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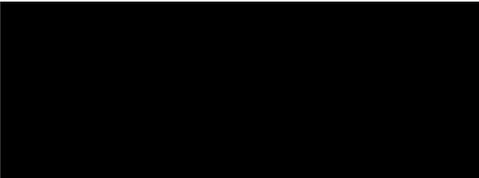


FILE: WAC 03 006 55126 Office: CALIFORNIA SERVICE CENTER Date: MAY 03 2005

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:



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 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 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 wrongly discounted the petitioner's work simply because he was part of a team and makes specific assertions regarding the evidence submitted. For the reasons discussed below, we find that the petitioner meets only one of the ten regulatory criteria for the classification sought, three of which must be met to demonstrate eligibility. Thus, we uphold the director's ultimate decision 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 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 he 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 3D animator. 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.

As noted by counsel on appeal, the director stated:

Even if an alien does fulfill at least three (or more) of the ten regulatory criteria, it does not necessarily establish that the alien has achieved sustained national or international acclaim and recognition, and does not mandate a finding of eligibility. Rather than focusing on submitting documentation that “fits” the regulatory list, it is important to look upon the evidence in its totality.

While we may not agree with the exact wording of the above statements, especially the first sentence, we do not read the director’s decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. A more rational interpretation of the director’s decision is that the petitioner submitted documentation that related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. This office consistently states that a petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or at the very least consistent with sustained national or international acclaim. Regardless of the above language, the director did not conclude that the petitioner meets three of the regulatory criteria. Thus, this is not a case where the director conceded that an alien meets three criteria but denied the petition anyway.

The petitioner has submitted evidence that, he claims, meets the following criteria.¹

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 purporting to demonstrate that the petitioner has worked on award-winning projects. It appears from counsel’s initial brief that these awards were submitted as evidence to meet the display criterion set forth at 8 C.F.R. § 204.5(h)(3)(vii). In his request for additional evidence, the director indicated that the petitioner had submitted a list of awards. In response, counsel presumed that the director had found that the petitioner met this criterion. In his final decision, the director does not contest that the petitioner himself received the awards, but concludes that the petitioner had not established their significance.

On appeal, counsel discusses the events at length, asserts that a “finalist” ranking does constitute an award or prize and notes that this office has found that team awards can qualify under this criterion. We will discuss the specific awards below. We note at the outset, however, that the issue is not whether the petitioner received an award as part of a team but whether he can be considered the recipient of any awards at all and, if so, whether those awards are nationally or internationally recognized.

Initially, counsel listed the following awards:

1. The 1995 ACC CM Festival ACC Award for [REDACTED]
2. The 1995 ACC CM Festival ACC Award for Suntory Ice Gin,
3. The 1997 ACC CM Festival ACC Award for Regal Jumbo Jet,
4. The 1998 ACC CM Festival ACC Award for Calbee Potato Chips,

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

5. The 1998 The New York Festivals AME Bronze Medallion for Mazda Familia S-Wagon,
6. The 1999 ACC CM Festival ACC Award, and
7. The 1999 Imagina Prix Pixel-INA Finalist Award for his work on the NTT Group '98 campaign.

Counsel references exhibits 44 through 49. Exhibit 49 includes stills from an advertisement with the caption "1995 ACC CM Festival ACC Award" preprinted next to the stills. Exhibit 47 includes stills from the Suntory, Calbee and Regal Jumbo Jet advertisements with preprinted captions referencing the 1995, 1997 and 1998 ACC Awards. Exhibit 46 contains stills from the Mazda advertisement with a preprinted caption referencing the AME Silver Medallion. Exhibit 44 includes stills from an NTT commercial with a preprinted caption referencing the Prix Pixel INA award. These stills accompanied by self-serving captions do not constitute evidence that these advertisements received any awards. Moreover, these stills do not establish the actual recipient of any award that may have been issued.

Exhibit 48 includes another copy of the stills from the regal jumbo jet advertisement and a preprinted caption regarding the 1997 ACC Award. Also included is a copy of page 27 from an unidentified publication showing several stills of different advertisements and captions mostly in Japanese. None of these stills appear to be from the regal jumbo jet advertisement. These submissions do not evidence an award or the recipients.

More persuasive evidence that an award was issued is included in Exhibit 46. Specifically, this exhibit includes a publication of the New York Festivals, billed as the International Television & Cinema Advertising competition. The publication lists the Mazda advertisement developed by Hakuhodo, Inc. as the bronze winner worldwide for single entries. The credits are listed below, however, and do not include the petitioner. The petitioner also submitted a photograph of the trophy, which lists the name of the company as the recipient.

