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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 03 2006

IN RE: Petitioner: [redacted]
Beneficiar

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:

[redacted]

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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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. Specifically, the director concluded without explanation that the petitioner had failed to submit evidence to meet any of the regulatory criteria, of which an alien must meet at least three.

On appeal, counsel submits a brief and additional evidence. Ultimately, we concur with the director that the evidence submitted is not merely insufficient; the petitioner did not submit the initial required documentation for the classification sought. Rather, the petitioner relies mostly on self-serving claims, purported examples of his work product and letters that do not qualify as primary evidence.

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 he 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 creative concept advertising artist.[1] 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, he claims, meets the following criteria.[2]

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

Initially, counsel asserted that the petitioner was submitting five letters as evidence to meet this criterion. Abby Wong, a creative consultant at a Malaysian advertising company, asserts that the petitioner's expertise in his field is an artistic contribution of major significance because his designs enable his clients "to better display and promote their products leading to increase[d] sales and visibility." Ms. Wong concludes that the petitioner's "creative concept advertising art transcends print media, visual media and the [I]nternet." The letters from Suttinee Nanakornpanom, owner of a restaurant in North Miami Beach, and Shaq Lim Shao Hoong of Dynamic Revolution in Malaysia include identical language, suggesting that while these witnesses affirm the statements in their letters by their signatures, the language is not their own. Jeanny Chi-Lei, President of the Miami Overseas Chinese Association (MOCA), asserts that the petitioner's contributions to his field are evident from the "display" of his work on the promotional materials for a local MOCA festival. Ms. Chi-Lei does not explain the basis of her conclusion.

In response to the director's notice of intent to deny, in which the director stated that the letters merely describe the petitioner's work, counsel reiterates the statements discussed above. In a new letter, Mr. Hoong asserts that the petitioner's work is "well received" by his clients and that he is "able to contribute fresh and brilliant advertising ideas to the art and design field."

The director concluded that the petitioner had not submitted any "new" evidence relating to this criterion. On appeal, counsel asserts that the attestations in the reference letters are sufficient. Counsel cites non-precedent decisions from this office from 1998 and earlier, which are not binding. Counsel concludes that the petitioner's expertise alone is sufficient to meet this criterion.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration

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[1] The petitioner last entered the United States with an F-1 nonimmigrant student visa for optional practical training through the Savannah College of Art and Design. His period of stay expired November 27, 2004. While student or training status does not preclude eligibility under this exclusive classification, the petitioner cannot narrow his field to those just completing their education and training.

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

Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from 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 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Most art is original. 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. To demonstrate a contribution of major significance in the field of advertising art, the petitioner must show more than the mere satisfaction of clients. The purpose of advertising is to contribute to the client's business; not all advertising is a contribution of major significance in the field of art. The petitioner must demonstrate an impact in his own field. The record lacks evidence that the petitioner's advertisements have attracted the attention of national trade journals in his field or that he is recognized for pioneering new artistic techniques currently being applied at the national level.

In light of the above, while the director's decision should have included more discussion of this criterion, we concur with the director that the initial letters were unpersuasive and that the petitioner's response did not include any new evidence beyond another vague letter that fails to explain *how* the petitioner has impacted the field of art. Thus, the petitioner has not established that he meets this criterion.

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

Initially, counsel asserted that the reference letters and the petitioner's purported work product serve to meet this criterion. In response to the director's notice of intent to deny, counsel quotes from the reference letters. The director concluded that there was "no evidence submitted."

On appeal, counsel cites *Dragon v. INS,* 748 F. 2d 1304, 1306 (9th Cir. 1984), for the proposition that all relevant evidence must be considered. That case involved a decision by the Board of Immigration

Appeals (BIA) denying an application for permission to reapply *nunc pro tunc* for admission into the United States. The court stated:

> In deciding whether to grant such relief, the BIA must, as in other cases involving discretionary relief, consider expressly all relevant factors presented and issue a reasoned decision reflecting such deliberation. This rule applies in the case of *nunc pro tunc* applications as well. Among the factors the BIA has found relevant in cases involving applications for permission to reapply are the following: (1) the applicant's ignorance of the need to reapply for admission because he was unaware that he had been deported; (2) the reason the alien was originally deported; (3) the length of time the applicant has legally resided in the United States; (4) his or her moral character; (5) his or her family responsibilities; and (6) hardships resulting from deportation.

Id. at 1306-1307. While we agree that all of the documentation submitted must be considered, counsel does not explain how a decision requiring the BIA to weigh positive and negative factors in discretionary relief cases applies to a visa petition seeking the highly exclusive extraordinary ability classification.

