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U.S. Department of Homeland Security
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
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JUL 29 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 Director, Nebraska 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” 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. Specifically, the director concluded that the petitioner meets only one of the ten regulatory criteria, of which an alien must meet at least three.

On appeal, counsel submits a brief and evidence, much of which was already part of the record of proceeding or postdates the filing of the petition. For the reasons discussed below, we uphold the director’s decision.

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.

U.S. Citizenship and Immigration Services (USCIS) 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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an art director. 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). Initially, counsel asserted that the petitioner “has received major internationally recognized awards including, a two-time winner at the 11th Annual Webby Awards in 2007, selection as a finalist for the One Show Interactive Merit Award, 2007 Clio Awards Finalist and a Cannes Lions Award 2007 Finalist.” Counsel’s response to the director’s request for additional evidence and appellate brief do not challenge the director’s conclusion that the record does not contain evidence that the petitioner received a major internationally recognized award.

Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a \$1 million cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien’s field as one of the top awards in that field. As will be discussed below, the awards actually received by the petitioner are not even lesser nationally or internationally recognized awards. Thus, none of them can constitute 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. The petitioner has submitted evidence that, she claims, meets the following criteria.¹

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

At the outset, we note that the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the alien’s receipt of qualifying “prizes or awards.” Thus, awards received by the petitioner’s employer, award nominations, or finalist status cannot serve to meet this criterion.

The online LOST Experience Sprite promotion, for which the petitioner served as art director, received a 2007 Interactive Merit Award, Business to Consumer, at The One Show. The petitioner did not submit a photocopy or photograph of a certificate or statue confirming that she personally received this

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

award. The same campaign was one of at least 21 interactive campaigns appearing on the Cyber Lions “short list” for Integrated Campaigns at the 2007 Cannes Lions festival. Similarly, the same campaign appears on the 2007 Clio Awards short list. The credits list the petitioner as one of six art directors for this promotion. In addition, the same campaign was a finalist at the 2007 Revolution Awards. Finalist or runner up status is not an award or prize.

The petitioner submitted two certificates from the 11th Annual Webby Awards in 2007. The certificates are issued to the petitioner in the categories of integrated marketing campaign and food and beverage. Contrary to the assertions of counsel, however, these certificates do not document “awards” but “official honoree” status, received by 15 percent of entrants. According to the materials submitted in response to the director’s request for additional evidence, the Webby Awards issues two awards in every category: the Webby Award and the People’s Voice Award. The petitioner did not receive either of these awards. We note that the website materials submitted by the petitioner show separate links for “winners” and “official honorees.” Recognition akin to an honorable mention is not an award or prize.

The petitioner did submit a photograph of a 2007 Silver World Medal trophy issued to her from the New York Festivals for the Sprite integrated campaign. According to the materials submitted in response to the director’s request for additional evidence, however, the New York Festivals, while an international competition, issues 120 gold, silver and bronze world medals (40 at each level). While only one percent of the total entrants receive awards, it remains that 80 other promotions received the same or higher recognition at this event.

Further, a prepared case study of the LOST Experience campaign was one of four 2006 “Wommie” winners sponsored by the Word of Mouth Marketing Association (WOMMA). Significantly, Coca-Cola Company is the recognized recipient of this award, not the petitioner or even her advertising company employer. The awards appear to recognize the case studies prepared for the campaign rather than the campaigns themselves. The record lacks evidence as to whether the petitioner, an art director for the actual campaign, was involved in the case study. As noted by the director, 2006 was the first year WOMMA issued Wommies.

Finally, AKQA Inc.’s “Nike Nature,” for which the petitioner appears to have served as art director, is featured as one of several possible wallpapers available on the website of the Favorite Website Awards (FWA). “Nike Nature,” however, is not listed as one of AKQA’s award-winning promotions. Regardless, the record contains no evidence that the petitioner personally received an award from FWA.

The director concluded that the above recognition did not rise to the level of nationally or internationally recognized awards or prizes.

On appeal, counsel notes that the Webbys have been hailed as the “Oscars of the Internet” by the *New York Times*. As stated above, however, the petitioner did not receive a Webby Award or the People’s Voice Award, also issued at this competition. Rather, she received recognition as an “official honoree.”