Also persuasive of an award being issued, Exhibit 45 includes a certificate and certified translation reflecting that Hakuhodo's Mazda advertisement "was recognized as demonstrating excellence in the Television Commercial Category of the 39th ACC National Commercial Festival." Once again, however, the credits are listed below and do not include the petitioner.

Counsel also noted that films on which the petitioner had worked had been nominated for and received Academy Awards, Golden Globe Awards, Producers Guild Awards and American Film Institute (AFI) Awards.

We acknowledge that some film awards are issued to entire teams. Once again, the issue for this criterion is whether the petitioner is a listed recipient of the award. We note that Best Picture awards are issued to the producer. Thus, the petitioner was not a recipient of those awards and nominations. *Pearl Harbor* was nominated for an Academy award for Best Visual Effects and *Black Hawk Down* won an Academy Award for Best Film Editing. While these awards are related to the petitioner's area of work, he has not demonstrated that he was a recipient of the award or nomination. Specifically, [REDACTED] were nominated for Best Visual Effects for *Pearl Harbor* and Peitro Scalia won as Best Editor for *Black Hawk Down*.

Finally, we need not consider awards and nominations for *Master and Commander* as these awards and nominations were announced after the date of filing and do not demonstrate the petitioner's eligibility as of that

date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Once again, however, the members of the team listed for the Visual Effects nomination did not include the petitioner.

In summary, while these awards are indicative of the distinguished nature of the projects on which the petitioner has worked, and will be considered as such below, the petitioner has not demonstrated that he personally, either individually or as a member of a team, has won a nationally or internationally recognized award.

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.

Initially, counsel asserted that the petitioner achieved "national or international recognition" as evidenced by "critical reviews or other published materials by or about the individual." This characterization broadens the criterion at issue, which requires published material about the petitioner. Counsel further asserted that *Advertising Age* and *CG Realism* devoted a "spread" to the petitioner's commercials. Counsel referenced exhibits 26 through 37. All of these exhibits include stills from commercials accompanied by preprinted captions. None of them appear to be copied from a publication or other media.

In addition to those exhibits, however, the petitioner also submitted an interview with himself published in *CG World*, an article in *Cinefex* on "Moulin Rouge" that includes a quote from the petitioner, an article in *CG Realism* on a Mazda advertisement that features a photograph of the petitioner with the other animators for the advertisement, an article in *CG Realism* about another Mazda advertisement, recognition in *Commercial Photo* for a Chivas Regal advertisement and an article in *CG Camera Work* about a Mazda advertisement.

In response to the director's request for additional evidence, the petitioner submitted promotional materials about *Cinefex* from its own website that includes quotes from James Cameron and George Lucas. The petitioner also submitted another article in this publication about "Minority Report" that includes a quote from the petitioner. Finally, the petitioner submitted a June 2003 issue of *Title* that features the petitioner and other Japanese animators.

The director concluded that two quotes in articles that focused on the work of many could not serve to meet this criterion. On appeal, counsel asserts that a single sentence or quote is sufficient to demonstrate the petitioner's outstanding contributions and that there is no requirement for a certain number of sentences. Counsel further asserts that there is no requirement that the materials critique the petitioner's work. Counsel reiterates that the petitioner was featured in *Title*.

Counsel is not persuasive. While the regulations do not specify that the materials must "critique" the petitioner or his work or that there must be a certain number of sentences about the petitioner or his work, the regulations do require materials *about* the petitioner. Both articles in *Cinefex* are lengthy and primarily about the many effects in the two movies featured. The petitioner is only quoted briefly about a single effect in each article. Thus, we cannot conclude that these articles are about the petitioner.

The article in *Title* was published after the date of filing and cannot be considered evidence of the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Finally, we acknowledge the submission of an interview with the petitioner in *CG World*. While this

interview could be considered published material about the petitioner, the record contains no evidence of the circulation of this publication. As such, the petitioner has not established that it constitutes major media.

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

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

The petitioner submits testimonials from his colleagues praising his software abilities and asserting that his work "serves to revolutionize the entire industry" and is "a driving force for progress within the industry." These letters are supported with a review by Roger Ebert singling out a scene completed by the petitioner in "Minority Report" and praise of a scene in "Milan Rouge" in an article in *Cinefex*. While the extraordinary effects by others in the same films somewhat diminish the significance of this evidence, we find that the record sufficiently establishes that the petitioner minimally meets this criterion.

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

As stated above, counsel initially asserted that the awards discovered above served to meet this criterion. In response to the director's request for additional evidence, counsel no longer asserted that the petitioner met this criterion. The director concluded that the petitioner had not demonstrated that his participation in the advertisements and films was decisive in their recognition. On appeal, counsel asserts that the director was looking at the wrong evidence. Counsel reasserts that the petitioner's work was featured at the Imagina festival and the New York Festivals. Counsel further notes that the movies on which the petitioner worked were seen in "showcases" around the world.

