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FILE: [REDACTED]  
SRC 07 185 53108

Office: TEXAS SERVICE CENTER Date:

**APR 08 2009**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

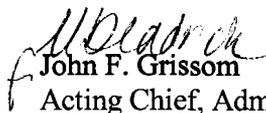
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to  
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas 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 business. The director determined that the petitioner had not established the sustained national or international acclaim required for classification as an alien of extraordinary ability.

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

(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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in business, specifically as a perfumer. The petitioner initially submitted information about his store, Aedes de Venustas, copies of his awards, news articles, product brochures, and fifteen letters of recommendation. In response to a Request for Evidence ("RFE") dated October 23, 2007, the petitioner submitted a sworn statement and additional news articles.

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

The petitioner claimed eligibility under this criterion through his nomination for a FIFI Award. The evidence submitted indicates that a candle produced by Aedes de Venustas was one of five finalists for the 2006 FIFI Award out of a nomination pool of 26 “candles, liquid, electric and other significant interior scent applications.” The petitioner presented no evidence showing that he was responsible for developing the candle or its scent or that he was responsible for its marketing. In the appellate brief, counsel asserts that the Aedes de Venustas referenced in the FIFI Awards was not the store, but was instead a “private label home fragrance that [the petitioner] personally created.” Nothing in the record evidences a second entity with the name of Aedes de Venustas or that the petitioner is responsible for creating any of the scents including the one nominated for the FIFI Award. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). The excerpt from the FIFI Award program states that “[e]ntries were judged on the following criteria: olfactory impression, presentation / packaging and commercial viability” and does not indicate how entries were submitted or chosen. In addition, the judging criteria emphasize commercial success “through national consumer response to [the product’s] packaging, advertising and promotion.” The petitioner presented no evidence that he was responsible for creating the scent involved in the candle or was responsible for the candle’s packaging, advertising, or promotion.

In addition, the petitioner submitted little evidence supporting his assertion that the FIFI Awards are nationally or internationally recognized as awards for excellence in the field. Only the August 23, 2006 letter from [REDACTED] Vice President Global Store Design at MAC Cosmetics, contains any evidence as to the acclaim due to winners of the FIFI Awards. His letter states: “The FiFi Awards are the highest recognition one can achieve in the world of fragrance and cosmetics.” The petitioner submitted no other evidence, such as news articles or letters from sponsoring organizations, documenting the prestige associated with this award that would indicate its national or international recognition as an award for excellence in his field. Even if [REDACTED] statement could be accorded adequate weight, no evidence appears in the record showing that a *finalist* for a FIFI Award would be accorded national or international recognition as opposed to recognition due to being the actual winner of the Award. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s award be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. Again, counsel claimed in the appellate brief that both winners and nominees for the FIFI Awards are accorded acclaim, but provided no evidence to support these assertions. See *Matter of Obaigbena*, 19 I. & N. Dec. at 534 n.2; *Matter of Laureano*, 19 I. & N. Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. at 506. Counsel further refers to an unpublished decision in which counsel asserts that the AAO determined that the petitioner met this criterion by being nominated for a prestigious award, but furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all United States Citizenship and Immigration Service (“USCIS”) employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, the AAO did not find alone that a nomination is sufficient to meet this criterion. Instead, the AAO stated that it was “problematic” that the petitioner was not a recipient of the award, but merely a finalist. The AAO cited the regulation as requiring documentation of the alien’s receipt of the award, not just a nomination.

The petitioner also submitted a certificate recognizing him and his business partner as a “retail finalist” in the 2002 Rising Star Awards from the Fashion Group International, Inc. The petitioner submitted no information about this contest to show that it is nationally or internationally recognized as an award for excellence within the field. We note that the title of the award limits the available competitors to newcomers to the industry so would not indicate overall excellence within the field as opposed to potential.

For all of the above reasons, the petitioner has not demonstrated eligibility under this criterion.

*(iii) 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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>1</sup>

The petitioner initially submitted an article from *Allure* titled “Scents of Identity” which interviewed the petitioner and two other perfumers. This article is not about the petitioner as it does not discuss him or Aedes de Venustas; instead, the portion of the article devoted to the petitioner focuses on how scents should be chosen as a gift for someone else. In response to the RFE, the petitioner submitted a plethora of magazine excerpts about Aedes de Venustas. Many of the pieces submitted were little more than a few lines in an article about general offerings either in perfumery or in New York City. For example, in the November 1996 *Marie Claire*, the following blurb appeared:

We've always wondered how all those beautiful supermodels manage to smoke, drink, and party all night, then emerge bright-eyed and radiant the next morning for a photo shoot. So we asked around. The secret: D.R. Harris & Co.'s Crystal Eye Drops. Just a few drops whiten your baby blues in seconds. For info call AEDES DE VENUSTAS in NYC (212) 206-8674.

