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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 07 040 54155

Office: TEXAS SERVICE CENTER Date:

MAR 05 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)

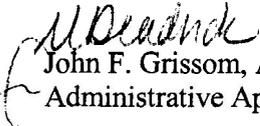
ON BEHALF OF PETITIONER:

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition 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.

The petitioner timely filed a Form I-290B, Notice of Appeal or Motion, in which he asserted that the decision of the director was “unreasonable,” and that the evidence “clearly shows” that he is an alien of extraordinary ability. The petitioner indicated on the Form I-290B that he would submit a brief and/or additional evidence within 30 days of filing the appeal. As of the date of this decision, however, more than 18 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 to the United States will substantially benefit prospectively the United States.

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 has 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):

Initial evidence: 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. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (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;
- (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;
- (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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a model. 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.

In a statement accompanying the petition, the petitioner submitted a copy of his résumé and "numerous ads portraying the applicant involving acting, fashion, etc." The petitioner claimed these documents meet the following criteria: published materials 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; evidence of the display of the alien's work in the field at artistic exhibitions or showcases; evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Where a petitioner has asserted that evidence directly relates to one of the regulatory criteria, USCIS is not obligated to consider the same evidence as comparable evidence to meet a second criterion. Significantly, section 203(b)(1)(A)(i) of the Act requires the submission of "extensive evidence." The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien meet at least three of the ten regulatory criteria. To consider the petitioner's photographs in advertisements not only as evidence of published material but also as comparable evidence of several other criteria would undermine the statutory and regulatory requirements for extensive evidence and that an alien meet at least three separate and independent criteria. Accordingly, we will consider the advertisements submitted by the petitioner under the first criterion that he has requested, published materials about the alien.

Published materials 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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

As noted, the petitioner submitted numerous examples of his work as a model in the form of various advertisements in which he appeared. None of these advertisements identify the petitioner by name and are not about the petitioner or his work. Further, they do not include title, date and author of the material as required by the regulation. Accordingly, the documentation submitted does not establish that the petitioner meets this criterion.

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

The petitioner also alleges that his appearance in the photographic advertisements is also evidence of the display of his work in artistic exhibitions and showcases. The wording of this criterion indicates it is intended for those in the visual arts such as sculptors and painters. As noted previously, the petitioner's photographs have already been considered as evidence of published material about the petitioner, and therefore cannot also be considered evidence of this criterion. Further, an advertising model's job is to display a product or merchandise. The petitioner submitted no documentation that his work as a model is the focus of any display. The evidence does not establish that the petitioner meets this criterion.

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

In an April 17, 2007 unsigned letter submitted in response to the director's request for evidence dated March 14, 2007, the petitioner asserts that:

He has appeared in advertising for such national and international companies such as; [sic] Esquire Magazine, Cosmopolitan, Vivienne Westwood, Armani, Cigar Aficionado, SAS Airlines, Northwest Airlines, Paul Fredericks Catalogue, and numerous others. Documentation (photos) are enclosed to support the above stated facts, and it should be noted that he has recently been on the cover of Newsweek.

In television, he has appeared in Sex in the City (HBO), Jonny Zero (FOX television), Behind the Movies (VH1), Guiding Light (CBS), History International (the History channel) and Good Morning America (CBS).

In theater, he [has] appeared in War and peace (Metropolitan Opera).

In film he has appeared in Blackfire, produced by Renato Longhi and Protester, produced by P.E. Tasciotti.

In the filed of "██████████" he has done the Christmas Play, portraying ██████████ produced by Sathya Sai Baba.

As to his performance as a model and actor, he has appeared in commercials for such known products as Prospan, Kodak Gold, Peugeot 607, Gitane Blonde, Kellogs Cornflakes, Martin Dawson Cellphones, Pfanni, Bahlsen Cielo, BMW "Spinning Wheel" and Honda.

The petitioner submitted no documentation to establish that any of these appearances or performances was in a critical capacity for the companies or organizations named. The evidence does not establish that he meets this criterion.

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

With the petition, the petitioner stated that he was also submitting the following documentation to establish that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field: a letter from his employer indicating that he was paid up to \$3,400 per day on advertising photography, four verifications of payments by Ikon, and payment vouchers from assignments in Europe. However, the petitioner did not include this documentation with his petition.

In his April 17, 2007 response to the RFE, the petitioner submitted a copy of a June 25, 2004 letter from ██████████ New York, in which she stated that the petitioner “earns \$250 per hour and \$2,500 per day for editorial photography modeling and \$425 per hour and \$3,400 per day for advertising photography.” ██████████ also stated that the petitioner’s work has appeared in “editorial fashion stories and national advertising.”

The petitioner submitted documentation to reflect payments that he received for his work. However, he submitted no documentation to establish how these payments related to those received by others in his field. Therefore, his evidence does not establish that he has commanded a high salary or other significantly high remuneration relative to others in his field of endeavor in accordance with the regulation at 8 C.F.R. § 204.5(h)(3)(ix).

The documentation he has submitted does not establish that the petitioner 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 her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a model 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. 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.