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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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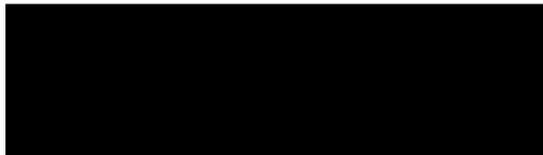


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 01 2010
SRC 08 227 51427

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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 that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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, 60898-99 (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 he has sustained national or international acclaim at the very top level.

This petition, filed on July 17, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a photographer/artist. The petitioner initially submitted a letter from [REDACTED], Assistant Professor and Head of the Photography Concentration, Film and Media Arts Division, School of Communication, American University, Washington, D.C., stating:

[The petitioner] began at American University in 1997 as a graduate student. He quickly became a staff member, running our Photography Lab from 1998 until 2005.

[The petitioner] started teaching our Principles of Photography class as an adjunct in 2001 and we were able to move him into a temporary yearly-appointed faculty member in 2005.

The petitioner also submitted a June 2, 2008 letter from [REDACTED], Associate Dean for Student and Academic Affairs, School of Communication, American University, stating: “[The petitioner has been filling a temporary faculty line, which has now expired. However, if a faculty line were to become available, [the petitioner] would be a serious candidate.”

On appeal, the petitioner submits letters from [REDACTED], Professor and Chair, Department of Mass Media, Visual and Performing Arts, University of the District of Columbia (UDC), stating that the petitioner taught at UDC “as an adjunct in the Spring of 2008” and was later selected in the Summer of 2008 for a “tenure track position in photography.”

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien’s receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria 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 a June 16, 2008 letter from [REDACTED] President & Chief Executive Officer, Prosperity Media, Washington, D.C., stating:

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

The *ProsPY Awards* is a national film and video competition that recognizes excellence in the work of college students.

As a nonprofit media arts organization that provides access to media to underserved individuals and other nonprofit organizations, Prosperity Media created the *ProsPY Awards* to give access to the “big screen” to college students.

* * *

When [the petitioner] was a senior at American University he entered his work [redacted] into the 2003 *ProsPY Awards* competition. . . . [redacted] garnered [the petitioner] a 2nd Place win in the 2003 awards competition

The petitioner submitted additional documentation confirming that he received a Second Place trophy and a \$750 cash prize in the 2003 ProsPY Awards competition. The petitioner’s selection for an award limited by its terms to “college students” is not an indication that he is among “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced competition from throughout his field, rather than competition limited to college students who had not yet begun working in the field. Receipt of an award limited to university students offers no meaningful comparison between the petitioner and experienced professionals in the field who have long since completed their educational studies. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. For comparison, USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *See, e.g., Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.² Likewise, it does not follow that a photographer who has had success in a college student competition should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Further, there is no documentary evidence demonstrating that the petitioner’s 2nd place award is recognized beyond the presenting organization and therefore commensurate with a nationally or internationally recognized

² While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

prize or award. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence demonstrating that the petitioner's award had a significant level of recognition beyond the context of the 2003 Prosperity Awards Competition.

The petitioner submitted a copy of his resume listing the John R. Bowden Award (1998) and Visions Festival awards for Best Photo Essay and Best Slide Portfolio (1998) and for first place in the portfolio category (2003). The record, however, does not include evidence of the preceding awards. The self-serving claims in the petitioner's resume are not sufficient to meet the burden of proof for this regulatory criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. The petitioner has not established that evidence of the preceding awards does not exist or cannot be obtained. Further, his resume does not equate to secondary evidence or an affidavit. Moreover, there is no evidence showing that the preceding awards constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner submitted documentation showing that he contributed photographs appearing in the January 2006 and October 2006 issues of *DC Modern Luxury*. The plain language of this regulatory

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

criterion requires “[p]ublished material about the alien in professional or major trade publications or other major media” including “the title, date, and author of the material.” The photographs contributed by the petitioner to this local magazine do not meet these requirements. Accordingly, the petitioner has not established that he 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.⁴ A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

[REDACTED], President, Blue Bear Films, and Assistant Professor in the School of Communication at American University, states: “I have known [the petitioner] for several years as my colleague at American University. He has been the primary advisor to many students in my Advanced Media Portfolio course [The petitioner] has served as a judge for the prestigious CINE Golden Eagle Awards in several categories.”

[REDACTED] Director of Competitions, CINE, states:

Golden Eagle recipients are chosen through CINE’s semi-annual Golden Eagle Film & Video Competition, held each Spring and Fall. These competitions involve hundreds of volunteer media and content specialists who judge nearly 1,000 entries yearly in several moving-image genres for professional, independent and student filmmakers.

* * *

In the judging phase of our competition, these films (which number nearly 500 per competition) are evaluated by juries of film, video, television or content professionals – all of whom served on a volunteer basis. CINE recruits jury chairs from around the United States (approximately 70-90 per competition), and these jury chairs recruit at least two colleagues in media or the appropriate content category (i.e., educators evaluate educational films) with whom to view and judge their assigned entries.

⁴ We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006) and *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

The complete jury gathers to watch the assigned films, and using CINE's judging paperwork, evaluates each individual production. . . . After viewing an entry, each juror makes a recommendation on his or her scoresheet. If a majority of jurors recommend the film for an award, it moves forward for additional judging; if a majority do not recommend it, it is sent back to the CINE office for processing. If a production is recommended through two stages of jury evaluations, the film receives a CINE Golden Eagle Award.

