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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 23 2009
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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:

SELF-REPRESENTED

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” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. Specifically, the director determined that the petitioner met only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3),¹ of which an alien must meet at least three.

On appeal, the petitioner submits a personal statement supported by several non-precedent decisions by this office and additional evidence. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. We will discuss the petitioner’s assertions in detail below. For the reasons discussed below, while we concur with the petitioner that she also meets the display criterion set forth at 8 C.F.R. § 204.5(h)(3)(vii), we uphold the director’s ultimate conclusion that the petitioner has not demonstrated her eligibility for the exclusive classification sought.

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.

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).

¹ The director found that the petitioner meets the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii).

At the outset, we acknowledge that USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner. The prior approval, however, does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The regulatory requirements for an immigrant and non-immigrant alien of extraordinary ability *in the arts* are dramatically different. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as simply "distinction," which is further defined as follows:

Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field 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." While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in the nonimmigrant regulations, 8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Rather, separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in 8 C.F.R. § 214(o), does not appear in 8 C.F.R. § 204.5(h). As such, the petitioner's approval for a non-immigrant visa under the lesser standard of "distinction" and using completely different regulatory criteria is not evidence of her

eligibility for the similarly titled immigrant visa. Regardless, each petition must be adjudicated on its own merits under the regulations which apply to the benefit sought. Thus, the petitioner's eligibility will be evaluated under the ten regulatory criteria relating to the immigrant classification, discussed below.

As stated above, the term "extraordinary ability" as it applies to section 203(b)(1)(A) of the Act 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 a mixed media artist. 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.

As stated above, the director concluded that the petitioner meets the published materials criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii) and we find that the record supports that finding. In addition, we find that the petitioner has demonstrated that her work has been displayed at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii). Specifically, the record contains evidence of the display of the petitioner's work at museums, galleries and film festivals in several cities in Germany, New York, Ohio, Russia and Indonesia. These displays go far beyond the typical displays necessary for any visual artist to sell her work and make a living in her field. The displays also extend far beyond the cities where the petitioner has resided. Thus, we are satisfied that they serve to meet this criterion.

The petitioner, however, must demonstrate that she meets a third criterion in order to be eligible for the exclusive classification sought. For the reasons discussed below, however, the evidence falls far short of meeting the necessary third criterion. The petitioner has submitted evidence that, she claims, meets the following criteria.²

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

The director concluded that the petitioner's awards were academic in nature and could not serve to meet this criterion. On appeal, the petitioner acknowledges that her award from the State Academy for

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Fine Arts, Karlsruhe, was limited to other students at the academy, but asserts that her artist residencies, fellowships and certificate of participation should serve to meet this criterion.

Initially, the petitioner submitted a February 20, 2006 letter from [REDACTED] of Kommandantenhaus Dilsberg. The letter is in German and the petitioner did not submit a complete certified translation as required under 8 C.F.R. § 103.2(b)(3). Rather, a caption at the bottom of the letter states that it is a confirmation of the artist residency program in Dilsberg/Heidelberg sponsored by the Cultural Foundation of the Rhine-Neckar Region, Germany. In response to the director's request for additional evidence, the petitioner submitted materials reflecting that the Cultural Foundation awards "2x2 grant awards per year" through the Board of Trustees. The grant "brings artists from all over the world to Dilsberg (2 Studios have been set up for this purpose in the Culture House)." On appeal, the petitioner asserts that the residency includes a Euro 1,200 monthly grant awarded to only two international visual artists per year. The petitioner further asserts that awardees are nominated for this residency and cites a non-precedent decision by this office noting that awardees selected from a pool of nominations have a more persuasive claim to meet this criterion than awardees who submit their work for consideration.

As stated above, only decisions designated as precedents are binding. 8 C.F.R. § 103.3(c). Moreover, nothing in the non-precedent decision suggests that all awards for which the pool of competitors are nominated are presumed to meet this criterion. The petitioner submits a June 23, 2008 letter from [REDACTED] confirming that the petitioner was a resident in the fall of 2006, that the award is given to two international visual artists each year, that nominees are referred to the board of the Cultural Foundation through peers, gallery owners, museum directors, curators and other professionals and that the board makes its decision based on the applicant's excellence in the field. [REDACTED] confirms the monthly stipend of Euro 1,200, free residence in a Culture House apartment, free studio space and a first class ticket for all regional public transportation. The petitioner has not established that the most experienced and renowned members of the field would find an offer of housing or a studio sufficient such that they would aspire to win this residency. Rather, such an offer appears designed for up-and-coming artists. Ultimately, while a review of the artist's past work is essential, the grant appears primarily designed to support future work rather than recognize past work. We are not persuaded that this residency qualifies as an award or prize for excellence such that it can serve to meet this criterion.

