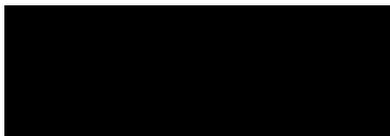


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U.S. Citizenship
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Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: AUG 17 2005
EAC 03 135 50446

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:
[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, Director
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 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, counsel asserts that the director erred by failing to issue a request for evidence in accordance with 8 C.F.R. § 103.2(b)(8). At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence which the petitioner would have submitted in response to such a request.

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

This petition, filed on March 17, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Design Director." At the time of filing, the petitioner was the Design Director of [REDACTED] in New York City.

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 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.

The petitioner received a 1999 American Graphic Design Award for Excellence from *Graphic Design USA* and a 1995 Zanders U.S.A. Corporate Communications Design Award for Excellence. Documentation submitted on appeal adequately demonstrates the national significance of the *Graphic Design USA* competition. We acknowledge the director's observation that the initial record lacked evidence showing the exact number of the preceding awards bestowed each year. While the presentation of a substantial number of these awards somewhat diminishes the weight of this evidence, in this instance, we do not find that the number of annual recipients is so substantial as to preclude eligibility under this criterion. Therefore, based on the documentation presented on appeal, we find that the petitioner's evidence is adequate to minimally satisfy this criterion.

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, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, 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 submitted evidence of her membership in the Art Director's Club (ADC) and information printed from the websites of the ADC and the American Institute of Graphic Arts (AIGA). In a letter accompanying the petition, counsel states that the petitioner is a member of the AIGA, but the record contains no first-hand evidence of the petitioner's individual membership status. Without documentary evidence of the petitioner's AIGA membership, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

According to the information from their websites, there is no indication that membership in the ADC or the AIGA requires outstanding achievement in the petitioner's field or that she was evaluated by national or international experts in consideration of her membership. The record contains no evidence to establish that

the preceding organizations require outstanding achievement of their members in the same manner as highly exclusive associations such as the U.S. National Academy of Sciences.

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.

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.

As noted by the director, the petitioner submitted an “illegible” photocopy of an eight-line piece in the March 23, 1995 issue of *The Wall Street Journal*. There is no indication that the petitioner herself is named in this brief piece. Nor is the petitioner’s name ever mentioned in the transcript from the *Larry King Weekend* interview, in which the publisher of The World Trade Center Remembered, Robert Abrams, and its author, Paul Goldberger, discuss their book.¹

On appeal, counsel cites exhibit G of the initial submission as further evidence under this criterion, but these materials represent the work of others (in conjunction with the petitioner) rather than published material “about” the petitioner herself. For example, the petitioner submitted photocopies of the cover and initial pages of a book by Jenette Kahn entitled In Your Space. The book lists [REDACTED] as the editor, the petitioner as the art director and designer, [REDACTED] as the production editor, Miranda Ottewell as the copy editor, and Louise Kurtz as the production manager. The subject of this book is “personalizing your home and office.” The book is not “about” the petitioner or her artistic designs, but, rather it is about the work of the author, Jenette Kahn. Therefore, it is implausible for counsel to argue that a two-sentence “acknowledgement” about the petitioner’s role as art director on page 282 of this book constitutes qualifying published material under this criterion. The same reasoning applies to the petitioner’s work on the DiamlerBenz and Dun & Bradstreet annual reports. These annual reports are about these companies’ financial information rather than the petitioner or her artwork.

In the preceding instances, the petitioner herself was clearly not the primary subject of the published material or the *Larry King Weekend* broadcast. The plain wording of the regulation, however, requires “published materials about the alien.” If the petitioner is not the primary subject of the material or is not actually named in the material, then it fails to demonstrate her individual acclaim. We find no evidence to support the conclusion that the petitioner been the primary subject of *sustained* national or international media attention.

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 support from individuals in New York who have been associated with business or community projects involving the petitioner. These letters describe the petitioner as a talented artist and graphic designer, but they provide no information regarding how the petitioner’s artistic

¹ Robert Abrams specifically mentions the book’s editor, [REDACTED] and the photographers, Sonja Bullaty and Angelo Lomeo, but there is no mention of the petitioner in the transcript of this broadcast.

contributions have influenced the greater field. The issue here is not the originality of the petitioner's design projects or artistic works, but, rather, whether they constitute a contribution of "major significance" in the field of graphic arts and design. Original submissions for display or promotion are expected of graphic artists or art designers and do not set the petitioner apart from almost all others in her field. In this case, the record does not indicate the extent of the petitioner's influence on others throughout her field, nor does it show that any specific works by the petitioner are widely acclaimed as major artistic contributions.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. In this case, the petitioner's witnesses consist entirely of individuals from New York. If the petitioner's reputation is limited to this one city, then she has not achieved national or international acclaim regardless of the expertise of the individuals offering letters of support. Without extensive documentation showing that the petitioner's work has been unusually influential or widely acclaimed at the national level, we cannot conclude that her work constitutes a contribution of major significance.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

We concur with the director's finding in regard to this criterion. The record contains no evidence of the petitioner's "authorship of scholarly articles."

