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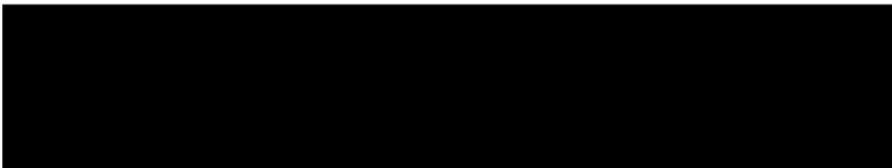
Petitioner:

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 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks the beneficiary's 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 the beneficiary for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that the beneficiary 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 16, 2006, seeks to classify the beneficiary as an alien with extraordinary ability as a designer. The petitioner initially submitted evidence of the 2005 PROMAX and Broadcast Design Association ("BDA") World Gold Awards, information about [REDACTED], membership card for American Institute for Graphic Arts ("AIGA") and information about AIGA, an invitation for the beneficiary to judge the New York and Southeast division EMMY awards, excerpts from Time Warner's 2005 Annual Report, and five letters of recommendation. In response to a Request for Evidence ("RFE") dated May 15, 2007, the petitioner submitted information about the PROMAX Awards, information about the EMMY awards, copies of [REDACTED] promotional materials, and two additional letters of recommendation.

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 the beneficiary 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.

In the initial submission, the petitioner claimed that the beneficiary met this criterion through his receipt of a 2003 and 2004 FIAP/ award for outstanding graphic design skills. No evidence appears in the record to support the claimed receipt of this award. 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)). Even if proof of the award had been presented, no background information was presented regarding the awarding organization or any other information which demonstrates that the award is considered to be a nationally or internationally recognized award.

Additionally, counsel stated that the beneficiary was eligible under this criterion by virtue of the 2005 and 2007 PROMAX BDA awards to the and the resulting recognition of the beneficiary. To support this statement, counsel provided evidence which shows that the was awarded Gold Awards in 2005 in the categories of “Folded Piece,” “Non-Promotional Animation Campaign,” and “Consumer Image Publication Advertising.” The also won two Gold Awards in 2007 in the categories of “Folded Piece” and “3D Interactive Promotional Material,” however, the won those awards subsequent to the filing of this petition. 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. *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). Accordingly, we will not consider the 2007 awards.

The evidence submitted documents the prestige of these awards, however, the petitioner, was the recipient of the PROMAX awards, not the beneficiary.¹ The 2005 “Folded Piece” award listing included the beneficiary as the designer along with two others as creative and art directors; the official listings for “Consumer Image Publication Advertising” and “Non-Promotional Animation Campaign” did not contain the beneficiary’s name. The letter from senior vice president and general manager of the stated that the beneficiary’s work “led to . . . receipt of the incredibly competitive and highly coveted world gold award from . . .” The letter from print

¹ It is interesting to note that the information submitted about AIGA indicates that its awards are “the most prestigious design competitions in the United States,” yet the petitioner has not shown that the beneficiary either participated in the competition or received any of these awards.

creative director for [REDACTED] Latin America, states that the beneficiary's designs "have contributed to the recognition of [REDACTED] Latin America brand - winning several awards in advertising and design worldwide." Neither letter states that the beneficiary was solely responsible for the creation of the winning project nor does the letter set forth the contribution that the beneficiary made to allow us to reach a conclusion other than that the award was presented to the petitioner and not to the beneficiary and thus can be considered as the beneficiary's receipt of a lesser nationally or internationally recognized award.

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

(ii) 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.

The beneficiary submitted a copy of his admission into AIGA and a copy of the association's website. The extract submitted does not indicate how membership is accorded, but states that the association "supports the interest of professionals, educators and students who are engaged in the process of designing, regardless of where they are in the arc of their careers." The website does not indicate that membership is only accorded to those persons who have made outstanding achievements or that membership applications are judged by national or international experts in the field. Instead, the website states that the AIGA started as "a small, exclusive club" but that it now is "the oldest and largest membership association for professionals engaged in the discipline, practice and culture of designing" and has "more than 16,000 designers" as members. Such a large membership is not indicative of an association that requires outstanding achievement of its members.

