

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

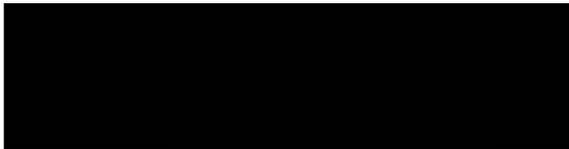
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [REDACTED]
LIN 07 119 52139

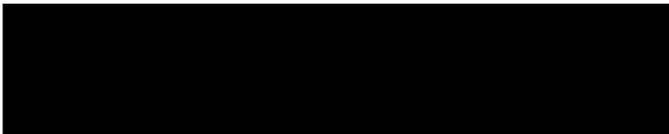
Office: NEBRASKA SERVICE CENTER

Date: JUN 04 2009

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)

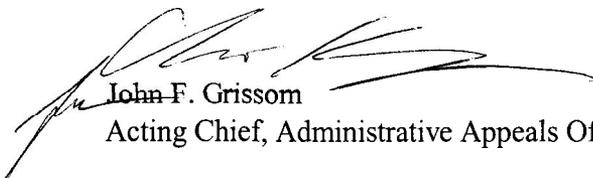
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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. The director determined that 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 meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director applied incorrect standards in denying the petition.

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.

U.S. Citizenship and Immigration Services (USCIS) 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 sustained national or international acclaim at the very top level.

This petition, filed on March 14, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an industrial 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, 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. Neither counsel nor the petitioner claim that the petitioner meets any criterion not discussed below.

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 initially submitted a letter dated November 2006 from _____ President of the National Designer's Association. The name of the association is Andiseno. The letter was accompanied by an uncertified translation. The letter confirmed the petitioner's membership and stated that the petitioner was one of the "key persons to found this association in October of 1996." The petitioner also provided a list of goals for Andiseno with another uncertified translation. On appeal, the petitioner refers to this document as the articles of incorporation. However, the document does not appear to be official, as it is not on letterhead and is not certified by the state or otherwise. Additionally, two articles from *Diseno* were provided, also without certified translations. One of the articles stated that Andiseno had its first national meeting and that the petitioner was elected to be the organization's Financial Director. The second article noted that Andiseno celebrated its second anniversary of providing service to Columbian designers.

The director, in his decision, stated that the petitioner claimed to be a founding member of Andiseno, but that no documentary evidence was submitted to establish that outstanding achievements were required to be a founding member. As such, the director found the petitioner had not met this requirement. On appeal, no new evidence was provided. However, on appeal, counsel argues that,

The Service did not take into account the affidavit filed and the magazines' articles enclosed in the petition, and the fact that this is the First Association in the Designs field incorporated in the Country.

We agree with the director, and find the petitioner failed to fulfill this criterion. The evidence provided was deficient insofar as certified translations were not provided for any of the documents. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Nonetheless, even if the submitted translations were certified, the evidence provided still fails to meet this criterion. The petitioner failed to demonstrate outstanding achievements are required for membership in Andiseno or for founding members of the group. The record also lacks evidence such as membership bylaws or official admission requirements establishing that the organizations require outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field. The goals of the organization were provided, which included union, disclosure and projection. However, none of these goals appear to be consistent with excellence or exclusivity, but instead relate to generating business and opportunities for designers. Moreover, although the petitioner's brief claims that Andiseno is the first association in the design field that was incorporated in Colombia, there is no evidence to support this proposition. 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). In addition, as mentioned above, the evidence provided to show incorporation is problematic.

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 regulation, 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.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 an article from *Diseno*, which stated that Andiseno had its first national meeting. It also noted that the petitioner was elected to be the organization's Financial Director. The petitioner also submitted an article from *Casa & Estila*. Both articles were translated, however certified translations were not provided as required by 8 C.F.R. § 103.2(b)(3). Moreover, the regulatory parameters require that the date and author of the material be provided. Yet, the authors of the articles were not provided and the dates were not translated. It is also unclear whether the article in *Diseno* was an advertisement purchased by the organization. Nonetheless, neither article can be considered "about the alien" because the article in *Diseno* only briefly mentions the petitioner and the article in *Casa & Estila* does not even reference the petitioner.

No new evidence was provided in response to the RFE or on appeal. However, counsel claims on appeal that the petitioner met this criterion because his "designs year by year has (have) been chosen, fabricated and displayed in the most important and bigger exhibitions and showcases." As no further evidence was provided to demonstrate the petitioner's designs were published in a professional or major trade publication, or other major media, this argument has no evidentiary support. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner also failed to provide any evidence about *Diseno* and *Casa & Estila*, such as, a widespread distribution, readership, or overall interest in either publication to demonstrate that they are professional or major trade publications or other major media.