We are not satisfied that this recognition constitutes a nationally or internationally recognized prize or award.

Counsel also discusses the prestige of the Clio Awards, the Cannes Lions festival, the One Show and the Revolution Awards. As discussed above, however, the petitioner did not personally receive awards at these events and her project was only a finalist. Counsel also discusses the FWA, but, as stated above, the record contains no evidence that the petitioner received an FWA or even that her work for Nike was so recognized.

Regarding the recognition from WOMMA, counsel asserts that while a new award, the Wommie represents new marketing strategies. As noted above, however, the petitioner did not personally receive a Wommie. In fact, the advertising company for which she worked at the time also is not the named recipient of the award. Rather, the award was issued to Coca-Cola for its case study of the promotion. The record lacks evidence as to the significance of an art director to the case study.

Regarding the New York Festivals, counsel reiterates that less than one percent of entrants received awards. We are not persuaded, however, that the issuance of 40 gold and 40 silver medals is consistent with a nationally or internationally recognized award.

Finally, counsel discusses awards won after the date of filing. These awards have no relevance to the petitioner's eligibility as of the date of filing, the date as of which she must establish her eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

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

Initially, the petitioner submitted an undated article in *USA Today* about Doritos' campaign to select an unsigned musician for a music video to be aired during the Super Bowl. While the petitioner was the art director for the promotion of the contest, there is no evidence that she served as the art director for the video that was ultimately aired during the Super Bowl. Regardless, she is not mentioned in this article.

The petitioner also submitted a March 24, 2003 article in *Adweek* about the filming of Woody Allen's typewriter for a promotional poster for his play "Writer's Block." Once again, the article does not mention the petitioner by name or even single out the art direction of the promotion. Rather, the focus is Mr. Allen's concern for his typewriter during the photo shoot and his ultimate approval of the results.

In addition, the petitioner's advertisements were featured in *Lürzer's Archive*, *Creative Review* and *Graphis Poster Annual*. The inclusion of her work in these magazines, however, is not published material about her.

In response to the director's request for additional evidence, the petitioner submitted a Winter 2007 edition of *Eye* containing an article about India's communication industry that includes two paragraphs about the petitioner. The petition was filed November 28, 2007 and it is not clear whether the "Winter" edition of *Eye* had been issued as of that date. Even assuming it was issued prior to the date of filing, the article is not "about" the petitioner.

The petitioner also submitted a June 2008 edition of *How* featuring a four paragraph blurb about the petitioner. This material postdates the filing of the petition and cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The director concluded that the material submitted initially was not "about" the petitioner and that the petitioner had not established that the materials submitted subsequently appeared in professional or major trade journals or other major media.

On appeal, counsel asserts that *Eye* and *How* are both internationally distributed and submits information about these publications. As stated above, however, the material in *How* postdates the petition and cannot be considered. While counsel asserts that the petitioner was featured in *How* prior to the date of filing, that material was not submitted on appeal or previously. Counsel also references an interview with Woody Allen that is also not in the record. Regardless, counsel's discussion of the interview does not suggest that the interview was about the petitioner. While we acknowledge that the petitioner's photograph accompanies the *Eye* article, we are not persuaded that the article is primarily about the petitioner. Moreover, as stated above, the article was not submitted initially and it is not clear whether or not the issue was published prior to the date of filing.

The petitioner also submits (1) a December 30, 2007 article in *USA Today* that does not mention the petitioner by name and postdates the filing of the petition, (2) an August 28, 2006 spotlight in the *Examiner* that credits the petitioner with the art direction of a Sprite promotion but is not "about" the petitioner, (3) a February 18, 2008 promotion for a podcast interview with the petitioner and the other creator of Doritos' Crash the Super Bowl competition, (4) a January 11, 2008 article in *Adweek* about the Doritos' promotion that quotes the petitioner but is not about her, (5) a promotion for the Doritos' contest dated October 12, 2007 on the website *Promo* that mentions the petitioner but is not about her and (6) articles about a Sprite promotion that do not mention the petitioner by name. The December 30, 2007 and February 18, 2008 materials postdate the petition and cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The remaining materials submitted for the first time on appeal are not "about" the petitioner.

