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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 17 2007
EAC 06 101 50272

IN RE: Petitioner:
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 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.

On appeal, the petitioner argues that she qualifies as an artist 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 she has sustained national or international acclaim at the very top level.

This petition, filed on February 14, 2006, seeks to classify the petitioner as an alien with extraordinary ability as an artist. In a letter submitted in support of her petition, the petitioner states:

> I am a recognized artist in my homeland, Croatia. I was a dancer, choreographer, costume designer, make-up artist, art director, photographer and journalist. I studied journalism in Split, Croatia. I specialized in modern dance techniques at "CSC" – Academy of Dance in Milan, Italy. Then I

graduated at "BCM" – the famous European school of artistic make-up, also in Milan. I developed different art and cultural projects in Croatia.

Seven years ago a young man asked me to shoot photos for his model-portfolio. We created about a dozen very unique photos. One of them changed my life, and my family's life, forever.

* * *

World famous "Benetton" photographer suggested me to go to [New York City], where I could share the supernatural messages of my photo with as many people as possible.

* * *

Fascinated by the photo, "National Museum of Catholic Art and History," here in New York, renewed our visas twice.

* * *

For the past six years, we have been struggling to make a life in New York . . . .

The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that she seeks to continue work in her area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). According to Part 3 of her Form I-140 petition and other documentation submitted by the petitioner, she has been residing in the United States since November 1999. The record, however, contains no evidence showing that the petitioner has sustained national or international acclaim in the arts after her entry into the United States. Nor is there evidence that she has worked as dancer, choreographer, costume designer, art director, photographer, or journalist subsequent to 2000. While the petitioner's appellate submission includes a September 6, 2001 memorandum from the Public Relations Department of Lancome Paris indicating that it requested her services as a make-up artist for a fashion event in September 2001, there is no evidence that she has worked as a make-up artist since that time. The preceding issues and additional deficiencies in the petitioner's evidence will be further addressed below.

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

On appeal, the petitioner states: "[B]eing 'Alfa and Omega' of the 'First Croatian Fashion Designers Festival' in 1994 was equivalent to an "Oscar"-winning performance in the United States. The record, however, includes no evidence of the petitioner's receipt of this award, nor evidence that it was nationally or internationally recognized. 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)).

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.

On June 9, 2006, the director issued a notice requesting the petitioner to provide evidence for this regulatory criterion. The petitioner, however, failed to submit the requested documentation. On appeal, the petitioner submits an October 27, 2006 letter issued by the Art Directors Club, Inc. of New York stating that she is a member. The petitioner also submits an October 24, 2006 letter from the president of Photo Club Split stating that she is a member of the club. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Nevertheless, there is no evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's or an allied field. As such, the petitioner has not established that she 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 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 or international level from a local publication or broadcast. 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.[1]

[1] 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 submitted a videotape of local news coverage from UPN Channel 9 in New York. The June 2003 video clip, which features brief quotes from the petitioner and her spouse, shows a promotional event to market new variations of "I love New York" t-shirts and states that the petitioner's husband came up with the idea. There is no indication that participating in a promotional event for t-shirt sales relates to the petitioner's "work in the field for which classification is sought." Nor is there evidence that UPN Channel 9 in New York is a form of "major" media.

The petitioner also submitted several articles discussing her in publications such as *Nedjeljni Magazine*, *Stil*, *Jutarnji List*, *Slobodna Dalmacija*, *Nedjeljna Dalmacija*, *Foto*, and *Vecernji List*. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The English language translations of the preceding articles were not certified by the translator, nor were they complete, as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the dates for the majority of the preceding articles were not properly identified as required by this criterion. On appeal, the petitioner submits an October 25, 2006 letter from a Consul Counselor for the Consulate General of the Republic of Croatia, New York, asserting that the preceding publications "are established to be major trade publications or major media in Croatia." As this assertion is unsupported by documentary evidence, it is insufficient to demonstrate that the preceding articles were printed in major publications in Croatia. The record includes no evidence (such as circulation statistics) showing that the preceding publications qualify as "professional or major trade publications or other major media." Moreover, there is no evidence of material about the petitioner in major publications subsequent to the 1990s. As such, the petitioner has not established that her national or international acclaim has been sustained.