Without further evidence concerning the AIGA membership qualifications, the beneficiary has not established 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 beneficiary 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.²

Initially, to establish the beneficiary's eligibility under this criterion, counsel relied on two website articles: one from www.terra.com and one from *Publicas Online*. Although counsel asserts that *Publicas Online* interviewed the beneficiary for a story about the petitioner's design, no article from that source appears in the record. In any

² 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.

case, no evidence was presented regarding either website to indicate that either of them may be considered a major trade publication or other major media. In addition, the *Terra* article was not about the beneficiary, but was instead about the petitioner's "new institutional campaign for Latin America." The beneficiary's name was listed among approximately twenty others as one of the three art directors for the campaign, but the article contained no other information about the beneficiary. In counsel's brief on appeal, he contends that the petitioner's statement, as stated in a August 14, 2006 letter from senior vice president [REDACTED] that the beneficiary designed the slogan featured in the *Terra* article would lead to the conclusion that the article amounts to published material about the beneficiary's work. Even if the beneficiary was solely responsible for the campaign and the website was classified as major media, the article merely announces the new campaign and does not discuss it in sufficient depth for the article to be considered to be about the beneficiary or his work.

In response to the RFE, the petitioner argued that the appearance of the beneficiary's work on the advertising campaigns of several major companies as featured on the website www.fuertecito.com would qualify under this criterion. The record contains no information about the *fuertecito* website to indicate that it is a professional or major trade publication or other major media. Instead, the evidence in the record indicates that the website was created and is maintained by the beneficiary. The Internet is an arena available to any user with access to a computer regardless of notoriety or recognition in the arts. To ignore this reality would be to render the "major media" requirement in the regulation at 8 C.F.R. § 204.5(h)(3)(iii) meaningless. We are not persuaded that international accessibility on the Internet by itself is a realistic indicator of whether a given website constitutes "major media" published material. As no information was provided to indicate that the website is anything other than a personal portfolio of the beneficiary's work available online, it cannot meet the definition of major media.

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

(iv) 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.

Evidence in the record indicates that the beneficiary served as a judge for the 2006 New York trade chapter EMMY awards and the 2006 Southeast trade chapter EMMY awards. The record contains no evidence that service as a judge at a trade chapter event is commensurate with the national or international acclaim required for this highly exclusive classification. The chairman's statement on the EMMY awards' website states that entrants would be judged by "blue ribbon panels," however, this statement does not contain information about how judges are chosen or any other indication which demonstrates that the beneficiary's participation in judging a local chapter's award is indicative of this highly restrictive classification. In addition, the petitioner did not show how the category that the beneficiary judged, "Arts Programming," relates to the field of design.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The program submitted from the 2006 Southeast Regional EMMY awards indicate that the competition is restricted by geographic area and no evidence appears in the record to indicate that judges of such a regional award would be afforded national or international acclaim.

Consequently, the beneficiary does not meet 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 claims that the beneficiary meets this criterion through his “exceptional creative talents, as well as through his ability and willingness to search for and find new ways to recapture and captivate the imagination and interest of his targeted market.” In response to the RFE, the petitioner elaborated by stating that the beneficiary’s original contributions of major significance included his “original and extraordinary graphic work . . . featured in various internationally circulated publications.” We acknowledge that the beneficiary’s work was original in that he contributed to new promotional campaigns and advertisements. However, 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. One would expect a designer to contribute artistically to advertisements and other promotional materials. In addition, 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. While the beneficiary’s artistic talent is admired by those offering letters of support, there is no evidence demonstrating that his work has had major significance in the field. 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 his work.

The petitioner also stated that the beneficiary met this criterion through his work on “The Grinch,” however, that movie did not launch until after this petition was filed. 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. *Matter of Katigbak*, 14 I. & N. Dec. at 49. The petitioner submitted no evidence that the promotional materials on which the beneficiary worked were completed or distributed prior to the filing of this petition, therefore, they will not be considered.

The petitioner identified letters in the record purportedly supportive of the beneficiary’s claim of eligibility under this criterion. 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 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 beneficiary’s contributions.