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

Exhibit F of the initial submission contains evidence showing that the petitioner has displayed her photography at the Culpepper Gallery in New York, the Ning Nam University in Hong Kong (the petitioner has resided and worked in Hong Kong), and the Superior School of Graphic Arts in Paris, France (her work was exhibited among those of students at the school).

In a letter dated March 6, 2002, [REDACTED] Development Director, Everson Museum of Art, Syracuse New York, states:

Eight years ago, at the 25th Anniversary of the Museum's present structure, [the petitioner] was commissioned by the Museum's board of trustees to design a multi-media event to celebrate the art and architectural and historical significance of the Museum. . . . [The petitioner] was chosen for her considerable artistic talents and outstanding ability to work with the large team of people involved in this ultimately very successful project.

We accept that the petitioner assisted a "large team of people" involved in this promotional event, but there is no evidence showing that the petitioner's artwork was exhibited or showcased at the museum over a sustained period. Assisting in a "multi-media event" celebrating the museum's 25th anniversary is not tantamount to the petitioner's artwork being "displayed" among the museum's featured works of art.

A July 17, 2002 letter from [REDACTED] states that the petitioner has “consulted on certain design related issues for the International Council” of the New York Museum of Modern Art, but there is no evidence of the petitioner’s artwork being displayed among this museum’s featured works of art.

On appeal, the petitioner submits information about the Neue Galerie in New York City (appellate exhibit H). This information discusses various works of art featured at the Neue Galerie from November 2001 to February 2002, but there is no discussion of the petitioner’s artwork, nor is there any evidence showing that the petitioner’s works have been displayed at this gallery in the same manner as those of Gustav Klimt or Max Beckmann (two artists mentioned in the information provided by the petitioner).

It must be stressed that an artist does not satisfy this criterion simply by arranging for her work to be displayed; otherwise most, if not all, visual artists would satisfy this criterion, rendering it meaningless. Aside from a single school exhibition in France, the petitioner has not shown that her works of art have often been displayed outside of the areas where she has once resided (i.e., New York or Hong Kong). Nor is there any indication that the petitioner’s works have been featured along side those of artists who enjoy national or international reputations. Furthermore, the petitioner has not demonstrated her regular participation in shows or exhibitions at major venues devoted to the display of her work alone. In this case, there is no supporting evidence showing that the petitioner’s exhibitions enjoy a national reputation or that participation in her exhibitions was a privilege extended to only top artists.

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 the alien performed in 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 worked as a Senior Designer at Page, Arbitrio & Resen from August 1994 to July 2000, as a Senior Art Director at Abbeville Publishing Group from October 2000 to August 2001, and as a Design Director at Freeform Studio, Inc. from October 2001 to present. We concur with the director’s finding that the record lacks evidence establishing that these companies enjoy a distinguished reputation within their industry. Beyond showing that these companies are financially successful, the petitioner must submit evidence that significantly distinguishes them from others in their industry. The record contains no published material or other objective evidence showing that the preceding companies have distinguished themselves from their competitors.

A June 18, 2001 letter from [REDACTED] Director of Rights and Acquisitions, Abbeville Publishing Group, states:

[The petitioner] is our Art Director who heads up our award-winning design department. She is a major artist and designer whose contributions has [sic] made a significant impact on our company since she joined us. Clearly, [the petitioner] is a top designer who has mastered cutting-edge technologies used to create meaningful and unique projects. These projects have garnered critical attention for Abbeville. Her rare talents and design expertise have also made a significant difference in our company and the way our products are produced.

██████████ does not specifically identify the petitioner's projects which "have garnered critical attention for Abbeville" or the outside sources of such attention. ██████████ letter goes on to mention the petitioner's current projects, but she offers little detail regarding how the petitioner's role has substantially influenced Abbeville Publishing Group's overall operations.

The petitioner submitted January 17, 2003 letter verifying her salary at ██████████ but there is no substantive discussion of the petitioner's leading or critical role for that company. Nor is there a letter of support from ██████████ detailing the petitioner's role for that firm.

In this case, the record lacks evidence establishing the relative importance of the petitioner's duties when compared to those of the other individuals employed in the design departments where she worked. We accept that the petitioner has contributed to various art design projects, but there is no evidence showing the extent to which the petitioner has exercised substantial control over business, personnel, or creative decisions executed on behalf of her current and former employers.