The petitioner also submitted a 2001 German certificate from the Deutscher Akademischer Austauschdienst (DAAD or German Academic Exchange Service) with an uncertified translation. The uncertified translation indicates that the certificate from the DAAD granted a fellowship for the petitioner's continued education. The petitioner also provided English-language material from the DAAD's website promoting DAAD scholarship and grant alumni, including the petitioner. In response to the director's request for additional evidence, the petitioner submitted a September 29, 2004 letter from [REDACTED], Head of the North American Programs Section for DAAD, advising that the petitioner was awarded a fellowship from DAAD for the 2001/2002 academic year and that the DAAD "supports the specialist and personal qualification of outstanding German students, graduates and young, up-and-coming academics, scientists and artists." On appeal, the petitioner submits

evidence that DAAD fellowships are limited to those artists who completed their education “not longer than 3 years ago at the time of application.” It is clear from the materials submitted that the DAAD fellowship is designed to fund future work and education and is limited to those at the beginning of their careers. As the most experienced and renowned members of the field are not seeking these fellowships, they cannot demonstrate that the petitioner compares with the small percentage that has risen to the top of her field. Thus, this fellowship cannot serve to meet this criterion.

The petitioner also submitted a certificate issued by the World Trade Center Site Memorial Competition for “recognition of your participation” in the competition. The certificate does not suggest that the petitioner is singled out from other participants or that participation itself was limited to awardees of a separate competition. In response to the director’s request for additional evidence, the petitioner acknowledges that her entry “did not win” but asserts that it “gained the respect” of her collaborator, “one of the most important engineers of our time, who has won hundreds of awards.” The petitioner concludes: “To have collaborated with two of the most impressive persons in art and engineering is an honor that is rarely achieved by artists at my age.” On appeal, the petitioner reiterates that her fellow team members had won prizes and awards and that it is a recognized honor to work with such “highly regarded senior professionals.”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the alien’s receipt of a qualifying prize or award. Collaborating with award winning members of the field is insufficient. As the petitioner only received a certificate of participation and did not receive an award or prize in this competition, it cannot serve to meet this criterion.

In light of the above, while the director incorrectly categorized all of the petitioner’s honors as academic, we concur with the director’s ultimate conclusion that the evidence does not establish that the petitioner meets this criterion.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The evidence submitted to meet this criterion may be reviewed as to whether it is consistent with sustained national or international acclaim. *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

Initially, the petitioner did not claim to meet this criterion specifically. Rather, she stated that she had authored a scholarly article as an art critic. In response to the director’s request for additional evidence, the petitioner asserts that not only does this article meet this criterion, she also meets this criterion through her recommendations to a gallery in Switzerland. The director concluded that peer review was routine in the field and that the petitioner had not provided evidence that set her apart from other artists. On appeal, the petitioner asserts that peer review is an academic practice that is not routine in the field of visual arts. In addition, the petitioner asserts that her show recommendation for the Internet cultural

event guide *Flavorpill* and artist recommendations for the Swiss art gallery serve to meet this criterion. Finally, the petitioner notes that she is qualified to nominate artists for the residency program in which she participated but acknowledges that she has not actually done so.

While we concur with the petitioner that peer review is not routine in the art field, her article cannot serve to meet this criterion. The article, "The Artist as a Social Critique," is published on *tout-fait: The Marcel Duchamp Studies Online Journal*. While the website proclaims that it is recognized by the BBCi, Leonardo digital reviews, *The New York Times* and aicausa, the record contained little evidence of the site's actual viewership. On appeal, the petitioner submits materials from the website attesting to 200,000 visitors over four years. Regardless, the article "is based on an interview with [REDACTED], the founder of the Art Science Research Laboratory located in Soho, Manhattan New York and her findings about the art of Marcel Duchamp." Thus, the petitioner appears to be a journalist reporting on an art critique by [REDACTED]. Thus, [REDACTED] is judging the work of others in this context, not the petitioner. As such this article cannot serve to meet this criterion.

