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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: SEP 29 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:



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).

Perry Rhew
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.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, while the petitioner submitted persuasive documentation under one criterion that dates from 1995, we uphold the director's ultimate finding that the petitioner has not established her eligibility for this exclusive classification sought. While the petitioner is a successful fashion designer in that she earns a living in her field and has satisfied customers, we are not persuaded that she has demonstrated the necessary sustained national or international acclaim.

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 a fashion designer. 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. The petitioner has submitted evidence that, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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

The petitioner submitted (1) a Certificate of Excellence issued on May 18, 1998 by the Academy of Fashion Technology; (2) a page from an unknown source listing a "Dress of the Week" designed by the petitioner and (3) a 1995 letter from [REDACTED] Vice Chairman and Managing Director of JCT Limited, inviting the petitioner to judge the company's upcoming fashion design competition in recognition of her receipt of Designer of the Year the previous year. In addition, the petitioner submitted materials about JCT Limited, which, among other products, manufactures textiles. As noted by the director, these materials do not address a fashion design award issued by the company. The petitioner also submitted a 2002 letter from President George W. Bush sending greetings to "those gathered for the American Immigration Law Foundation (AILF) dinner as you celebrate your theme, 'A Salute to Indian Americans'" and "special congratulations to your honorees tonight." The letter is not addressed to the petitioner and the record contains no evidence that the petitioner was a guest or an honoree at this event.

In response to the director's request for additional evidence, the petitioner submitted a new letter from [REDACTED]. In this letter, [REDACTED] asserts that JCT Limited is the largest manufacturer of cotton textiles in the world and that it launched promotional fashion shows in the 1990's, including the first Asian Fashion Design Competition. This competition "invited" fashion designers from "all over Asia." [REDACTED] explains that preliminary rounds were held in major cities and the winners participated in the final round. In his initial letter, [REDACTED] identified those cities, all of which are in India. According to [REDACTED], winners were selected based on their ability to work with natural fabrics and create distinctive outstanding designs. The petitioner also submitted her actual award, issued in 1994.

The director noted that the record lacked promotional materials, media coverage or other objective evidence establishing that the "Designer of the Year" award was nationally or internationally recognized. The director concluded: "An award which existed only briefly, was sponsored by a single manufacturer and received little media coverage does not have the same prestige as a long-running,

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

industry-wide award." Finally, the director concluded that the remaining certificates and the letter from President Bush were not nationally or internationally recognized awards or prizes in fashion design.

On appeal, counsel notes [REDACTED]'s statements that JCT Limited was one of the world's largest producers of cotton textiles and that fashion designers from all over Asia were invited to compete in the Asia Fashion Design Competition. Counsel further asserts that JCT Limited no longer markets fashion textiles, resulting in the lack of current information about their earlier fashion shows on their website or in the media. Finally, counsel asserts that the AILF dinner was an "invite only" event for successful South Asians "in the community" and that it can be "inferred" that the invitation alone "indicates that the invitee has risen to the top of their field or endeavor."

The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), a qualifying award must be nationally or internationally *recognized*, not merely national or international in scope. The fact that the organizers invited fashion designers from "all over Asia" does not imply that the competition ultimately drew a notable pool of international competitors for the preliminary rounds, all of which were in India. Moreover, we will not infer the reputation of an award or prize based solely on the prestige of the entity that issued the award or prize. While the award or prize need only be recognized nationally and [REDACTED] does indicate that the preliminary rounds were held in several Indian cities, the record lacks evidence regarding the response to this event, such as the ultimate number of competitors. Significantly, none of the petitioner's coverage in the Indian media mentions that she had previously won this award. Without additional evidence that during its short existence, the award became recognized nationally in the Indian fashion industry, we cannot conclude that this award is qualifying.

While we recognize that material about an award issued 15 years ago can be difficult to obtain, as claimed by counsel on appeal, the age of the award is not necessarily a mitigating factor as it raises its own concerns. Specifically, an award from 1994 cannot, on its own, be considered evidence of sustained acclaim in 2006 when the petition was filed. As will be discussed in more detail below, while the petitioner has continued to operate a successful fashion design business after entering the United States in 2001, it does not appear that she has sustained any national recognition she enjoyed in India prior to that time.

It is clear from the 2002 letter from President Bush that he was responding to a request to attend this event, hosted and organized by AILF. The letter does not suggest that the President invited the guests or selected the honorees. As stated above, the letter is not addressed to the petitioner and the record contains no evidence that the petitioner was a guest or an honoree at this event. Even assuming that the petitioner was an honoree, the record contains no evidence as to the significance of the petitioner's recognition from AILF. It would appear that AILF's expertise is immigration law, not fashion design.

Moreover, the event's theme suggests that the honorees were limited to Indian-Americans. As the most experienced and renowned fashion designers who may not be Indians residing in the United States were excluded, it is not clear how this honor would constitute a lesser nationally or internationally recognized award or prize in either India² or the United States.³

The petitioner submitted no evidence regarding the "Dress of the Week" designation or the certificate from the Academy of Fashion technology. Thus, the petitioner has not established that either is a nationally or internationally recognized award or prize.