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

The petitioner submitted two articles she authored for *Jet Set* magazine in which she interviewed [redacted]. These articles were unaccompanied by certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nor is there evidence (such as circulation statistics) showing that the preceding magazine qualifies as a professional or major trade publication or other form of major media.[2] Further, the plain language of this regulatory criterion requires the petitioner's "authorship of scholarly articles in the field." Without proper English language translations, it cannot be concluded that the petitioner's articles were "scholarly" in nature. Finally, there is no evidence of scholarly articles authored by the petitioner in major publications subsequent to the 1990s. As such, the petitioner has not established that her national or international acclaim has been sustained.

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[2] As discussed previously, the petitioner submitted an October 25, 2006 letter issued by a Consul Counselor from the Croatian Consulate in New York asserting that *Jet Set* was one of several publications "established to be major trade publications or major media in Croatia." This assertion was unsupported by documentary evidence and therefore is insufficient to demonstrate that the articles authored by the petitioner were printed in a major publication.

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

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

The petitioner submitted evidence of her work in Croatia in the 1990s that appears to meet this criterion. For example, the petitioner's photographic exhibition, "Faces," and art direction for the Mr. [redacted] contest, demonstrate a level of national acclaim in Croatia. The petitioner also submitted May 9, 2000 and November 14, 2000 letters from [redacted], Director of Development and Deputy Director, The National Museum of Catholic Art and History, New York, stating that the museum was "engaged in the planning stages of an art project" with the petitioner. In the November 14, 2000 letter, [redacted] states: "I am writing to urge that [the petitioner] be granted permission to stay in the United States in order to complete this important art project which is expected to be exhibited in the National Museum of Catholic Art and History at the opening of the museum which is anticipated to be September 2001." The record, however, contains no evidence showing that the petitioner's exhibition at this museum ever came to fruition. Thus, subsequent to her arrival in the United States, there is no evidence that the petitioner's work has been displayed in qualifying artistic exhibitions or showcases. As such, the petitioner has not demonstrated that her national or international acclaim as an artist has been sustained.

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 she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner, however, has submitted no evidence showing that the organizations for which she has worked have distinguished reputations or that she was responsible for their success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. As such, the petitioner has not established that she meets this criterion.

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

The plain language of this regulatory criterion requires evidence of commercial success in the form of "sales" or "receipts"; simply submitting evidence indicating that the petitioner has worked on various productions cannot meet the plain language of this criterion. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial success in the performing arts in a manner consistent with sustained national or international acclaim. As such, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Further, as required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that her national or international acclaim has been sustained. As previously discussed, the petitioner has been residing in the United States since November 1999. The record, however, includes no evidence of

achievements or recognition showing that the petitioner has sustained national or international acclaim in the arts in the six years immediately preceding the filing date of the petition.

On appeal, the petitioner requests to "be granted a personal interview . . . to present original documentation and hundreds of negatives of [her] photos." The presentation of original documents and negatives of the petitioner's photographs is unnecessary as CIS has not questioned the credibility of her evidence. The regulations provide that the requesting party must adequately explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner has not identified unique factors or issues of law to be resolved. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Review of the record does not establish that the petitioner 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 petitioner's achievements set her significantly above almost all others in her 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.

Beyond the decision of the director, the record lacks evidence that the petitioner will continue work in her areas of expertise in the United States. Aside from being "engaged in the planning stages of an art project" with the National Museum of Catholic Art and History more than five years prior to the petition's filing date and being requested to work as a make-up artist at a Lancome Paris fashion event in September 2001, there is no further evidence that the petitioner has continued to work in her areas of expertise for the last four years. The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The petitioner submitted a November 10, 2003 letter stating: "My first book is almost finished. I burn for its publishing in my new home. My 'THE LITTLE RED SHOES,' a short kids movie, is waiting for sunny shooting days of this winter. My FACE PAINTING HANDBOOK FOR KIDS will be presented next year." This letter lacks sufficient details of these projects and does not represent "clear evidence" of the petitioner's work intentions in the United States. Further, we cannot ignore that the petitioner wrote the November 10, 2003 letter more than 27 months prior to the filing of this petition. As of the filing date of her appeal on October 31, 2006, the record contains no evidence that the petitioner has published either of the preceding books or released the children's movie. Nor is there documentary evidence of ongoing work or progress related to these projects. For example, the record includes no evidence indicating that the petitioner has entered into an agreement with a publishing house or that she has acquired the necessary resources to produce a children's movie. As such, there is no clear evidence that the petitioner will continue work in her areas of expertise in the United States.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C.

557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.