In addition, a number of the articles submitted appeared only in a foreign language. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner did submit a number of articles that discussed him and the innovative nature of Aedes de Venustas. An article from *The New York Times* Style section entitled “The Essence of Buzz” details how the

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<sup>1</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

petitioner and his business partner began their shop and attracted new customers and publicity. An article in the October 2001 edition of *WWDBeautyBiz* entitled “Scent and the City” emphasizes the petitioner’s olfactory abilities. Numerous other articles focus on the uniqueness of Aedes de Venustas such as *The Financial Times* magazine which featured the store in its August 2004 edition, the November 1996 edition of *In Style* magazine which featured the store in its “Beauty Black Book” section, *MetroSource* which featured the store in its Summer 1998 edition. These articles discuss the merits of the petitioner’s work, his standing in the field, and indicate sustained national and international acclaim.

The director’s decision indicates that he found the majority of submitted materials to constitute “advertisements paid for by the [petitioner].” Although certain blurbs submitted by the petitioner, including the one from the November 1996 *Marie Claire* quoted above, could be construed as advertisements, the petitioner also submitted at least five articles about him and Aedes de Venustas that cannot be considered to be advertisements. Those articles appear in major media sources and are primarily about the alien.

Accordingly, the petitioner demonstrated eligibility under this criterion.

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

The petitioner states that he contributed to the field by developing scents and through his business plan. Counsel claims in her appellate brief that the petitioner developed the “signature scent” used in the candle that was the subject of the FIFI Awards nomination. As stated above, the petitioner submitted no documentary evidence to support the claim, and the assertions of counsel will not satisfy the petitioner’s burden of proof. *Matter of Obaighbena*, 19 I. & N. Dec. at 534 n.2; *Matter of Laureano*, 19 I. & N. Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. at 506. In any event, duties or activities which nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the occupation itself. We note that a perfumer would be expected to develop different or original scents and would only be a successful perfumer if those scents had market appeal. Instead, the petitioner must demonstrate that his scents or product marketing made a contribution of major significance to his field. Such a demonstration may be made through other evidence that demonstrates the petitioner’s impact on his field such as through examples of revolutionary marketing techniques, letters attesting to the importance of the development of certain scents, evidence of the use of the petitioner’s methods by other perfumers, or other evidence that the scents or marketing attracted significant attention in his field. While counsel asserts that the petitioner developed an innovative business plan, the fact that the petitioner gave away free samples or personally serves his clients is not sufficient to demonstrate that the petitioner’s model is original or of major significance.

The petitioner submitted numerous letters of recommendation in support of this criterion. As counsel acknowledges in the appellate brief, while letters of recommendation provide relevant information about an alien’s experience and accomplishments, they cannot by themselves establish the alien’s eligibility under this criterion because they do not demonstrate that the alien’s work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained

