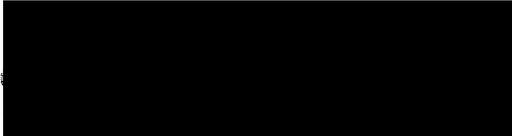




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FILE: WAC 03 052 50892 Office: CALIFORNIA SERVICE CENTER Date: FEB 24 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:
[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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 the petitioner had not established that he qualifies as an alien of extraordinary ability in his field of endeavor.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in CIS regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary 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 director in the field of advertising. The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

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

Initially, the petitioner submitted evidence that two advertisements for which he was the creative director won [REDACTED] in 1998. Specifically, his print advertisement won a gold award and his television advertisement won a bronze award. The materials from the [REDACTED] press kit indicate that it is the largest and most famous advertising awards program in the world, with over 17,000 advertisements submitted from 67 countries. In the same year, the petitioner won a bronze lion at the Cannes Lions festival, established in 1954 as a response to the International Film Festival staged in Cannes since the late 1940's. The materials for this event assert that the festival is a major platform for seeing and exhibiting the best advertising work from around the world.

More recently, the 2001 Radio-Mercury Awards recognized one of the petitioner's advertisements with a \$5,000 award. The list of awardees includes the petitioner as one of the creative directors. The materials for the Radio Mercury Awards indicate that they have been recognizing radio commercials in the United States since 1992 in general, Spanish language, radio station produced, and college categories. The award hierarchy includes a \$100,000 grand prize and several \$5,000 awards. The petitioner's advertisement was the only commercial to win the Hispanic category.

The petitioner also submitted evidence of district or regional awards, recognition in the United States limited to advertisers that target the Hispanic community and finalist status in other international competitions.

The director concluded:

The evidence does not show that the successful performances and award winnings [sic] events are due to the self-petitioner's performances, or that the petitioner is solely responsible for the award winning performances, or that the petitioner's participation in those events is an indication of the extraordinary ability.

While this language is peculiar because the petitioner does not "perform," it is also flawed reasoning. The Nobel Prize is often awarded to collaborators, Olympic medals are awarded to winning teams, Grammy awards are issued to entire bands, and Academy Awards often recognize entire production or design teams. Thus, the mere presence of a collaboration does not warrant dismissing a significant award. While we agree that simply participating on an award-winning project is not necessarily sufficient to meet this criterion, being credited by the award issuing entity demonstrates that the credited individual has won the award, albeit with others. The petitioner is credited as an award recipient on the above awards. As such, he may be credited with winning these awards despite the collaborative effort involved in making the advertisements.

As discussed above, both the [REDACTED] and Cannes-Lions are international festivals with distinguished reputations. While the awards were in 1998, we find that the record reflects that the petitioner has sustained that acclaim. Awards from competitions limited to a specific segment of the field, such as advertisements aimed at Hispanics, and finalist status at an international festival in London are not persuasive evidence by themselves. They are, however, consistent with continued recognition in the petitioner's field. More significantly, as will be discussed below, the evidence relating to the other criteria is also consistent with sustained acclaim. Thus, we find that the petitioner meets this criterion.

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

The petitioner submitted several newspaper articles and Internet news stories. The director dismissed this evidence, implying that published material is normal in the field of advertising and referring to the materials as “reviews” and “citations.” The petitioner, however, is not in an occupation that tends to generate critical reviews or citations from other researchers. Rather, the petitioner is in advertising. The director does not explain his conclusion that advertisers are frequently reviewed and cited.

The director also noted that several of the items submitted are not primarily about the petitioner and some appear to constitute press releases. While true, not all of the published material can be dismissed. For example, in 2001, *Advertising Age* featured the petitioner in an article as part of its section “Marketing to Hispanics.” This article is clearly about the petitioner and represents independent journalist reportage. On appeal, the petitioner submits evidence that *Advertising Age* is delivered to 220,000 advertising, marketing and media professionals and is considered a “must-read” for the industry.

The evidence to meet this criterion would have been stronger if the petitioner had complied with the regulations at 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3) and submitted certified translations of the articles that appear to be about the petitioner posted on www.adlatina.com, a site with 9,000 visitors daily. Nevertheless, we find that the evidence is sufficient to meet this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

While most of the judging performed by the petitioner has occurred after the date of filing, the petitioner served on the 2000 jury for the Cuspide Awards in Puerto Rico. The materials for this 22-year old festival indicate it is the most prestigious award program in Puerto Rico, relying on “creative directors’ of great international reputation” to judge the competition. The festival’s website currently identifies the petitioner as one of its former panelists.

The director dismissed this evidence, concluding that the petitioner had not established the level or type of competition involved and that the judging “appears to have been as one of a number of contemporary and successful creative directors/copywriters in the field of advertising.” On appeal, the petitioner resubmits the materials regarding the Cuspide Awards and additional competitions where the petitioner served on the jury after the date of filing.¹

The petitioner has worked in Argentina and California. We find that his participation on the jury for the most prestigious advertising competition in Puerto Rico is indicative of his national, if not international, reputation.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The director concluded that while Toyota Motor Sales, USA has a distinguished reputation, “it does not follow that the individuals employed by that agency are inherently among the best in their fields simply by virtue of their association with that prominent agency.” The director then cites a lack of letters from independent professionals.

¹ While the petitioner was requested to serve on the jury for the 2002 Mobius Advertising awards prior to the date of filing, the date for the panel was December 10, 2002, five days after the date of filing.

First, we do not find evidence that the petitioner has worked as an employee for Toyota Motor Sales, USA. Rather, the petitioner heads the account of Toyota Motor Sales, a client of his employer, Conill Advertising Saatchi & Saatchi. Moreover, while we agree with the principle that merely working for an organization with a distinguished reputation is insufficient, the director failed to analyze the petitioner's actual role with any of his employers. Finally, while letters from independent experts are often useful in placing the evidence in context, objective evidence in existence prior to the preparation of the petition is far more persuasive. As such, we do not find the lack of independent witness letters problematic.

Conill includes the petitioner's biography on its website through its "meet the heads" link. It also issued a press release posted at www.hispanicad.com when it hired the petitioner. The petitioner also submitted that Saatchi & Saatchi, with revenues of \$476.5 million, is a subsidiary of the Publicis Groupe, ranked fourth in the nation by *Advertising Age*. The same newspaper, in a story featuring the petitioner, indicated that as Vice President-Creative Director of Bromley Communications, the petitioner was "[p]residing over one of the biggest U.S. Hispanic creative departments with 17 staffers.

As we find that the petitioner meets at least three of the regulatory criteria as discussed above, we need not discuss counsel's less persuasive arguments. In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.