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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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Office: NEBRASKA SERVICE CENTER

Date: APR 16 2009

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Petitioner:

Beneficiary:

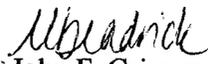
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 the arts. 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 argues that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

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).

This petition, filed on August 14, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a jewelry and fashion designer. The petitioner initially submitted evidence of an approval of a nonimmigrant visa petitions (F-1 and H-1B1), award certificates, copies of her education degrees, information about the Fashion Institute of Technology ("FIT"), information about the Manufacturing Jewelers and Suppliers of America ("MJSA"), pictures of jewelry pieces that she designed, information about the Tahitian Pearl Trophy, news articles, tax documents, and eight letters of recommendation. In response to a Request for Evidence ("RFE") dated May 10, 2007, the petitioner submitted a copy of her portfolio, information about pieces submitted to various competitions, information about the various jewelry organizations and awards sponsored, news articles, and four additional letters of recommendation. On appeal, the petitioner submitted information about the competitions in which she participated and additional awards won.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria. The petitioner does not claim that she meets any of the criteria not discussed below.

(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 presented evidence that she won the following awards: second place in the Eight Annual DIVA Award Design Competition in 2004; first place pearl row category, second place necklace category, and third place brooch category in the 4th Edition Tahitian Pearl contest; third place in the student category in the 2005 Swarovski design contest; second place in the student category in the 14th Annual American Vision Awards; and fifth place in the professional category in the 2006 Swarovski design contest. Although the petitioner submitted her design pieces to Swarovski for the 2006 contest before filing this petition, the award was not made until 2007. Eligibility must be established at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). Accordingly, we will not consider the 2006 Swarovski competition award.

The 2005 Swarovski award and American Vision Award were both presented to the petitioner as a competitor in the student category of these competitions. The petitioner presented no evidence to show, if the competition was restricted to students, how the award would constitute an award for excellence in the field if it did not allow those working in the field, i.e. professional designers, to participate. On appeal, the petitioner argues that as "[a] design competition is about talent and innovation[,]" categories of participation are meaningless and that "extremely talented students can beat professionals." Although these statements are true, it is incumbent upon the petitioner to prove that these particular awards conveyed recognition of overall excellence in the field which is difficult to do where the category of eligible participants is restricted to students. The fact that the American Vision Award has two categories with only a slight distinction between what a student submits as opposed to what a professional submits does not change the fact that amateurs are judged against only those designers with a comparable level of experience and education. Similarly, the Swarovski competition had three categories: professional, amateur, and student. The professional category does not restrict entrants so that a student or amateur could compete on that level if he/she so chose; as that category is not limited, its results are more indicative of national or international recognition within the field. Had the petitioner submitted the same jewelry pieces in the professional category of the Swarovski and American Vision Award competitions and achieved the same level of success, a different analysis would be undertaken. However, the petitioner presented no evidence to show that placing second or third place in the student category of these competitions conveys the same level of achievement within the field as placing second or third place in the professional category of the same competitions.

The DIVA Award, similar to the student awards, restricts the entrants in its competition to women who have not previously won a first place DIVA Award. As the letter from Ann Arnold, president of the Women's Jewelry Association, stated: "The DIVA Award for Jewelry Design Competition truly encourages and fosters new design talent in the jewelry industry." An article in *National Jeweler* states that the competition is not for those persons who are at the top of their field, but instead the awards were "established . . . to showcase the work of up-and-coming women within the jewelry business." Based on the evidence provided, the DIVA Award is not an award for excellence in the field that would indicate that the designer had already risen to the top of the field but instead indicates that the award recipient shows promise and should be encouraged to reach the top of the field. As such, the DIVA Awards have not been shown to be nationally or internationally recognized for excellence in the field.

The Perles de Tahiti information submitted about the Tahitian pearl competition states that the competition "has become one of the most prestigious of the jewellery [sic] world" and that "[t]he quality of the entries for this competition were extremely high and it can be assumed that designers who won rank among the top in the field of pearl jewelry designs at the international level." The winners of the Tahitian pearl competition were announced in three articles appearing in *National Jeweler*. Letters from experts in the field indicate that the competition is highly regarded and conveys national if not international acclaim. For example, Rater Wang, trade liaison director for the China branch of Platinum Guild International, wrote in a July 23, 2007 letter that "[t]he world's top designers enter this prestigious event, which garners enormous publicity for its winners." Michael Coen, associate professor at FIT, stated that the competition "is an outstanding international event with immense industry media coverage." The evidence in the record demonstrates that winning a prize in this competition exhibits prestige indicating national and international recognition for excellence in the field. However, we do not find that the petitioner's receipt of a single award is sufficient to meet this highly restrictive classification.