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

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.

The petitioner initially submitted the following published materials:

1. An article in the Metro Section of the *India Journal* about the debut of "Bombay Dreams" in early 2006 noting the petitioner's attendance at a "sneak peak" promotional preview of the production. The article is not "about" the petitioner.
2. An August 30, 2002 newspaper photo and caption in *India-West* that identify the petitioner's fashions as being displayed at a local restaurant. This photograph and caption do not constitute published material "about" the petitioner.
3. A June 9, 2006 article in the Business Section of the *India Journal* announcing the opening of the petitioner's design studio. While primarily about the petitioner's work, this article is arguably about the petitioner, including information about her career. The advertisements in this paper list California addresses and phone numbers, strongly suggesting it is a California paper.
4. A June 2006 article about the petitioner in *Orange Coast, the Magazine of Orange County*, as part of the magazine's "OC Trade Secrets: Local Success Stories" series.
5. An undated article in an unidentified newspaper entitled "[The petitioner and her partner] Launch Fashion Studio."
6. An undated article in *India-West* about the petitioner and the display of her fashions at "Event Expo 2002" in Los Angeles.

² Indians not residing in the United States would be excluded from consideration.

³ U.S. fashion designers not of Indian descent would be excluded from consideration.

7. An undated article in the *HT City*, a publication of the *Hindustan Times*, about the petitioner and her partner relating to their designs and a July 23, 2000 article in the same publication about the petitioner's fashions.
8. Three undated articles in unidentified newspapers that appear to be based in India.
9. An undated "Newsflash" in an unidentified newspaper about the Mutiny Ray Ban fashion show in 1994 that mention the petitioner's fashions.
10. The Fall/Winter 2005 edition of *Shaadi Style: The Premiere South Asian Wedding and Fashion Magazine* featuring the petitioner's fashion on the cover and an article about the petitioner and her partner.
11. A November 1994 brief interview with the petitioner entitled "Serenading the Saree" in *First City*.

In response to the director's request for additional evidence, the petitioner submitted published material that postdates the filing of the petition. Such evidence cannot be considered evidence of eligibility as of that date. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 4 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

The director concluded that, with the exception of *Shaadi Style*, the publications were local or regional and that the single article in *Shaadi Style* could not serve to meet this criterion. On appeal, counsel asserts that "both past and present articles" should be considered and reiterates the previous evidence submitted.

In addition to the article in *Shaadi Style*, we will consider the dated article in *HT City*. The remaining articles are either not "about" the petitioner, appear in what are obviously local or regional publications or do not comply with the regulation at 8 C.F.R. § 204.5)(h)(3)(iii) because the petitioner did not provide the date and/or publication name.

The director did not contest that *Shaadi Style* constitutes a professional or major trade journal or other major media. While we acknowledge that the magazine includes letters from readers in various states in the United States and London, the petitioner's assertion that this journal constitutes a professional or major trade journal or other major media would have been bolstered by the submission of circulation and distribution statistics for the magazine. Even if we accepted that *Shaadi Style* is a professional or major trade journal or other major media, we concur with the director that a single qualifying article cannot serve to meet this criterion, which is worded in the plural, as it is not indicative of or consistent with *sustained* national or international acclaim.

On appeal, counsel asserts that the *Hindustan Times* is India's most circulated newspaper. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record does not support counsel's statement. Moreover, the petitioner has not established that *HT City* enjoys the same circulation as the *Hindustan Times*.

In light of the above, we concur with the director that the petitioner has not established that she 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.

As stated above, in 1995, the petitioner was invited to judge JCT Limited's Asia Fashion Design Competition based on her receipt of an award during the 1994 competition. The director determined that because the petitioner's award at this competition, the sole basis for her selection as a judge, was insufficient to meet the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), her service as a judge could not serve to meet this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iv). While the regulation at 8 C.F.R. § 204.5(h)(i) includes language requiring that any qualifying award be nationally or internationally recognized, that language does not appear at 8 C.F.R. § 204.5(h)(3)(iv). Thus, our conclusion that the petitioner does not meet the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) does not by itself resolve whether or not the petitioner might meet this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iv).

That said, USCIS is not precluded from evaluating the level of judging involved. Specifically, the evidence submitted to meet any criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. *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). For example, an internal review of work where the alien is employed does not demonstrate national or international acclaim and, thus, cannot serve to meet this criterion. *Kazarian v. USCIS*, __ F.3d __, 2009 WL 2836453, *5 (9th Cir. 2009).

The petitioner has established the reputation of JCT Limited and that the award competition was held throughout India, culminating in finals in New Delhi. The petitioner was not an employee or otherwise affiliated with JCT Limited at the time. Regardless of whether the competition continues at this time, we are persuaded that her selection to judge this competition held throughout India is sufficiently consistent with national acclaim.