The petitioner claims to have submitted a press release for the "[the petitioner] and friends from New York" exhibition at the Roland Aphot Gallery in Switzerland listed her cooperation with [REDACTED] to expand a program to the United States and an article in *Basel News* listing the petitioner as a curator for the show. The press release indicates that in 2005, [REDACTED] started a collaborative working relationship with the petitioner and, as a result, has expanded his studio-visiting program across the Atlantic and is now presenting the gallery's first international artist collaborative project. A press release, however, is a very self-serving document, and the petitioner's role is not well defined. The article in *Basel News* merely lists the petitioner as an artist and notes her collaborative piece with artist [REDACTED], but does not characterize the petitioner as a curator. On appeal, the petitioner submits two electronic mail messages from [REDACTED] to the petitioner. The first message states that [REDACTED] likes the work of [REDACTED] and would like to include him in an exhibit at the gallery. The second message states that the petitioner may select up to three colleagues who are members of the gallery's international group to participate in the exhibition "[The petitioner] and friends from NYC."

The petitioner has been collaborating with [REDACTED] since 2005. While her display in Switzerland has been considered as evidence to meet the display criterion pursuant to 8 C.F.R. § 204.5(h)(3)(vii), we are not persuaded that these casual conversations on who else would appear at her exhibition and a different exhibition constitute the type of formal judging responsibilities that might serve to meet this criterion.

Finally, as acknowledged by the petitioner, she has yet to nominate any individuals for the artist residency program. Regardless, far more persuasive than being one of the many individuals in the field qualified to nominate individuals would be serving on the far more exclusive panel that selects the final residents.

Without evidence far more indicative of national or international acclaim, such as evidence that the petitioner judged the work of artists at a nationally significant competition or served as an art critic for a nationally significant art journal, the petitioner cannot establish that she meets this criterion.

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

Initially, the petitioner submitted several reference letters but did not explain exactly what specific contributions she has made to her field. In response to the director's request for additional evidence, the petitioner asserts that the letters are more demonstrative of an impact in the field than sales figures would be, noting that Van Gogh's work did not sell well during his life and providing the example of a commercially successful sculptor whose work is not considered influential by critics.

The director concluded that while the petitioner's work, like all art, is original, the petitioner had not demonstrated the impact of her work on the field as a whole. On appeal, the petitioner asserts that she provided several letters, including independent letters, that should be afforded significant weight under the standard set forth at *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). She further asserts that she invented the technique of photography embedded in wax, which has been recognized by experts and copied by other artists, although the petitioner further asserts that artists rarely copy the techniques of others.

As acknowledged by the petitioner, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See id.* However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.*

In evaluating the reference letters under this criterion, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field.

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. To be considered a contribution of major significance in the arts, the contribution must be documented as widely influential. The petitioner's assertion that influence is rarely apparent in her field because artists try to be original is not persuasive. We will not apply a lesser standard simply because the petitioner asserts that it is difficult to meet this criterion in her field. It is precisely because an artist's impact is rare and apparent only after time that evidence meeting this criterion can demonstrate sustained national or international acclaim. While the example of Van Gogh suggests that some currently acclaimed

artists were not recognized during their lifetimes, it remains that the exclusive classification sought requires extensive evidence of sustained national or international acclaim as of the date of filing, which cannot be presumed simply because the petitioner is able to produce an example of an artist whose influence was posthumous.

Given the above considerations, we will consider the reference letters. The majority of the letters submitted simply praise the petitioner's talent and style. Subjective evaluations of talent, while consistent with the petitioner's ability to successfully work in her field and secure exhibitions at distinguished locations, do not necessarily create a presumption that the petitioner has made a contribution of major significance in the field.

██████████ of the Rathaus Gallery asserts that the petitioner's career partly started at the gallery and that her "original and inventive installations including experimental sound pieces, photography-in-wax objects and various others were profoundly impressive, moving and inspiring." ██████████ a faculty member at the Parsons School of Design where the petitioner was previously a student, asserts that the petitioner revitalized the Dadaist tradition within a context of innovative contemporary technological explorations. While ██████████ asserts that the petitioner has "become a major influence in the development of contemporary art," she provides no examples of this influence. ██████████ Gallery Director at the Alp Galleries that has displayed the petitioner's work in New York, characterizes the petitioner as a "driving force for the continued renewal of contemporary art," but provides no examples of any influence. ██████████, an artist who has collaborated with the petitioner, asserts that she has "the great ability to inspire other artists." ██████████ however, provides no examples of any independent artist influenced by the petitioner.

██████████, Director of the Art Research Laboratory, asserts that the petitioner's article on ██████████ was a major contribution to the laboratory and its magazine. ██████████ does not explain this conclusion in light of the clear and unambiguous statement at the beginning of the article indicating that the information in the article comes from an interview with ██████████ and is based on the findings of ██████████. That statement and the footnotes referencing the interview reveal that the ideas in the article are those of ██████████. Thus, this article cannot be considered a contribution by the petitioner.

