from her jewelry design precludes any analysis of whether the petitioner can meet this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel initially asserted that the petitioner meets this criterion based on the use of her jewelry in films and the prominent individuals who have purchased her work. The director questioned whether this evidence related to commercial success in the performing arts and counsel no longer claims that the petitioner meets this criterion. We concur that this criterion specifically relates to performing artists. Moreover, even if we were to consider evidence of a visual artist's commercial success, the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires receipts. As stated above, the record contains no receipts for the purchase of the petitioner's work.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

³ Counsel implies that these amounts are in U.S. dollars but one article specifies that the prices are in Hong Kong dollars and the other article appears in a Hong Kong paper.

⁴ The exchange rate was obtained at www.oanda.com.

Review of the record, however, does not establish that the petitioner has distinguished herself as a jewelry designer 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 indicates that the petitioner shows talent as a jewelry designer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. 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.