Nevertheless, the petitioner judged this competition in 1995, 11 years before the petition was filed. As such, while we are satisfied that the petitioner's service as a judge is sufficient to meet this criterion, the remaining evidence in the record must establish that the petitioner has sustained any recognition she may have enjoyed in 1995 through 2006 when the petition was filed in order for us to conclude that she is eligible for the benefit sought.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in 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 field of fashion design, it can be expected that the designs would have been demonstrably influential on the industry.

As noted by the director, the petitioner has never claimed to meet this criterion. Counsel does not challenge this conclusion on appeal. We note that while the record establishes that the petitioner has succeeded as a designer of original fashions, the newspaper and magazine articles and letters from satisfied clients and colleagues do not establish that the petitioner's original designs have influenced the field of fashion design such that they can be considered contributions of major significance.

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

Initially, the petitioner submitted a partial flier for the Exhibition "A Passage to Mughal Kingdom." The flier does not reflect the date or location of the exhibit. The exhibit featured the products for a furniture and accessory business, art work from an art gallery and the petitioner's fashions. The petitioner also submitted a flier for Event Expo 2002 (formerly the Ziba Bridal Expo) being held in Laguna Hills and Los Angeles, California. The petitioner is listed as one of eight designers featured at the event. The petitioner also submitted a flier for the Mistique Collection's "Magical Afternoon of Fashion" held in 2001 in Artesia, California. Further, the petitioner submitted an invitation to the opening of Khanzanaa in Los Angeles which will house the petitioner's collections among others. The date of this event is not listed. The petitioner also submitted a flier for a 2003 exhibition in Wisconsin.

████████████████████ of A Link to Fashion, indicates that after ordering two outfits from the petitioner, she invited the petitioner to participate in a Trunk Fashion Show to be held in Las Vegas. ██████████ a former Indian High Commission to Singapore, asserts that during his tenure as High Commissioner from 1995 through 2000, he invited the petitioner to hold four fashion shows at his residence which were very successful. ██████████ Chairman of the Sumi Motherson Group, asserts that he organized a successful fashion show for the petitioner in Dubai. Finally, the petitioner submitted letters from stores in India confirming that they "showcase" the petitioner's fashions.

The director requested evidence regarding the prestige of the above events and evidence as to their selection criteria. In response, the petitioner resubmitted the letters from ██████████ ██████████ and

The petitioner also submitted a 1995 letter from ██████████ thanking the petitioner for accepting his invitation to a fashion show.

The director concluded that it is inherent to the fashion industry to exhibit one's work for sale and that the petitioner had not established that the shows where her work was exhibited were indicative of or

consistent with national or international acclaim. On appeal, counsel asserts that it is inherent to any artistic field to exhibit one's work and that the very selection for exhibition should serve to meet this criterion.

As stated above, the evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim. Thus, in order to meet this criterion, any artist would need to demonstrate the significance of the exhibitions where her work was showcased.

We acknowledge that, several years before the petition was filed, the petitioner's work was displayed internationally in India, Singapore and the United Arab Emirates. The JCT Limited fashion show predates the petition by 11 years. A private show hosted by the High Commissioner carries less weight than a major fashion show organized within the fashion industry and attended by the top members of the industry. The record contains little information regarding the nature of the Dubai show such as who organized it and who attended it. In fact, the record does not even establish when the Dubai show occurred. The record contains little evidence regarding the nature of the more recent shows exhibiting the petitioner's work in the United States. Significantly, the media coverage of these events submitted is limited to coverage in regional U.S.-based Indian newspapers.

Without additional evidence demonstrating the significance of the events where the petitioner exhibited her work, such as information regarding the attendance at these events or wider media coverage of the events, we cannot conclude 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.

On appeal, counsel does not challenge the director's conclusion that the record contains no identifiable evidence relating to this criterion. We concur with the director that the petitioner has never explained how she might meet 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.

On appeal, counsel does not challenge the director's conclusion that the evidence reflecting that the petitioner's dresses cost more than dresses advertised on Nordstrom's website does not establish the petitioner's personal remuneration. We concur with the director. The record does not establish the petitioner's actual annual remuneration, which is impacted not only by prices but sales volume and overhead. The record also lacks evidence that would allow a comparison with the remuneration received by other renowned fashion designers who also custom design clothes for appointment only clients. Thus, the petitioner has not demonstrated that she meets this criterion.

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

Counsel initially asserted that the petitioner meets this criterion based on the petitioner's design of costumes for the film "Mixing Karma" produced by KO Studios in Seattle, displays of the petitioner's work and satisfied clients. On appeal, however, counsel does not challenge the director's conclusion that the record contains no evidence relating to this criterion. Counsel also does not address the director's statement that the website www.imdb.com⁴ does not name the petitioner as the costume designer or under the costume and wardrobe department.

As the petitioner does not work within the performing arts and did not submit box office receipts, she cannot establish 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 a fashion designer 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 has demonstrated extensive experience and talent as a fashion designer, 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.

⁴ While the director did not add this information to the record, we accessed the website on September 24, 2009, at <http://www.imdb.com/title/tt0411670/fullcredits>, and have incorporated the results into the record of proceeding.