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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]  
LIN 04 033 50288

Office: NEBRASKA SERVICE CENTER

Date: OCT 28 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.

*Mari Johnson*

*rw* 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 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 in the arts. The director determined the petitioner had not established that she qualifies as an alien of extraordinary ability in her field of endeavor. Specifically, the director determined that the petitioner had only established that she met one of the regulatory criteria. As will be discussed below, a petitioner must meet at least three of the criteria to establish eligibility.

On appeal, counsel submits a brief and new evidence that addresses the director's legitimate concerns. As the petitioner has overcome those concerns, valid at the time of the director's review, we find that the petitioner has 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).

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 curator of African art. 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. The director concluded that the petitioner meets the criterion set forth at 8 C.F.R. § 204.5(h)(vi) relating to authorship of scholarly articles. We concur with that finding. As such, the petitioner need only establish that she meets an additional two criteria. While much of the evidence does not carry the weight ascribed to it by prior counsel, the materials submitted on appeal satisfactorily establish that the petitioner meets the following two criteria.

*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 initially submitted a 1998 article from the Agence Congolaise de Presse (ACP) reporting the petitioner's thesis as the first study on the art of the Holo of the Kwango. The petitioner also submitted a 2000 biographical sketch of the petitioner following an article by Alek Kakalasi on African masks in *Couleurs Locales*. The biographical sketch credits the petitioner with furnishing the publication with the information in Mr. Kakalasi's article. The petitioner further submitted discussions of her work in *Arts D'Afrique Noire, Library Journal* and [www.tribalarts.com](http://www.tribalarts.com). Finally, the petitioner submitted coverage of her work at the Dayton Art Institute in a local Dayton newspaper.

In his request for additional evidence, the director requested evidence of the significance of the published material, such as the circulation of the publications. In response, prior counsel asserted that the ACP is comparable to the Associated Press and is a government-owned national publication available on the Internet and through the 18,000 printed copies. Prior counsel further asserted that *Couleurs Locales* is a Brussels publication that prints 1,500 copies per month. Finally, prior counsel asserted that the local Dayton articles appeared in the *Dayton Daily News*, which has a distribution of 45,000.

The petitioner submitted a letter from Jackson Nsilulu. Mr. Nsilulu asserts that the ACP published a piece about the petitioner's thesis because it judged the petitioner's work "unique and scholarly important." Mr. Nsilulu continues that ACP is read by over two million people worldwide. Mr. Nsilulu, however, lists an Ohio address and his curriculum vitae indicates that he is the director of the Soujourner Recovery Services. The education and employment listed suggests he has resided in Ohio since 1991. Mr. Nsilulu does not explain how he has any first hand knowledge of the circulation of ACP or its decision to publish the article on the petitioner's thesis. The official materials about the ACP provided indicate that it has 189 journalists and is distributed "through newspapers, to the radio chains, public and private television, to the principal administrations, the ministries, the embassies and other international organizations." In addition, "the daily electronic bulletin is dispatched by email to the subscribers." The information does not indicate the number of subscribers.

The petitioner submitted no evidence regarding the circulation of the remaining publications. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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).

The director noted that Mr. Nsilulu's credentials as an expert on ACP were not established and concluded that the remaining materials regarding ACP contained insufficient information. The director further

concluded that the petitioner had not established the significance of the book reviews or biographic sketch and that the Dayton articles did not appear in a nationally circulated publication.

On appeal, the petitioner submits a letter from J. R. Mazanza Kindulu, Director of ACP Brussels. Mr. Kindulu affirms that CPA is the official news agency of the Democratic Republic of Congo, that it has offices in all regions and that information diffused by the CPA "is used not only by Congolese media, but also by other media around the world." The petitioner also provides information from *Tribal Arts*' website indicating that it is the "only magazine dedicated to fine and antique traditional art from the Americas, Africa, Asia, Indonesia, Polynesia, Melanesia and Micronesia." The magazine has offices in San Francisco and Brussels. The petitioner further provides evidence that *Library Journal* is published 20 times annually, reviewing 250 to 350 adult books in each issue. An e-mail from Ron Shank indicating that *Library Journal* estimates a readership of 100,000. This readership estimate is confirmed by Internet information also provided. Finally, the petitioner provided evidence that the *Dayton Daily News* is ranked 77<sup>th</sup> or 72<sup>nd</sup> by circulation among U.S. newspapers, depending on the source of the rankings. The newspaper also has a circulation of 149,032 or 185,122, depending on the source. An e-mail from Lona Crovetti affirms that the *Dayton Daily News* has only a local circulation.

We find that the director's concerns were valid based on the record at that time. The petitioner, however, has overcome those concerns with evidence from official sources establishing the significance of ACP and the journals that published discussions of the petitioner's works. While the *Dayton Daily News* is a local publication, the remaining evidence, considered in the aggregate, serves to meet this criterion.

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

Prior counsel asserted that the petitioner's dissertation, her work at the Dayton Art Institute, her work on the Chokwe traveling art exhibit and her books constitute contributions of major significance. The director concluded that while the petitioner is accomplished and has produced original work, the record lacked evidence that her contributions to the field were of major significance. On appeal, counsel reiterates the petitioner's work in the field and concludes that the "supporting letters from a remarkable array of scholars, critics and curators make it absolutely clear that [the petitioner's] scholarly and artistic contributions make a significant and unique impact upon the field of African art curator ship [sic] on a global level."

On appeal, the petitioner submits letters explaining her contribution to several exhibits around the United States. Several of these letters are submitted for the first time on appeal. For example, Dr. Manuel Jordan, Curator of the Arts of Africa, Oceania and the Americas at the Iris & B. Gerald Cantor Center for Visual Arts, asserts that in 1993, he sought the petitioner's collaboration on a large exhibit at the Birmingham Museum of Art. The petitioner served as one of the main consultants, "shaping the thematic framework of the show (coming of age in African cultures) and contributing an essay for the book." The exhibit traveled to the Baltimore Museum of Art and the Minneapolis Institute of Art, gaining national exposure.

Joseph D. Horse Capture, Acting Curator for Africa, Oceania and the Americas at the Minneapolis Institute of Arts, discusses the petitioner's work for that institute's Congo art exhibit in 1999. Specifically, the petitioner selected and researched the artwork used in the exhibit. "She also wrote a substantial essay, nine introductory essays on ethnic styles and seventy individual objects captions." The petitioner also "reviewed the entire permanent collection of Central African art at the Minneapolis Institute of the Arts and offered unique insights

into the context of each item.” In this work, the petitioner was able to “correct some erroneous preconceived notions that [the institute’s] curatorial staff had about several of our pieces.”

As Assistant Curator of African Art at the Dayton Art Institute, the petitioner was responsible for expanding their African art collection. This expansion received local press coverage crediting the petitioner with the exhibit. The petitioner also contributed essays to several books accompanying major African art exhibits around the United States. Additional letters submitted on appeal attest to the significance of this work.

The exhibits to which the petitioner has contributed are not limited to a local area. Considering the above evidence in the aggregate, we find sufficient evidence that the petitioner meets this criterion.

As the petitioner meets the above two criteria in addition to the scholarly articles criterion as determined by the director, we need not address the less persuasive assertions made by prior counsel.

In review, while not all of the petitioner’s evidence carries the weight imputed to it by prior counsel, the petitioner has established that she has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in her field of expertise. The petitioner has established that she seeks to continue working in the same field in the United States. The petitioner has established that her 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.