national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

All of the letters submitted were from friends or business associates of the petitioner. A letter from the co-founders of "THREEAsFour," a self-described prestigious fashion design house, stated that the petitioner helped develop its signature scent and that the petitioner "has gained the respect and admiration of his peers in the international contemporary fragrance and cosmetics world." A letter from [REDACTED], creative director of Anthouse, states that the petitioner "is very important to [REDACTED] because he has worked on [the company's signature line]" and that the petitioner "possesses extraordinary skills that are quite rare among perfumers." A letter from [REDACTED] states that she has known the petitioner for many years and that the petitioner's "creative contributions to the fragrance industry are immeasurable." A letter from [REDACTED] senior design director for Helmut Lang, states that the petitioner "is an expert perfumer [who has the] ability to distinguish and sense even the faintest fragrance of an exotic ingredient and to utilize his findings to create newer fragrances that become the fashion world's new sensations." [REDACTED]'s letter states that the petitioner "has performed a flawless job at creating and selecting luxury fragrances, year after year." A letter from [REDACTED] president of Marla Weinhoff Studio, LLC states that the petitioner "has influenced an entire industry with his taste, refinement, and innovation." [REDACTED] president of Trump Model Management, states that "the world's leading figures in fashion and entertainment rely on [the petitioner's] abilities and his nose to concoct, develop and define some of the rarest and most exclusive fragrances." [REDACTED] promotion services director at *GQ Magazine*, states that the petitioner is "a perfumer who is known throughout the world for his impressive contributions to the world of luxury fragrances and fashion . . . [who has set] new trends and values throughout the worldwide markets." Dr. [REDACTED], curator at the Metropolitan Museum of Art, states that the petitioner "can be relied upon to understand and contribute to the overall concept of a very exclusive fragrance." [REDACTED] image artist with the hair salon L'atelier by Morgan & Paul, states that the petitioner "is one of the world's leading fragrance experts and perfumer." [REDACTED] vice president of marketing for Givaudan, states that the petitioner's "contributions to the field of perfumery are of international significance and very highly respected." [REDACTED] national sales director at LAFCO New York, states that many celebrities and companies rely upon the petitioner "when making decisions on the purchase of high-end luxury fragrances . . . [because] he has the nose, both literally and figuratively, for his art." [REDACTED], store manager of Lucien Pellat-Finet, states that the petitioner "ha[s] mastered not only innovation but marketing and public relations" and that the petitioner helped insure "the success of [celebrities' and companies'] multi-million dollar corporate, public and private image." Annie Falkenburger, president of French Look International, states that the petitioner "can be relied upon to provide innovative, yet professional fragrance creations, luxury perfumes to which savvy consumers are drawn and which celebrities revere." [REDACTED] President of L'Artisan Parfumeur, states that the petitioner "is a superb fragrance expert who can savvily discern and discover new olfactory experiences for his impressive list of clients."

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. Despite the effusive comments offered by the petitioner's friends and colleagues, no one stated that the petitioner made an original contribution of major significance to the field such as by wielding influence on other perfumers nationally or internationally or by showing that the field has somehow changed as a result of his work. Instead, those letters stated that the petitioner is a successful perfumer who has enjoyed success in his chosen profession.

For all of the above stated reasons, the petitioner has not demonstrated eligibility under this criterion.

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

To meet this criterion, a petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself.

The record shows that Aedes de Venustas is a unique and commercially successful company. As stated above, the petitioner submitted numerous press articles that discuss the business activities and commercial success of the store including the *Zagat* rating which rates the merchandise of the shop at a 29 out of 30, the presentation at a 27 out of 30, and the service at a 24 out of 30. The store was also included in the 2006 NYC "Beauty Book" and *The Bombshell Manual of Style*. The store was discussed in depth by national media including *Women's Wear Daily*, *The Financial Times*, and *The New York Times* and received mention by many top fashion and style magazines. These documents indicate that Aedes de Venustas is a company with a distinguished reputation.

As evidence of his leading or critical role, counsel states that the petitioner is a co-owner and founder of Aedes de Venustas. Counsel cites the story about the store's first break in the article "The Essence of Buzz" as evidence that the petitioner played a leading or critical role in the store because his efforts led *Vogue* to mention Aedes de Venustas in "a tiny piece," which then led to Naomi Campbell patronizing the store. The article also states that the petitioner works on the floor at the store assisting customers in choosing products, i.e. as the director found, as a store manager. The petitioner did not submit a letter from his business partners setting forth their individual roles or asserting that the petitioner plays a leading or critical role in the business. The petitioner's own statement submitted in response to the RFE fails to describe his responsibilities or otherwise establish his leading or critical role. We note that founding and co-owning a business is not necessarily indicative of the role played by the individual as roles may change over time and initially indicates only a financial contribution. The articles do establish that the petitioner is active in the store, but they do not indicate that the petitioner was responsible for the success of Aedes de Venustas or standing even if he did contribute to the store's first publicity break as this one action cannot demonstrate sustained acclaim.

Hence, the record establishes that Aedes de Venustas is a distinguished company but not that the petitioner performs a leading or critical role and he thus does not meet this criterion.

In his appellate brief, the petitioner claims that the director imposed a higher standard of proof than is required under the regulations and in violation of the February 16, 2005 Yates memo. However, upon review, we find that the director did address the relevant evidence and explained its insufficiency so the decision does not indicate that the director imposed a higher burden of proof. Regardless, the AAO reviews the petition *de novo* under the preponderance of the evidence standard so that any defect in the director's decision may be cured with an appeal. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.