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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAR 17 2005**
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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.

Mari Johnson

RP Robert P. Wiemann, Director
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 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 challenges the director's conclusions. For the reasons discussed below, we are satisfied that the petitioner meets one of the ten regulatory criteria, three of which must be met to establish eligibility. As we find that the record falls short of establishing that the petitioner meets any other criterion, we uphold the director's ultimate conclusion that the petitioner has not established her eligibility for the classification sought.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she 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 an art restorer. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, she claims, meets the following criteria.¹

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this

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

The petitioner submitted a one-paragraph article in the June 22, 1986 issue of *El Tiempo* discussing a two-part opening for the Colon Theater of Bogota. The first part involved the Director of the Colombian Institute of Culture conferring its Medal upon Otto de Greiff for his "invaluable cultural work." The article describes the second part as follows: "a distinguished group of professionals [including the petitioner] will receive an award for their restoration of the main curtain of the Colon Theater." The director concluded that the record lacked evidence of the significance of this award. On appeal, counsel asserts that the petitioner received the award from the Colombian Institute of Culture, "the highest Colombian authority in the field."

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The article in *El Tiempo* confirms that Mr. de Greiff received an award from the Colombian Institute of Culture, but makes no mention of the source of the group award. The award itself is not in the record. Thus, we concur with the director that the petitioner has not established the significance of the award. Moreover, the award was presented in 1986, more than 16 years prior to the filing of the petition. As such, it is not evidence of sustained acclaim as of that date.

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.

Initially, counsel asserted that the petitioner's accreditation as an art restorer satisfies this criterion. In his request for additional evidence, the director requested evidence of the requirements for this accreditation. In response, the petitioner submitted the following 1980 resolution of the Council of National Monuments:

The persons or entities executing labors of conservation, restoration or recuperation of the previously mentioned objects must obtain prior license from the Council of National Monuments, which will be awarded to those who are accredited with the technical knowledge indispensable for the proper execution of the work.

The petitioner's license itself indicates that it is based on her completion of ten academic semesters, a final project, and two years of experience as a restorer. The director concluded that the record did not establish that licensure as an art restorer requires outstanding achievements. Counsel does not contest this conclusion on appeal and we concur with the director.

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 only evidence relating to this criterion is the above-mentioned article in *El Tiempo*. The director dismissed this evidence as insufficient. On appeal, counsel does not explicitly contest this conclusion, although he does assert that *El Tiempo* is the leading newspaper in Colombia with a national distribution. The petitioner did not

decision.

submit any circulation data for this publication to support counsel's assertion. Regardless, the article is not primarily about the petitioner. Furthermore, as with the award discussed in the article, it is from 1986, more than 16 years prior to the filing of the petition. As such, it is not evidence of the petitioner's sustained acclaim as of that date.

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

Initially, counsel asserted that the priceless nature of the art restored by the petitioner demonstrated her contributions to the field. In his request for additional evidence, the director inquired as to whether the petitioner had utilized techniques previously unknown to art restorers. In response, the petitioner submitted her personal declaration asserting that she developed a technique for large murals using "prepared colored bases" that reduces 30 percent of the labor costs of a restoration. The petitioner also asserts that she has designed solutions and prepared and tested materials with new products available locally to maintain the authenticity of the work being restored. Finally, the petitioner claims to have created a moisturizing paste from aloe for paper restoration and conservation of black and white photographs.

The director concluded that the reference letters did not address these achievements or identify any other specific contribution of major significance to the field. On appeal, counsel asserts that the "laudatory words in the numerous expert opinions [sic] letters submitted are the very result of [the petitioner's] development of restoration techniques that have been considered a major contribution in the field of art restoration in that they have allowed the successful recovery of 'some of the most valuable works of art and some of the most sacred religious artifacts to be found in museums and private collections.'"

Helena Wiesner, Dean of Art and Antique Restoration Faculty at Externado de Colombia University, praises the quality of the petitioner's work and her technique. Ms. Wiesner further states that based on the petitioner's "qualifications and experience, [she] was selected by the Ministry of Culture of Colombia to teach an intensive course on conservation and restoration of original polychromatic wood works." Eugenia Serpa Isaza, Coordinator of the National Center of Restoration of the Ministry of Culture, asserts that the petitioner also taught multicolored sculpture. These references do not indicate that the petitioner's technique with prepared colored bases has been influential or that the Ministry requested the petitioner to teach this technique based on its uniqueness and potential importance to the field.

The petitioner also submitted a letter from Clemencia Vernaza, a Swiss UNESCO consultant in Colombia, who, according to her resume, planned and coordinated the conservation of artworks at the Santa Barbara Church and the Church Nuestra Senora de Egipto. Ms. Wiesner indicates that the petitioner worked on both projects. Ms. Vernaza praises the petitioner's skill and concludes that the petitioner's education and training "makes her a rare exception among art restorers and gives her a profound knowledge of artworks in all of their aspects." Ms. Vernaza asserts that she sought the petitioner's advice in three areas: "1) esthetic presentation of artworks, 2) specific restoration problems and 3) organization of work." Ms. Vernaza does not, however, make any specific reference to prepared color bases or other unique techniques developed by the petitioner. While this letter confirms that the petitioner provided advice to a UNESCO consultant, without additional information we cannot conclude such advice constitutes a contribution of major significance to the field of art restoration as a whole.

