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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **APR 30 2008**  
SRC 07 048 51695

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.

*Maura Deadrick*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) 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, counsel submits a brief and a new document. For the reasons discussed below, we uphold the director’s decision. In fact, we must withdraw the director’s sole favorable finding that the petitioner meets the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) as the record contains no evidence to support that finding.

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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 photographer. 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, he claims, meets the following criteria.<sup>1</sup>

*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 letter from [REDACTED], Regional Manager of Marketing to Consumers for Sony Corporation of Panama, affirming that the petitioner won the company's regional contest in digital photography among 12 countries in Latin America in 2001. Specifically, the petitioner won in the categories of Architecture, Nature and the Sony grand prize. The letter indicates that the purpose of the contest "is to promote the passion of photography and discover new talent in those region[s] with individuals who use Sony-Cybershot digital cameras." Finally, the letter states that the contest has more than 40,000 participants and is "considered the most important contest in its category in the region." A review of business news in *La Prensa* reports that the contest was part of an event to launch Sony's Cybershot DSC-S85 and notes the petitioner's receipt of the Sony Trophy. The review bears no byline and appears to be a press release from Sony. A second letter from [REDACTED] indicates that the jurors "select the best amateur photographer of the region."

The petitioner also submitted a February 12, 2004 letter addressed: "Dear *American Photography 20* Entrant." This letter advises the entrant that his work would appear on the magazine's website. The letter explains that 6,400 images were submitted. The letter explains that the entrant's photograph will appear on the website based on receiving two votes. According to the letter, however, the entrant's photograph did not receive a majority vote or better to appear in the book. The letter requests a payment of a "website fee" for the entrant's photograph to be displayed. The petitioner submitted his photograph downloaded from *American Photography 20*'s website.

In response to the director's request for additional evidence about the significance of these honors, the petitioner submitted Internet materials about *American Photography 20* confirming that selected images that receive a majority vote or better appear in the magazine's book and website. As stated above, the petitioner's photograph only appeared on the magazine's website.

The director noted that the Sony prize is limited to those using Sony Cybershot cameras and that it is designed to recognize new talent. The director further noted that entrants who are selected to have their

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

photographs displayed on *American Photography 20's* website must pay a fee. Based on these observations, the director concluded that the petitioner did not meet this criterion.

On appeal, counsel asserts that the fact that the contest requires the use of a specific camera “has no bearing” on the contest’s national or international recognition and that the limitation encourages creativity and levels the playing field since all contestants are using the same equipment. Counsel further asserts that the petitioner’s image was selected to appear in *American Photography 20's* hardcover and website. The petitioner submits the list of six jurors for the *American Photography 20* contest.

Counsel is not persuasive. First, the record contains no evidence that the Sony Cybershot is a camera commonly used by professional photographers. In fact, the record reflects that the contest is designed to identify “new talent” and that jurors select the best “amateur photographer.” An award from a contest for camera owners rather than professional photographers cannot be considered a nationally or internationally recognized award in the petitioner’s field. The only reference to the contest in the media is a press release from Sony appearing in a business review section of *La Prensa*. There is no evidence that any photography or art media covered the award.

Second, counsel is factually wrong that the petitioner’s image appeared in the hardcover book. The letter expressly states that the petitioner’s image would appear “only” on *American Photography 20's* website. The petitioner does not appear to have garnered the majority votes necessary for inclusion in the hardcover book. We are not persuaded that the selection of the petitioner’s photograph for inclusion on the website if the petitioner agrees to pay the necessary fee is a nationally or internationally recognized award or prize.

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

*Published material 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 director concluded that the publication of the petitioner’s photographs in magazines serve to meet this criterion. We must withdraw this finding as it is contrary to the plain language of the relevant regulation. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material *about* the alien. The petitioner is a professional photographer. He photographs architecture and other subjects for stories in magazines. The inclusion of his photographs in magazines as part of stories that are not about the petitioner is evidence that the petitioner is capable of earning a living in his field. These photographs, while credited to the petitioner, are not included in stories primarily “about” the petitioner. Thus, they cannot serve to meet the plain language of the criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii).

The record also includes a local newspaper story about an exhibit of photographs of disabled women that includes a photograph by the petitioner. We note that the project, sponsored by the Miami Ad School, was led by [REDACTED], a Pulitzer Prize winner and that the remaining photographers, including the petitioner, were students at the Miami Ad School who donated their time. The article is primarily about the exhibit and not the petitioner individually. Moreover, the petitioner has not demonstrated that articles in the local *Miami Herald* and *Miami New Times* about an exhibit in Miami constitutes major media coverage of the petitioner.