For all of the above stated reasons, the petitioner failed to establish that he meets this criterion.

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

The petitioner initially submitted a list of five fairs and shows where he purports to have displayed his designs. The petitioner provided information on the trade show called "Coverings," which took place April 17-20, 2007 in Chicago, Illinois, including a promotional pamphlet, internet printouts from www.coverings.com, an article from *Casa & Estila* about a "Coverings" event in Florida and promotional materials for "Coverings" 2004 from Euroceramica. In addition, an internet printout from www.surfaces.com with details of the "Surfaces" exhibit in Las Vegas, Nevada in February of 2007 was provided. In response to the RFE, a name tag for the "Coverings" show in Miami, Florida indicating that the petitioner was an exhibitor for Euroceramica S.A. was submitted. He also provided a credential for a show, "Columbian Building Materials and Hardware Showroom," indicating that Euroceramica was an exhibitor, as well as contact information for the company and its booth number. However, none of the evidence for this show demonstrated that the petitioner's designs were displayed. No new evidence was submitted on appeal. Nonetheless, counsel asserts on appeal that the petitioner's "designs were exhibited in some of the biggest business trade shows, which supports its specialty, and that positioned him as one at the top five percentage of designers with sustain national and international acclaim." As aforementioned, it is insufficient to go on record without supporting documentary evidence for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. As the petitioner failed to submit

documentary evidence that his designs were actually displayed at these various exhibitions, he has not met his burden of proof.

Frequent display of artwork is intrinsic to most professions in the visual arts. However, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. In this case, the record documents the petitioner's involvement in one "Coverings" show and also provides information regarding other exhibitions in which the petitioner claims to have displayed his designs. Even assuming that the petitioner provided evidence to show that his work was actually displayed in all the claimed trade shows, the record contains no persuasive evidence to establish that these events were nationally or internationally recognized as premier exhibitions in the petitioner's field or that the petitioner's work was otherwise displayed in a manner consistent with sustained national or international acclaim. For example, the record lacks evidence that the petitioner's work displayed at these exhibitions was critically acclaimed. In review, the relevant evidence does not establish that the petitioner has displayed his designs at artistic exhibitions or showcases in a manner consistent with the requisite sustained acclaim. Accordingly, he does not meet 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 initially submitted the following evidence relevant to this criterion:

1. A reference letter from [REDACTED], General Manager of Alfarera, dated November 24, 2006, stated that the petitioner produced new products for the company and that he was employed for the company from August 1996 until December 1997. According to the letter, in 1997, the petitioner was offered partnership in the company and assigned the role of consultant as well.
2. A reference letter from [REDACTED] General Manager of Ladrillera-Galpon Medellin, dated October 5, 2006, stated that the petitioner created a new line of roof tile for his company in February of 1989, among other lines. According to the letter, the petitioner was also given stock in the company so that he would continue to provide the company with his experience.
3. A letter from [REDACTED], Manager of Terrazul, dated October 14, 2006, credited the petitioner for designing a line of religious figures, which is one of her company's most successful products.
4. A reference letter from the petitioner's university professor, [REDACTED], dated October 3, 2006, that confirmed the petitioner was elected to the Faculty Counsel from 1998 to 1999.
5. A confirmation letter dated September 1, 2006 from the Human Resources Office stated that the petitioner was the chair of the Industrial Design Faculty for two semesters, one in 1994 and another in 1995.
6. An article in *Diseno* dated 1998 stating that Andiseno had its first national meeting and that the petitioner was elected to be its Financial Director.

7. An article in *Edicion Especial Semana*, dated May 2005, entitled “The 100 Largest Columbian Companies” was submitted.

In response to the RFE and on appeal, no new evidence was submitted. The director found the evidence was not sufficient to satisfy this criterion.

With regard to all the evidence listed above, for Items 1 through 7, the petitioner failed to provide certified translations of the original documents. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Moreover, the translations in Items 2 and 6 failed to translate the date, which appears on the original document.

In addition to the deficiencies with the translations of the evidence, the petitioner has failed to establish the nature of his role within the organizations or establishments so as to show that he held a leading or critical position. For example, there is no evidence demonstrating how the petitioner's role differentiated him from the others in the company or organization, nor is there any evidence detailing the responsibilities of his various positions.