██████████, a New York artist, provides a lengthy discussion of the significance of the petitioner's work. Specifically, he states:

In a very short time [the petitioner] has risen to the apex of her field and has already made a major impact on the art world. Her shows at the Goethe Institute in 2002, The Aronson Galleries in 2003, VertexList Gallery and the New York Art Fair in 2004 have reshaped the art world's understanding of minimalist art in the century. I can think of no other artist of her generation who has had such a sudden and complete impact. It would be a tragic loss to the art community of America if an artist of [the

petitioner's] stature and accomplishment were not given an opportunity to continue to contribute directly to American culture.

To understand what I mean by this you have to understand the degree to which an artist who was raised outside of our culture can at times see that culture more objectively. [The petitioner's] work has bridged a gap that has existed in contemporary art making for over thirty years. The tradition that [the petitioner's] work comes from is a minimalist tradition. Historically this tradition has tried to purge all associations from the work to create a more or less "pure" art form. This tradition lead [sic] to many of the century's most extraordinary American contemporary art accomplishments. Unfortunately it also lead [sic] to an aesthetic dead end, until [the petitioner] as an outsider to American culture, presciently saw that what was missing from minimalist work was the very thing it had so actively discouraged, humanism. [The petitioner] has brought back to reductive work a range of visual poetry that could never have been arrived at by an American artist. Her work allows for the rigor and purity of minimalist work while seducing the viewer with narratives and associations that had been previously disallowed. I cannot overestimate the importance of this gesture. What might have been seen as a rear-garde action by an American artist has become the most progressive action by [the petitioner].

The record, however, lacks evidence that the significance of the petitioner's influence on the minimalist tradition is widely recognized, such as articles in contemporary art journals discussing a new trend in minimalist art. Significantly, the articles on minimalism provided, including an article on the synthesis of humanism and minimalism, do not mention the petitioner.

On appeal, the petitioner submits a photograph of what purports to be a photograph embedded in wax with no evidence regarding the artist, influence or place of exhibition. The petitioner also submits a German-language article featuring the photograph "Winterwald" by [REDACTED] which appears to be embedded in wax. Without a certified translation pursuant to 8 C.F.R. § 103.2(b)(3), this article has no evidentiary value. Specifically, we cannot determine where in Germany [REDACTED] is based, thus raising concern as to whether the petitioner's influence extends past the German city in which she began using this technique. Moreover, we cannot determine whether the article credits the petitioner with developing this technique. Finally, the use of this technique by one other artist of unknown repute cannot demonstrate that the petitioner's technique is widely influential.

While the evidence demonstrates that the petitioner is a talented and original artist, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established that she meets this criterion.

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

As stated above, the petitioner authored an article that was posted on *tout-fait*, an online journal. As further stated above, while the website proclaims that it is recognized by the BBCi, Leonardo digital reviews, *The New York Times* and aicausa, the record contains little evidence of the site's actual viewership. Finally, as noted twice previously, the article "is based on an interview with [REDACTED], the founder of the Art Science Research Laboratory located in Soho, Manhattan New York and her findings about the art of [REDACTED]"

The director concluded that the petitioner had not demonstrated the significance of this material. On appeal, the petitioner submits information from the *tout-fait* website reflecting that it had 200,000 visitors in four years.

As the petitioner has not demonstrated that this article represents her own scholarship, 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 asserted that her commission to prepare the 120 slide PowerPoint presentation and a website for the German National Tourist Office of New York serves to meet this criterion. The director concluded that this role could not serve to meet this criterion. On appeal, the petitioner asserts that the director did not sufficiently consider the evidence submitted to meet this criterion. She submits additional information about the project and regarding her role as a "researcher" for Partison Pictures' "Ghosts of the Baltic Sea," broadcast on the National Geographic Channel.

While the petitioner may have played a major role in the composition of materials for the German National Tourist Office, we are not persuaded that the petitioner performed a leading or critical role for an organization or establishment. The fact that the petitioner received this commission demonstrates only her ability to earn a living as a graphic artist and web designer. This project, while involving "media," did not involve the creation of any original art. Thus, this project does not appear to fall within the petitioner's claimed area of extraordinary ability, mixed media contemporary art. Similarly, the petitioner's research into the sinking of three German evacuation ships for Partison Pictures does not appear to involve the creation of any original art and, thus, does not appear to fall within the petitioner's claimed area of extraordinary ability.

In light of the above, 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 artist 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 a mixed media artist, 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.