On appeal, counsel asserts that the petitioner also played a leading or critical role for the Museum of Modern Art, the Neue Galerie, and the Everson Museum. We note, however, that the petitioner was never an employee of these institutions and that her work appears to have involved only temporary projects. Periodic project work as a contractor or volunteer is not evidence of *sustained* acclaim in a leading or critical role for these organizations. There is no evidence to establish that a substantial part of the overall success of these institutions is primarily attributable to the petitioner.

We find that the petitioner's evidence is not adequate to demonstrate that she performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim.

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 a January 17, 2003 letter from ██████████ Senior Vice President, Freeform Studio, Inc., stating that the petitioner's annual salary was \$50,000.

On appeal, the petitioner submits an updated letter from ██████████ dated January 18, 2005, indicating that the petitioner's annual salary is now \$80,000. A petitioner, however, must establish eligibility at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Subsequent developments in the petitioner's career cannot retroactively establish that she was eligible for the classification sought as of the filing date.

As of the filing date of this petition, according to information on the petitioner's Form G-325A, Biographic Information document, the petitioner had at least nine years of experience in her field.² The petitioner's

² As of the date of this appeal, the petitioner had at least eleven years of experience in her field.

appellate submission included salary statistics for art directors in New York compiled by the Economic Research Institute based on data as of October 1, 2004. The salary profile included the following data:

Estimated Survey Mean Annual Base Salaries			
Years of Experience	10 th Percentile	Survey Mean	90 th Percentile
11	65,587	77,278	93,347
9	61,652	72,539	87,605

On appeal, counsel argues that the petitioner’s “compensation is above average for her field.” Counsel’s reliance on “average” salary statistics from New York as an appropriate basis for comparison is flawed. The petitioner must offer evidence showing that her salary places her at the top of her field at the national level rather than simply in the top half at the local level. Local prevailing wage data from New York does not meet this standard. Without comparative evidence showing that the petitioner is among the highest paid design directors at the national or international level, we cannot conclude that the petitioner satisfies this criterion.

Assuming we were to accept the above data, the petitioner’s \$50,000 salary from 2003 and nine years of experience would place her below the tenth percentile in terms of art director pay in New York. Furthermore, even if we were to accept the evidence related to her current salary of \$80,000 and eleven years of experience (which we do not), the above data indicates that her present salary is only \$2,722 above the mean, but well below (more than \$13,000) that of the top ten percent of earners in her occupation in New York.

A more appropriate comparison is the information the petitioner provided from the U.S. Department of Labor’s Occupational Outlook Handbook, which states:

The American Institute of Graphic Arts reported 2002 median annual earnings for graphic designers with increasing levels of responsibility. Staff-level graphic designers earned \$40,000, while senior designers, who may supervise junior staff or have some decision-making authority that reflects their knowledge of graphic design, earned \$55,000. . . . Design directors, the creative heads of design firms or in-house corporate design departments, earned \$85,000.

Therefore, the petitioner’s \$50,000 annual salary as stated in the January 17, 2003 letter from [REDACTED] reflects that the petitioner’s salary was \$5000 below the median level of earnings in 2002 for “senior designers” and \$35,000 below the median earnings in 2002 for “design directors.” Even if we were to accept the petitioner’s current \$80,000 salary as stated in the January 18, 2005 letter (which we do not), the petitioner’s current compensation is still below the 2002 median earnings for design directors, which was \$85,000.

On appeal, counsel states:

[The petitioner] is developing a new firm, Freeform Studio, Inc. [The petitioner's] "low level" of compensation indicated in the original submission results from the fact that she is investing her compensation in the new firm. As a business decision, [the petitioner] has decided to invest her profits into her business and withdraw a low level of compensation.

Counsel's observation that [redacted] is a "new firm" being developed by the petitioner is perplexing, particularly since documentation in the record indicates that this firm has existed since at least 2000. Furthermore, the appellate submission includes no objective documentation (such as financial records of the petitioner's profit re-investment) to support counsel's assertions. Nevertheless, the information the petitioner provided from the U.S. Department of Labor's Occupational Outlook Handbook specifically addresses such an employment situation, stating: "Graphic designers with ownership or partnership interests in a firm or who were principals of the firm in some other capacity earned \$93,000." In this situation, the petitioner's salary from January 2003 (\$50,000) and January 2005 (\$80,000) is still well below the median for graphic designers with ownership interests (based on the 2002 salary data from the AIGA).

In conclusion, we find that the evidence submitted by the petitioner does not indicate that she commands a salary that is significantly higher than that of others in her field.

On appeal, counsel notes that the petitioner has been granted O-1 nonimmigrant visa status. However, extraordinary ability in the non-immigrant context means distinction, which is not the same as sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes nonimmigrant O-1 criteria less restrictive for a beneficiary in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel Citizenship and Immigration Services (CIS) to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or binding precedent that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien already holds an O-1 nonimmigrant visa.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. In this case, the petitioner has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself as a Design Director 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 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 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.