In light of the above, the record does not support the director's finding that the petitioner meets this criterion. Thus, we must withdraw that finding and conclude that the petitioner has not established that he 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 relies on his participation as a juror of the Sony regional contest in 2002. As discussed above, however, this competition is a competition for users of what has not been demonstrated to be a professional grade camera. The competition was designed to recognize new talent and jurors picked "the best amateur photographer of the region." Once again, if the competitors were merely camera owners rather than professional photographers, the petitioner was not judging the work of others "in the same or allied field" as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

*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 recommendation letters secured by the petitioner are "the best evidence of [his] prominence in the field of photography." In response to the director's request for additional evidence, counsel was more specific about the petitioner's alleged contributions, asserting that the petitioner's participation in the exhibit of disabled women transformed stereotypes and noting that his work appears on the *American Photography 20's* website and has been utilized by designers, architects and artists to display their own work. The director concluded that the petitioner had not demonstrated how his professional success is evidence of contributions of major significance to the field of photography. On appeal, counsel asserts that the petitioner meets this criterion based on the submission of ten reference letters.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. CIS may

even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of talent and ranking in the field are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

While the petitioner submitted several reference letters, all of them are from individuals in Florida. Counsel has never explained how letters from such a local group of individuals can establish acclaim at the national or international level. We will consider the content of these letters below.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Simple talent and a unique style is not, by itself, a contribution of major significance. Rather, to be considered a contribution of major significance in the field of photography, it can be expected that the petitioner's work would have already had a demonstrable impact on other photographers.

██████████ Director of Photography at the Miami Ad School, asserts that the petitioner was one of his most talented students and is an "outstanding photographer." ██████████ asserts generally that the petitioner enjoys recognition as one of the leading photographers in Venezuela, the United States and throughout Latin America but provides no examples that demonstrate such recognition. ██████████ notes that the petitioner is skilled and talented with a unique perspective and contemporary approach but does not explain how these characteristics have influenced the field of photography as a whole.

██████████ President of the Miami Ad School discusses the reputation of the school itself. Mr. ██████████ asserts generally that the petitioner is one of the most prominent interior and architecture photographers in the Americas and characterizes the petitioner's work as "unique." ██████████ lists some of the publications that have included the petitioner's photographs and notes that the petitioner has ten years of experience. ██████████ Creative Director for FourDiaz Vargas in Florida, and the petitioner's longtime photographer friend, ██████████ provide similar information. Once again, talent by itself is not a contribution of major significance to the field.

Editor in Chief of *Home & Design* of the *Miami Herald*, confirms that the petitioner is a contributor to *Home & Design* and asserts that the petitioner is recognized for his use

of lighting and colors. further notes the competitive nature of the petitioner's field. These general assertions do not address the issue of how the petitioner has contributed to the field of photography such that his impact can be seen in the field nationally or internationally.

Finally, the petitioner also provided letters from one of his models, designers whose work he has photographed, a marketer with whom he has worked and a magazine style director with whom he has worked. These individuals are not photographers and they do not provide examples of how the petitioner has impacted the field of photography.

The fact that the petitioner is able to make a living in his field is not a contribution to the field. While the selection of the petitioner's photograph for the *American Photography 20's* website may be indicative of his talent, the record lacks evidence that the photographs selected for this website have all somehow influenced the field of photography as a whole.

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

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

The petitioner is a photographic contributor to various publications. His photographs have also been displayed at the Uncensored Life - Raw Beauty exhibit of photographs of disabled women, Art Basel at the Wolfsonian-Florida International University, a 2001 exhibition at the Ars Forum Galeria de Arte (AFGA) and a 2002 workshop for [REDACTED]. In response to the director's request for evidence of the significance of the exhibitions that have included the petitioner's work, the petitioner submitted evidence that Uncensored Life - Raw Beauty was on display at the Hope Center in Miami. As noted by counsel, [REDACTED] confirms that the exhibit may travel nationally. The record contains no evidence that the exhibit traveled nationally prior to the priority date, the date as of which the petitioner must establish his eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

The director concluded that Art Basel included over 1500 artists and that the petitioner had not established whether his work was a featured or main event of the exhibition. On appeal, counsel asserts that the director failed to consider the evidence relating to Uncensored Life - Raw Beauty, the exhibition at the [REDACTED] a workshop and the AFGA.

The evidence submitted to meet any given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. We are not persuaded that exhibitions in Miami, where the petitioner was a student and is now working, are indicative of any recognition let alone acclaim beyond Florida. The record contains no evidence regarding the significance of the [REDACTED] a workshop or the Ars Forum Art Gallery. Moreover, those exhibitions were four and five years before the petition was filed and cannot establish sustained acclaim as of that date.

Finally, the petitioner's photographs appeared in magazines as part of stories on the subjects of those photographs. These stories are not artistic exhibitions designed to showcase the petitioner's work. Thus, they cannot be considered under this criterion.

In light of the above, the petitioner has not established that he meets this 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 himself as a photographer 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 and professional success as a photographer, 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.