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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 04 230 51982

Office: VERMONT SERVICE CENTER

Date: SEP 01 2006

IN RE:

Petitioner:
Beneficiary:



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:

SELF-REPRESENTED

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.

A handwritten signature in cursive script, appearing to read "Maurice Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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, the petitioner submits a statement professing her ability but stating that her immigration status has prevented her from reaching her full potential. She does not attempt to rebut any of the director’s factual or legal conclusions. We uphold the director’s conclusions for the reasons discussed below. The standard for the classification sought does not allow for a subjective evaluation of ability or potential; rather the statute and pertinent regulations require that the alien already enjoy national or international acclaim in the field.

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 artist. 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 never explained which three criteria she meets. The criteria follow.

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

The petitioner initially asserted that she had received "numerous" awards but failed to elaborate. She submitted a Certificate of Excellence issued to her by Mercer County Community College in recognition for her work on an advertising design campaign for HiTOPS. An article in an unidentified newspaper indicates that the beneficiary's three-person team was one of two groups to win the end-of-semester advertising design competition. The article indicates the competition was limited to students. The director requested additional evidence, stating that the student award was not considered nationally or internationally recognized. In response, the petitioner submitted a certificate issued by the Krosno House of Culture in 2002 for "Distinction."

The director concluded that the petitioner had not submitted evidence of nationally or internationally recognized prizes or awards. The petitioner does not contest this conclusion. It is the petitioner's burden to submit evidence to address every element of a given criterion. Thus, the petitioner must submit evidence that any documented prizes or awards are nationally or internationally recognized. The petitioner has not demonstrated that she has won a prize or award that national or international experts in the field aspire to win. Thus, the petitioner has not demonstrated that she meets 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 response to the director's request for additional evidence, the petitioner submitted evidence of her first year "associate" membership in "AIGA." Her membership card indicates that she joined in 2005, after the date of filing. The petitioner did not submit any evidence of the membership criteria for AIGA. Thus, the director concluded that the petitioner had not established that AIGA has exclusive membership criteria. The petitioner does not contest this conclusion on appeal and we concur with the director. Regardless, the petitioner must establish her eligibility as of the date of filing, in this case August 9, 2004. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, we cannot consider her membership in AIGA.

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 two articles regarding her final project at Mercer County Community College. The petitioner identified the publications as the *Princeton Packet* and the *Mercer County Community College Voice*. The director concluded that the petitioner had not submitted evidence sufficient to meet this criterion. The petitioner does not contest this conclusion on appeal.

The record lacks evidence that either newspaper enjoys a national or international circulation. Rather, one appears to be a local publication and the other appears to be a school newspaper. Thus, the petitioner has not established that these published materials appeared in major media. Therefore, the petitioner has not established that she meets 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.

The petitioner submitted evidence that she offered updated designs of a company logo for Gallup and Robinson, Inc. The director concluded that this evidence did not set the beneficiary apart from other graphic artists. The petitioner does not challenge this conclusion on appeal. We are not persuaded that having a client in one's own local area who is interested in redesigning their logo is evidence of judging the work of others in the same field such that it is indicative of national or international acclaim. Thus, the petitioner has not established that she meets this criterion.

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

The director concluded that local displays of the beneficiary's work were not indicative of an influence or impact in the field. The petitioner does not challenge this conclusion on appeal and we concur with the director.

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

The petitioner does not contest the director's conclusion that the record lacks evidence relating to this criterion and we concur with the director.

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

The petitioner submitted evidence that her work has been displayed at local galleries and a local real estate office. The director acknowledged this evidence but failed to reach a conclusion. As discussed above, the petitioner also submitted a certificate of distinction for a display at an open-air exhibition in

Krosno, Poland. The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that standard is to have any meaning. It is inherent to the field of visual arts to display one's work. Agreements with local galleries to display her work for sale and having a local real estate office as a customer are not indicative of or consistent with national or international acclaim. The record lacks evidence regarding the beneficiary's display in Krosno. For example, the petitioner has not established whether it was by invitation only or otherwise indicative of national or international acclaim.

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

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

As noted by the director, the petitioner submitted evidence that she is the sole manager of Aria Graphic Design, LLC. The record lacks evidence that Aria Graphic Design enjoys a distinguished reputation nationally or internationally. For example, the record lacks national media coverage of the company or even evidence that the company has clients nationwide. Thus, the petitioner has not established that she meets this criterion.

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 checks issued to her by customers and receipts for her artwork sold by a local gallery. The petitioner did not submit evidence of high-end compensation in the field for comparison purposes. Thus, we cannot determine whether the petitioner's remuneration is significantly high in relation to others in the field. It is the petitioner's burden to submit evidence to meet every element of a given criterion. On appeal, the petitioner does not contest the director's conclusion that the petitioner failed to establish that she meets this criterion and we concur with the director.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The director failed to discuss this criterion. The petitioner, however, is not a performing artist. As such, this criterion does not appear applicable to the petitioner's field.

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 artist 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 artist, 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.