Ms. Wong asserts:

> Moreover, displays of [the petitioner's] work in the creative concept advertising art are evident at artistic exhibitions and showcases. [The petitioner's] works are showcased prominently at the 2004 Miami International Dragon Boat Festival and art exhibitions at Miami International University of Art & Design. [The petitioner's] works are also present at Nanyang.com, which is Malaysia's leading news outlet and at several well-established South Florida restaurants such as Hiro Miami and Yakko-san.

Mr. Nanakornpanom and Mr. Hoong provide near identical statements. [redacted] asserts that the petitioner's work "was displayed on [MOCA's] annual Miami Hong Kong Dragon Boat Festival brochure and web page, which was viewed by all citizens of [redacted]." Tachibana, an accountant in Miami, affirms that the petitioner's work is "displayed" at Miami restaurants.

The record contains the brochure for the Miami Hong Kong Dragon Boat Festival, advertisements for Nanyang.com, pages from Form Factory's website, restaurant menus and promotions, corporate graphics, artwork allegedly exhibited at a student exhibit at the Malaysia Institute of Art Design, animation allegedly exhibited at Miami International University of Art and Design (where the petitioner obtained his Master of Fine Art) and photographs with no indication of where they were displayed. None of these materials officially credit the petitioner with the work.

The director should have provided some discussion of this criterion given the counsel's explicit claim that the petitioner meets it. Nevertheless, the director was technically correct that no evidence was

submitted relating to this criterion. While the brochures, promotional materials, menus and corporate website pages may result in a "display" of the petitioner's work, they are not artistic *exhibitions or showcases*, whose primary purpose is to present art for viewing. As the regulation at 8 C.F.R. § 204.5(h)(3)(vii) explicitly provides that the display must be at an artistic exhibit or showcase, the mere fact that the petitioner has clients who use the work they paid him to do is not evidence relating to this criterion.

Even if we were to consider this evidence as relating to this criterion, none of it is explicitly credited to the petitioner as would be expected in an artistic exhibit or showcase designed to promote the petitioner's artwork. Without credit, the artwork can hardly be considered to garner the petitioner any national or international acclaim.

While the petitioner's claim to have displayed his work at what appear to be student exhibitions would at least relate to this criterion, the petitioner submits only photographs of the works allegedly displayed. The photographs alone are not evidence that they were displayed at an exhibition or showcase. The record lacks exhibit or showcase programs crediting the petitioner as a contributing artist. Even if we were to accept the self-serving captions that this artwork was displayed as claimed, a student exhibition at one's own school is hardly indicative of national or international acclaim.

In light of the above, the petitioner did not submit evidence that we can consider under this criterion. Even if we did consider the evidence, it demonstrates only his ability to work in the field. It is not indicative of national or international acclaim. Thus, 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.

The petitioner's references affirm, using similar language, the petitioner's roles for Nanyang.com (Art Director) and Miami restaurants and festivals. The director concluded that no evidence was submitted to meet this criterion.

Once again, the director should have provided some discussion given counsel's explicit claim that the petitioner meets this criterion. Nevertheless, the regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of employment experience "shall be in the form of letter(s) from current or former employer(s) . . . and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien." None of the letters are from individuals at the entities for which the petitioner allegedly played a leading or critical role, Nanyang.com, Hiro Miami or Yakko-san. Thus, technically, the director was correct in stating that the petitioner did not submit the evidence required to address this criterion.

Even if we were to consider the evidence relating to the petitioner's work in Miami, none of the materials establishing the reputations of Hiro Miami or Yakko-san suggests that these restaurants are

known because of their remarkable promotional art or menus. Thus, we are not persuaded that the petitioner, in designing these materials, performed a leading or critical role for these restaurants. We have similar concerns regarding his design of promotional materials for a local festival. Regardless, none of this evidence suggests that the petitioner has any recognition outside of Miami.

Without an organizational chart from Nanyang.com, we cannot determine whether the position of Art Director, assuming the petitioner actually held that position, is a leading or critical role. Regardless, the petitioner arrived in the United States in February 2004 as an art student. He filed the instant petition more than one year later. The petitioner must demonstrate sustained national or international acclaim as of the date of filing in May 2005. The petitioner's work in Malaysia, which appears to have ended by February 2004, cannot be considered evidence of his sustained acclaim as of that date.

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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a creative concept advertising artist 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 indicates that the petitioner shows talent in graphic design, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.