On appeal, the petitioner submits additional evidence that her design was selected as a finalist in the 2008 Sau Bell Design Award Competition, she was a finalist with the 2007 JCK Jeweler's Choice Awards, semifinalist in the 2007 Swarovski contest, and second place in the male jewelry category and first place in the accessory category of the 2007 Tahitian Pearl contest. Eligibility must be established at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. at 49. These contests occurred after the petition was filed in 2006; accordingly, we will not consider these awards.

In light of the above, the petitioner failed to establish that she meets 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. 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.¹

Although the petitioner presented a number of articles in which her name appears, she presented no published material that was primarily about her. The articles all concerned awards won by the petitioner and none of them included a detailed discussion of the petitioner or her work as opposed to merely announcing her name and the fact that she won an award. One article that the petitioner cites, "Star necklace makes a 'diva' of GIA graduate" published in the June 29, 2006 edition of *National Jeweler* focuses upon the background of the first place winner of the DIVA Award and mentions the petitioner's name only briefly at the end of the article as another winner.

Even if any of the articles submitted were primarily about the petitioner, a number of the "published material" included by the petitioner in support of her claim was printouts of websites promoting the organization that sponsored the award won by the petitioner. For example, the petitioner's photograph appeared on the website for the Women's Jewelry Association as the second place winner of the DIVA Award. The article appearing under the petitioner's photograph discussed the Women's Jewelry Association event held in conjunction with the award and the Association's criteria and guidelines for the award. Similarly, the petitioner's name was mentioned as an award winner on the Perles de Tahiti website. We are not persuaded that international accessibility by itself is a realistic indicator of whether a given publication is "major media." The petitioner must still demonstrate a widespread distribution, readership, or overall interest in the publication in order to demonstrate that the publication is some sort of professional or major trade publication or major media in order for us to credit these articles. Only *Modern Jeweler* and *National Jeweler* would qualify as professional or major trade publications, however, none of the articles appearing within either publication's pages are considered to be about the petitioner as discussed above.

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

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

Initially, the petitioner claimed that she met this criterion by virtue of "her sophisticated and intrinsic knowledge and skills" and because "her works **are sought after by many**" (emphasis in original). In support of her assertion, the petitioner cited three letters of recommendation. While letters such as these 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 her field beyond the limited number of individuals with whom she 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.

¹ 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.

wrote that the petitioner's "creations are of the highest level of design and execution, cutting edge in regards to fashion and have a solid basis for construction and manufacturability." also noted that the petitioner has "this special and unique sort of talent" that allows her "to design for the fashion jewelry industry" in addition to fine jewelry. , a jewelry designer and television personality, wrote in a June 26, 2006 letter that the petitioner has a great eye for detail and her entries in the Swarovski competition "were well-designed and unparalleled to submissions even in the advanced categories of the competition." 's July 21, 2006 letter states that the petitioner "is unconventional, innovative, and unafraid to take risks by combining new and conventional techniques" and she is "versatile[e]" because she combines jewelry and fashion. The letter further states that the petitioner's combination of fashion and jewelry has made "a unique style" that have won numerous awards and thus impacted the industry. In response to the RFE, the petitioner submitted a second letter from both and . Mr. July 30, 2007 letter states that the petitioner "is creating a new form of art by creating an entire piece of clothing using materials that are traditionally used for jewelry" (emphasis omitted). stated that the petitioner is one "of few jewelry designers in the world today who are creating jewelry in the form of fashion" and that the petitioner is "spearheading a cutting-edge phenomenon that has won widespread critical acclaim." The July 26, 2007 letter from states that the petitioner "has literally created a new genre of art through the exquisite pieces she has produced. An important original aspect of her work is her spearheading of an *avant-garde* trend whereby jewelry is created in the form of actual clothing." Ms. continued: "There are few designers in the market today who can match [the petitioner] in terms of creative vision, unerring taste and an understanding of the practical, technical aspects of jewelry design." Ms. stated that the petitioner "received widespread national and international acclaim and she has been acknowledged by leading experts as a pioneering visionary whose work has important implications in the evolution of jewelry design in the 21st century."