Rosario Molinos-Vela, Manager of Molinos-Velasquez Publishers, asserts that the petitioner has consulted for the company regarding research and preservation of cultural patrimony, their editorial mission. The record is

not persuasive that such consulting constitutes a contribution of major significance to the field of art restoration. In a subsequent letter, Mr. Molinos-Vela asserts that the art restored by the petitioner has a commercial value 25 percent higher than prior to restoration. It is inherent to the profession of art restoration to increase the value of the art restored. Mr. Molinos-Vela is not persuasive that this increase in value constitutes a contribution of major significance to the field of art restoration. For example, the record does not establish that this is a significantly higher increase than typical for restored art. In fact, Yvonne Lopez C., an independent consultant in the field of art restoration, states that with esthetic restoration, "historical and material values are increased in economic terms up to 100% of the original value."

Nicholas Dorman, Chief Paintings Conservator for the Seattle Art Museum, bases his opinion on a review of the documents submitted in support of this petition. He does not indicate that he had ever heard of the petitioner or her work prior to being contacted for a reference. He asserts that the nature of the projects with which the petitioner has been entrusted is indicative of the petitioner's "status as one of the preeminent conservators in her country." He does not indicate that the petitioner has made a contribution of major significance to the field as a whole.

Several other Colombian art restorers and professors attest to the importance of the petitioner's education and the projects on which the petitioner has worked. They affirm their high opinion of her abilities. They do not identify any specific contribution to the field of art restoration or explain how the petitioner has impacted their own work or the work of other restorers.

Two letters do reference the petitioner's specific techniques. Emilia Cortes M., an associate conservator with the American Institute for Conservation at the Metropolitan Museum of Art, states:

The approach to her work has shown exceptional commitment to the advancement of the profession, extending beyond her dedication to the continuous improvement of her skills, in development of ethically and technically correct conservation treatments in a variety of institutional and cultural contexts, some times in places where resources were not available, have been major challenges that [the petitioner] has faced and solved with remarkable success.

While Ms. Cortes asserts that she has no current ties to Colombia or Venezuela, where the petitioner has studied and worked, Ms. Cortes acknowledges that the petitioner was a student of hers in Colombia. Ms. Cortes does not assert that the petitioner's conservation treatments have been influential or explain how they have impacted the field of art restoration.

Similarly, Giuseppe Di Fiandra, Wall Painting Restorer of the Profiel in Brussels, asserts that the petitioner "has demonstrated extraordinary ability on the most critical roles of fine art restoration during the color reintegration and esthetic presentation of the most diversified artistic and historical pieces of art." Mr. Di Fiandra does not explain how he came to know of the petitioner's work, although he does state that he obtained his education in the field at the University Externado de Colombia, where the petitioner has taught. Mr. Di Fiandra does not explain how the petitioner's work has impacted the field or specify that her techniques have been influential. The record is not persuasive that his four years of experience in the field provides sufficient expertise to evaluate the petitioner's contributions to that field.

The above letters are mostly from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves

establish the petitioner's influence over the field as a whole. Moreover, independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

Ultimately, the letters establish that the petitioner is well educated in her field and talented. She has worked on many restoration projects. That the petitioner was able to work in her field of art restoration, however, is not evidence that she has made a contribution of major significance to that field. Art that is not valuable or important is rarely restored. As such, restoring valuable and important art is inherent to the petitioner's field and, in and of itself, is not evidence of her national acclaim or contribution to the field.

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

The artwork restored by the petitioner is on display in churches and elsewhere. The director concluded these displays did not distinguish the petitioner from other restorers. As implied by the director, any artist who restores art is restoring items for display. On appeal, counsel notes that the restored items are not on display as the work of the restorer, but as works of the original artist. This fact is not helpful to the petitioner. Assuming displays of restored art typically do not credit the restorer, it remains that a display that does not credit the petitioner does not garner her any acclaim. The petitioner asserts that exhibit 17 of the response to the director's request for additional evidence is a document reflecting that she was credited as the restorer for an exhibit at the Religious Art Museum in 1989. The record, however, does not contain this document. Regardless, the petition was filed more than 13 years later. Thus, this credit would not demonstrate the petitioner's sustained national acclaim as of the date of filing. It remains, the petitioner has not demonstrated that the museums or churches where her restored work is displayed credit her with their restoration. The record also lacks evidence that any art restoration trade journal has featured her work as examples of notable restorations (as opposed to notable art that happens to have been restored).

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 the petitioner had not identified a specific organization for which she had played a leading or critical role. We are persuaded, however, by Mr. Dorman's implication that the projects on which a restorer has worked are indicative of her status in the field. Thus, we would accept evidence of a leading role on a restoration project with national importance as comparable evidence to meet this criterion. We find that the petitioner has served in a leading role on such projects. Thus, we find that the petitioner meets this criterion. For the reasons discussed above, however, the record does not establish that the petitioner meets any other criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as an art restorer 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 indicates that the petitioner shows talent as an art restorer, but is not persuasive that the petitioner's achievements set her significantly above almost all

others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.