The most extensive published material relating to the petitioner potentially predating the petition in the record is the discussion of the petitioner in the *Eye* article. This material, included in an article that is

not primarily about the petitioner and possibly published after the date of filing, is insufficiently indicative of or consistent with national or international acclaim to meet this criterion.

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

The director concluded that the petitioner meets this criterion and we will not withdraw that conclusion.

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

As stated above, the petitioner's advertisements have been "displayed" at festivals and in advertising magazines. The director did not consider this evidence under this criterion. Rather, the director concluded that the Doritos' Super Bowl advertisement and the petitioner's California exhibit occurred after the date of filing. The director further noted that the California exhibit was for "emerging artists."

On appeal, counsel asserts that the displays at award festivals and the use of her work in advertisements in general serve to meet this criterion. Counsel is not persuasive. Awards are a separate criterion, set forth at 8 C.F.R. § 204.5(h)(3)(i). We cannot conclude that evidence insufficient to meet that criterion is presumptive evidence to meet this criterion. Moreover, the materials for these festivals reveal that they are open to paid entrants. Thus, the mere display of work at these festivals cannot be considered to be indicative of or consistent with national or international acclaim.

In addition, advertisements are not artistic exhibitions or showcases and, thus, cannot serve to meet this criterion. Moreover, while the petitioner was the art director for the promotion of the contest for the Super Bowl song, the ultimate video for the song that was actually shown during the Super Bowl was not her work. Specifically, there is no evidence that the petitioner was the art director for the video of the winner's song. Regardless, while Super Bowl advertisements are carefully crafted to make the most of the audience and to reflect the high cost of the advertising spot, they are not artistic exhibitions or showcases.

Finally, the magazines featuring the petitioner's work are not artistic exhibits or showcases. Specifically, they contain a sample of innovative advertisements and are not promoted as exhibitions or showcases of the work of one artist or a handful of artists.

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

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

The petitioner claims to meet this criterion as an art director. The record amply establishes that her employers have enjoyed a distinguished reputation nationally as evidenced in part by the nationally prestigious nature of their clients. In response to the director's request for additional evidence, the

petitioner submitted an organizational chart showing that she reports to the Vice President, Creatives, one of three vice presidents, all of whom report directly to the Chief Executive Officer and President. The director concluded that the petitioner had not established the leading or critical nature of her role.

On appeal, counsel asserts that while many individuals may hold the position of art director, the petitioner's successful campaigns demonstrate her critical role for her employers. Counsel notes the petitioner's credited role on successful campaigns.

The director already considered the petitioner's contributions in her role as art director and concluded that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(v). At issue for this criterion are the nature of the role for which the petitioner was selected and the reputation of the entity that selected her. We do not contest the distinguished reputation of her employers. Rather, the petitioner has not established that the role of art director is leading or critical for those employers other than the obvious need to employ competent art directors. If the petitioner's employer employs several art directors as implied by counsel, that information is not consistent with a determination that the role of art director is leading or critical. Even if we concluded that the petitioner meets this criterion through her critical role on several successful and recognized advertising campaigns, and it is not clear that a single campaign is an organization or establishment, she would meet only one additional criterion and, thus, would still not meet the necessary three criteria.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The director concluded that the petitioner's remuneration was commensurate with her position and location and counsel no longer asserts that the petitioner meets this criterion. We concur with the director that she does not for the reasons expressed by the director.

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

The director concluded that this criterion was not applicable to the petitioner's field and that the sales of her clients' products was not comparable to the box office receipts or media sales required to meet this criterion for a performing artist.

On appeal, counsel asserts that the increase in sales at Doritos and Coca-Cola are attributable to the petitioner's work and provides data in support of this assertion. Counsel concludes that such evidence is comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4).

We are not persuaded that the increase in sales attributed to the petitioner's advertising campaigns, which are designed to boost sales, is remotely comparable to the type of personal commercial success contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(x). Specifically, the personal commercial success of a performing artist is indicative of that artists' individual acclaim. The success of a product,

however, does not demonstrate the same type of individual recognition of the advertising agency or artistic director promoting the product. Thus, the petitioner has not established that she 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 herself as an art director to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as an art director, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.