vice president of research for TBS Latin America, wrote in a July 23, 2007 letter that the beneficiary’s “ability to translate abstract concepts into compelling imagery has been a great asset, infusing a fresh look with dynamic graphics and a modern feel.” [REDACTED] credits the beneficiary with creating a “visually stimulating, attractive and compelling” research presentation that helped position TBS Latin America in its target market. [REDACTED], senior vice president and general manager of [REDACTED] Latin America, wrote in a May 10, 2006 letter that the beneficiary has “extraordinary creativity” and played a “key role . . . in designing and developing extraordinary marketing presentations for trade shows and

corporate pan-regional meetings.” [REDACTED] credits the beneficiary with “contribut[ing] to the well-respected image that [REDACTED] Latin America has not only in the region, but also worldwide.” [REDACTED], print creative director for [REDACTED] Latin America, wrote in an April 27, 2006 letter that the beneficiary’s language ability “has improved the communication between [the [REDACTED]] brand and [the] varied pan-regional Latin America consumer markets . . . [the beneficiary] has been able to translate creative marketing strategies and campaigns into successful graphic design communications.” [REDACTED] print and design manager for TNT/TCM Latin America, wrote in a May 24, 2006 letter that the beneficiary “has handled a multitude of high-level design duties” and has an ability to “transcend the norm with his ability to translate into visual form architect creative marketing strategies.” [REDACTED] special projects producer for the [REDACTED] wrote that the beneficiary has made “unique artistic contributions” to the [REDACTED] brand. [REDACTED], consul general of Argentina, commended the beneficiary in a March 16, 2006 letter for his “extraordinary creativity” and “talent [in] design.” All but one of these letters was written by the beneficiary’s co-workers, i.e. the petitioner’s employees, and focus on the beneficiary’s contribution to the petitioner’s brand. None of these letters assert that the beneficiary made an original contribution to the design field as a whole nor do the letters suggest that any contribution made was one of major significance in his field.

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

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

Initially, the petitioner claimed that the beneficiary established eligibility under this criterion through the publication of his poetry by the International Open Poetry Contest in “The Silence Within.” The petitioner failed to establish, however, how poetry related to the field of endeavor in which the beneficiary seeks to continue working in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5). In addition, the petitioner provided no information about “The Silence Within” to indicate that the publication is a professional or major trade publication or other major media.

The petitioner also claimed that the beneficiary established eligibility under this criterion through his work on various advertising and marketing campaigns and the appearance of that work in published material. First, as stated above, 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 such as a designer creating material for advertisements. Second, the beneficiary’s design work is not an “article” but is a pictorial and/or an advertisement. National or international acclaim does not flow from a paid inclusion in a publication, such as an advertisement. In addition, the petitioner did not provide background information for any publication in which the beneficiary’s work appeared so we are unable to determine that any of the publications are professional or major trade publications or other major media.

Accordingly, the petitioner has not established that the beneficiary 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 the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment, the organization being the petitioner itself. In support of the claim that the [REDACTED] has a distinguished reputation, the petitioner submitted excerpts from the 2005 annual report of Time Warner, petitioner's parent organization, and evidence of the awards referenced above won by the [REDACTED]. No evidence was included regarding the [REDACTED] standing in the design field or any other aspect of its reputation.

Even if the [REDACTED] reputation had been established, no evidence in the record shows that the beneficiary performs in a leading or critical role for that organization. Nor is there evidence demonstrating how the beneficiary's role differentiated him from other designers employed by the petitioner, let alone its other employees including creative directors and senior management. The letter from [REDACTED] states that the beneficiary contributed to various projects for the petitioner and that "his commitment and talents are a valuable resource." [REDACTED], the beneficiary's supervisor at [REDACTED] stated that the beneficiary "has been key in developing better client relationship [sic] with [the] regional offices in Latin America" and that the beneficiary "participat[es] in very important image campaigns, collateral materials, event development and print advertising for [the] channels [REDACTED] and [REDACTED] [REDACTED] and [REDACTED]s stated in their respective letters that the beneficiary has played a key role in certain projects and presentations that have "contributed" to the positive image that the [REDACTED] Latin America enjoys. We note that while [REDACTED] is Senior Vice President and General Manager of the [REDACTED] and [REDACTED] holds the position of senior designer, the beneficiary is in the position of junior designer. The letters discussed above do not indicate that the beneficiary, a junior designer in a lower position within the company than his references, was responsible for the petitioner's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim at the very top of his field.

Even if the beneficiary could be said to have performed a leading or critical role for the petitioner and had submitted evidence that the petitioner enjoys a distinguished reputation, the plain language of this criterion requires that the beneficiary show that he performed a leading or critical role for organizations or establishments (plural). No evidence has been introduced to show nor has any allegation been made that the beneficiary played a role in any other organization or establishment.

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

In this case, the petitioner has failed to demonstrate that the beneficiary received 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 beneficiary 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 beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's 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.