The only advertising award discussed on appeal that is actually documented in the record is the New York Festivals Award. The petitioner submits no evidence on appeal establishing that he received any awards at the Imagina festival. Thus, we will only consider the New York Festivals Award. As noted above, however, the petitioner is not credited with the winning advertisement in the New York Festivals materials. A petitioner cannot establish that a showcase garnered him national or international acclaim when he is not even identified by name in the materials relating to the showcase.

Finally, a movie theater is not an artistic exhibition or showcase. We cannot conclude that every animator who works on a film released to the public enjoys national or international acclaim. The record contains no evidence that these films or the portions of these films on which the petitioner worked were specially featured in an artistic exhibition or showcase of CG animation.

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

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

Throughout the proceedings, counsel asserts that the petitioner meets this criterion directly and through the submission of comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). As comparable evidence, counsel asserts that the petitioner has performed a leading or critical role "for productions and events that have distinguished reputations." We will consider the evidence for both assertions.

Counsel asserts that the petitioner meets this criterion directly through his employment as a 3D animator for Image Corporation in Japan and Asylum Visual Effects in the United States. [REDACTED] Visual Effects Supervisor at Asylum Visual Effects states:

[The petitioner] has contributed greatly to the execution of Asylum's various feature film, commercial, and music video productions. His services on some [of] the following projects have been nothing less than vital to their completion: [films such as] "Black Hawk Down," "Minority Report," "Catch Me If You Can," [and] "Master and Commander"; commercials for clients such as Level 3 [C]ommunications, Nestle, and H&R Block; [and] music videos for [REDACTED] Aaliyah, and Limp Bizket.

[REDACTED] President of Image Corporation, references supervision of a single award-winning project at that company.

We have already considered the petitioner's alleged contributions to the field above. Under this criterion, according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), we consider the role the petitioner was hired to fill and the reputation of the employer. The record satisfactorily establishes that Asylum Visual Effects has worked on major motion pictures. As such, we will not contest its distinguished reputation. The petitioner is included in the credits of some movies, but always as a CG animator. Mr. [REDACTED] asserts that Image Corporation is Japan's largest production company with a CGI division that produces 150 television programs, advertisements and films a year. The record confirms that Image Corporation has won some awards in the field. As such, we will not contest that Image Corporation enjoys a distinguished reputation nationally in Japan. As discussed above, however, the petitioner's role at Image Corporation has never warranted inclusion of his name in the credits for the award-winning advertisements on which he worked. Ultimately, the record lacks evidence that every 3D animator plays a leading or critical role for his CG animation company beyond the obvious fact that any company producing 3D animation must employ competent and talented 3D animators.

Counsel asserts that the petitioner meets this criterion through comparative evidence through his major role in award-winning advertisements and movies. [REDACTED] Vice President and Executive Producer of Morning, Inc., asserts that he put the petitioner in charge of the Mazda advertisement that won ACC and New York Festival awards. Mr. Kobayashi states:

Creative Director [REDACTED] of the agency Hakuhodo earned the 1999 Creative of the Year Special Prize in Japan for the commercial. I asked Image, one of Japan's leading computer-generated image production companies, to produce a computer image of a samurai cutting a car, an entirely new image, for the commercial. There, I had [the petitioner] do everything from work as Chief Creator, analyze CAD data, and take measurements on location in Europe to serve as Creative Director.

Mr. [REDACTED] letter is ambiguous. He mentions Mr. [REDACTED] and the petitioner both as creative directors. We note that the credits for the Mazda advertisement listed in the New York Festival materials list Mr. [REDACTED] as the creative director for the award-winning Mazda advertisement. They do not mention the petitioner by name.

██████████ President of Image Corporation, asserted in a letter submitted initially, that the petitioner's "supervision" of the Mazda advertisement "played a key part in winning" the 1999 ACC CM Festival Award. The ACC credits, however, list another individual as the Visual Supervisor and do not list the petitioner at all.

As discussed above, the petitioner is listed as a CG animator or artist in the credits for "Black Hawk Down" (one of at least nine), "Moulin Rouge" (Edward Quirk of Digital Filmworks is listed as the senior 3D animator), "Minority Report" and "Catch Me If You Can" (one of four). We do not contest the distinguished reputation of these award nominated and winning films. We have already considered the petitioner's contributions to these movies above. As with the petitioner's role for his employer, we cannot conclude that every 3D animator who completes an effect for a film plays a leading or critical role for that film above and beyond all the credited crewmembers. We note that the record demonstrates that these films were full of dazzling visual effects, many of which were completed by others.

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 himself as a 3D animator 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 indicates that the petitioner shows talent as a 3D animator, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.