Further, the evidence is insufficient to demonstrate that the establishments, where the petitioner claims to have performed a leadership role, have distinguished reputations. With respect to this regulatory requirement, Item 7 was provided. However, only a partial translation was submitted, and the petitioner failed to provide the full article. Moreover, the article ranks various corporations where the petitioner has claimed employment. However, he has not claimed to have leadership roles in any of the corporations that were ranked. Moreover, most of the roles claimed to be held by the petitioner occurred between eight and 18 years before the petition was filed. Such a lapse in time would be insufficient to demonstrate *sustained* acclaim in the petitioner's field.

As such, the petitioner has not established that he 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 petitioner initially submitted the following evidence relevant to this criterion:

1. A catalogue and/or portfolio entitled, “An Artist Designing,” published by Industrial Designer was provided. It lists all the different services and products of Industrial Designer, and also has information on the petitioner as a designer for the company.
2. A list of the petitioner's designs and products, created by him or his attorney.
3. A reference letter, from [REDACTED] General Manager of Esmalgres S.A., dated October 18, 2006, stated that the petitioner designed a line called “Engraving.” She claimed it was the “most sold and beautiful lines at the International level.” She also wrote that the petitioner was a representative for the company, “which rendered good economical results for both parties.” (The reference letter was accompanied by an internet printout from the company's website, www.clayandtile.com, with a background of the company.)

4. A reference letter, from [REDACTED], General Manager of Alfarera, dated November 24, 2006, stated that the petitioner produced new products for the company, and that he was employed for the company from August 1996 until December 1997. After that, the letter indicates that he was offered partnership, and a consulting position, in the company.
5. A reference letter, from [REDACTED], General Manager of Ladrillera-Galpon Medellin, dated October 5, 2006, stated that the petitioner created a new line of roof tile for his company in February of 1989, among other lines. He wrote that the company saw an “increase in income due to the sales” of the petitioner’s new products. The petitioner was also given stock in the company, so that he would continue to provide the company with his experience.
6. A reference letter, from [REDACTED], Product Manager of Mancesa, dated October 4, 2006, stated that the petitioner designed products for the company for almost 4 years. (The letter was accompanied by the company’s promotional material.)
7. A letter from [REDACTED] Manager of Terrazul, dated October 14, 2006, credited the petitioner with designing a successful line of religious figures.

In response to the RFE, the petitioner provided only one new piece of evidence, a certification, dated May 15, 2008, from [REDACTED], Manager of Alfarera. The certification stated that the petitioner designed a brick product that “has permitted the (our) company to maintain good volume of production and some important incomes during the last two years.” The petitioner’s RFE response also discussed the various designs he was involved in and specifically stated that A.I.C. Trading Corporation increased its sales “10% over the budgeted sales” because of the ceramic tile, “Marbella,” designed by the petitioner. However, the record does not contain any documentation of these increases in sales.

The director’s decision found that the petitioner did not meet this criterion because he failed to provide any documentary evidence to establish commercial success. No new evidence was provided on appeal. We concur with the director’s finding that no documentary evidence was provided to support this criterion. This regulatory criterion calls for evidence of commercial successes in the form of “sales” or “receipts.” Simply submitting evidence indicating that the petitioner designed many industrial products does not meet the plain language of this criterion. Moreover, although the reference letters claim that the designs created by the petitioner created “good economical results” (Item 3) or increased income (Item 5) or were just referred to as being a success (Item 7), these claims were not substantiated with any proof. Also, the petitioner argued in response to the RFE that becoming a partner indicates commercial success (Item 4). However, there was no proof that commercial success was attained through his position as partner. The record does not include evidence of documented “sales” or “receipts” showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of his field. Items 3-7 are all reference letters. Further, Items 1 and 2 only detail the petitioner’s designs and do not provide evidence to demonstrate commercial success. Additionally, Items 3 through 7 were not submitted with certified translations as required by 8 C.F.R. § 103.2(b)(3).

Moreover, the plain language of the criterion requires evidence of commercial success *in the performing arts*. No claim has been made that the beneficiary’s field involves the performing arts. Even if the category were expanded to include commercial success in all fields, as stated above, the

petitioner presented no evidence to show that the beneficiary was responsible for the petitioner's revenue.

Accordingly, the petitioner failed to establish that he meets this criterion.

On appeal, counsel asserts that the petitioner submitted "'other comparable evidence' to indicate having risen to the very top of the field," but counsel does not specify what evidence she considers comparable. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

The reference letters submitted in support of this petition have already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (vii), (viii) and (x). Further, there is no evidence showing that the documentation the petitioner provided constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for other evidence of the alien's achievements and recognition as required by the statute and regulations. The classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

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 the 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 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.