On appeal, the petitioner cites the July 21, 2006 letter written by , head designer at Harry Winston and adjunct professor at FIT, as a grand master whose opinion should be given great weight. Mr. stated that the petitioner "has demonstrated extraordinary talents" and "[h]er ideas are often brilliant." Unlike the petitioner's assertion on appeal, is not an independent expert but is instead a colleague as he worked with or taught the petitioner at FIT. We note that the petitioner presented no evidence that her achievements fall within the same category of achievement as . As described by the petitioner: . . . is an octogenarian with more than 60 years of experience as a head designer at the most prestigious companies in the industry . . . distinguished by Cambridge Who's Who directory for excellence in jewelry design [and] is currently a senior head designer at Harry Winston . . . " is similarly situated as an adjunct professor at FIT.

The only letters from independent experts are those of and the letter dated July 26, 2007 and authored by a member of the Board of Directors of China Fashion Color Association and president of Zhejiang Fashion Color Association. wrote that "[the petitioner's] unique talents as a designer are evidence both in terms of the intricate and complex nature of her designs . . . and her groundbreaking use of gems and precious metals to create clothing. This latter concept is an entirely new phenomenon in fashion and jewelry and I believe it will go down in the annals of history as an almost revolutionary trend."

Although these letters are all complimentary of the petitioner's work and recognize its originality, none of these letters indicate that the petitioner's work has made a contribution of major significance to the jewelry design field. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. For example, the record does not indicate the extent of the petitioner's influence on other designers nationally or internationally, nor does it show that the field has somehow changed as a result of her work. The petitioner presented no evidence outside of these letters to demonstrate that she made a contribution of major significance to the design field and without support for the statements contained in letters, the petitioner cannot establish that she meets this criterion.

The petitioner stated that she would have won a higher award instead of the 5th place she won at the Swarovski competition as relayed to her by one of the judges if her designs were more mainstream and focused on jewelry as adornment instead of as pieces of clothing. She also stated that she heard from "[a] significant number of judges, competitors and spectators at the [2006 Swarovski competition] ceremony [that hers] was the most impressive design of the contest." As stated earlier, the 2006 Swarovski competition awards were given after this petition was filed so the results cannot be considered. In any case, the petitioner presented no evidence to support her assertions that the design submitted to that competition made an impact upon the field. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I. & N. Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972)).

Accordingly, the petitioner has not established that she meets this criterion.

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

Frequent display of artwork is intrinsic to most professions in the visual arts. However, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. In this case, the record documents the petitioner's exhibition of her work in conjunction with the various competitions that she entered. Although those exhibitions occurred at some of the industry's premier events, the petitioner presented no evidence showing that her designs were displayed in a manner consistent with national or international acclaim. On appeal, the petitioner refers us to the letter written by her counsel in response to the RFE for "details about the displays," but provides no evidence which demonstrates that the petitioner's work was showcased or exhibited in a manner consistent with this highly restrictive classification rather than being included as a part of the competition entries. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

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

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

In order to establish the performance of a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner claims to be eligible under this criterion by virtue of her participation in the contests discussed under criterion one. Even if mere participation in a contest could be considered a significant contribution to the jewelry field as a whole, which it is not, each criterion under 8 C.F.R. § 204.5(h)(3) are separate and distinct. The petitioner's argument that she made a significant contribution to the field by winning an award means that the awards considered under the first criterion would also qualify as a leading or critical role for an organization or establishment with a distinguished reputation under this criterion. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

Furthermore, participation in a contest is not a leading or critical role for an organization or establishment. The petitioner presented no evidence to support her assertion that winning the organization's competition helps that organization achieve its goal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I. & N. Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190). The petitioner states that her design for Swarovski, an organization with a distinguished reputation, "promotes the sales of [the company's] crystal components." First, the petitioner presented no evidence to show that the sale of Swarovski crystals increased as a result of her performance in the competition. Second, the petitioner presented no evidence that her participation in the competition impacted the Swarovski company to a greater degree than any designer, sales associate, or other employee of the company. Similarly, the petitioner presented no evidence that her participation in the competitions sponsored by the MJSA, DIVA, or Perles de Tahiti increased sales of those companies' designs or products or in any other way impacted the companies to such an extent that her participation in the competition would be considered a leading or critical role for those companies.

For all of these reasons, the petitioner failed to demonstrate eligibility under this criterion.

In this case, the petitioner has failed to demonstrate that she received a major, internationally recognized award, or that she 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 herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established her 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.