██████████ a longtime associate of CINE who has served as a jury chair and currently sits on the CINE Board of Directors, recruited [the petitioner] to serve as a juror for a few of her juries. She confirmed with us that he participated in at least two of the CINE juries that she held.

The information in ██████████ letter states that the petitioner was not actually a CINE jury chair, but rather was recruited for the task of film evaluation by his close colleague at American University, ██████████ who held the position of CINE jury chair. Moreover, there is no indication that the petitioner's initial scoresheet recommendations were followed, that he served as a second stage juror, or that he ultimately held final authority in determining any of the CINE Golden Eagle Award recipients. With respect to the petitioner's work as a recruited juror for the competition, the role played by him was clearly junior or subsidiary to that of the 70-90 jury chairs. While not dispositive, the petitioner's lesser role does not support a claim to being one of that small percentage who have risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). Further, it has not been established that being among the "hundreds" of volunteer judges for the CINE Golden Eagle Film & Video Competition held twice per year is commensurate with sustained national or international acclaim. For instance, internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion. ██████████

██████████ Finally, there is no evidence showing the specific categories judged by the petitioner, the dates of his participation, the names of the individuals whose work he evaluated, and their level of expertise. Without evidence showing, for example, that the petitioner has judged experienced professionals in a manner consistent with sustained national or international acclaim at the very top of his field, we cannot conclude that he meets this criterion.

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

The petitioner submitted a May 29, 2008 letter from ██████████ Co-Founder of the United States Association of Southeast Asian Nations (ASEAN) Film and Photography Festival by the Global Renaissance of ASEAN-American Culture and Entertainment (GRACE) Heritage, stating: "[The petitioner] is an extraordinarily talented photographer whose work was exhibited in National Geographic [Dining Hall] during US ASEAN Film and Photography Festival in 2006 and many other events organized by the GRACE Heritage." The petitioner also submitted a 2006 press release for the event prepared by ██████████ stating:

The Southeast Asia: Four Views and Four Colors photography exhibition aims to foster international discourse and solidarity. This show, curated by Jeong-ok Jeon will introduce

photographers from Southeast Asia to other photographers whose work is inspired by ASEAN.... The exhibition will be held in the original dining hall of the National Geographic located at 1600 M Street N.W. Washington, D.C. . . .

The preceding press release does not establish the level of prestige of the preceding venue or exhibition. A press release is a written communication directed at the news media for the purpose of announcing information claimed as having news value. We cannot conclude that a press release, which is not the result of independent media reportage and which is sent to journalists in order to encourage them to develop articles on a subject, is sufficient to demonstrate the stature of the petitioner's photography exhibition. The petitioner also submitted promotional material from the National Geographic Live! internet site announcing the dates for the US ASEAN Film and Photography Festival. The self-serving nature of the preceding promotional materials does not establish the distinction of the National Geographic Dining Hall venue or that the petitioner's exhibition was commensurate with sustained national acclaim at the very top of his field. Moreover, the record lacks supporting evidence showing that the petitioner's work was singled out for critical acclaim by others in his field.

The May 29, 2008 letter from [REDACTED] further states: "[The petitioner's] work also was used as a cover of program book during Indonesian Film Festival which collaborated with Smithsonian Institution in 2005." The record, however, does not include a copy of this program book. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Nevertheless, the petitioner has not established that having his work appear on the cover of the preceding program book equates to the exclusive exhibition of an artist's work contemplated by this regulation for visual artists.

On appeal, counsel argues that the documentation showing that petitioner contributed photographs for the January 2006 and October 2006 issues of *DC Modern Luxury* magazine meets this criterion. The petitioner submits a June 24, 2009 press release from the Washington, D.C. chapter of the American Marketing Association that describes *DC Modern Luxury* as a "regional lifestyle" magazine that captures "the urbane metropolitan lifestyle." The petitioner has not established that his ability to secure a photographic assignment with this "regional lifestyle" magazine equates to the exclusive exhibition of an artist's work contemplated by this regulation for visual artists. The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that standard is to have any meaning. We cannot conclude that every photographer whose work appears in a regional publication is among that small percentage who have risen to the very top of the field of endeavor.

The petitioner submitted a copy of his resume listing his exhibitions in the Washington, D.C. area. The record, however, does not include evidence documenting his involvement in the majority of these exhibitions. As previously discussed, the self-serving claims in the petitioner's resume are not sufficient to meet the burden of proof for this regulatory criterion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other

unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. The petitioner has not established that evidence of the undocumented exhibitions does not exist or cannot be obtained. Further, his resume does not equate to secondary evidence or an affidavit. Moreover, it must be stressed that an artist does not satisfy this criterion simply by arranging for his work to be displayed; otherwise most, if not all, visual artists would satisfy this criterion, rendering it meaningless. In this case, the petitioner has not submitted evidence showing that his works have been displayed at significant national venues, as opposed to local venues in Washington, D.C. Nor is there any indication that the petitioner's works have been featured along side those of photographers who enjoy national or international reputations. Finally, the petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive non-student venues devoted to the display of his work alone.

Counsel further argues that the petitioner's showcasing of "his artwork in premier forums in the Washington, D.C. area" amply satisfies this criterion. While the petitioner may have earned a regional reputation in the city where he has studied and worked, the classification sought requires extensive documentation of sustained "national or international acclaim." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The evidence submitted by the petitioner for this criterion is not sufficient to demonstrate a level of distinction that sets his photographic exhibitions apart from those of most others in his field nationally or internationally. For example, there is no evidence showing that his exhibited photographs have earned a national or international reputation or that participation in his exhibitions was a privilege extended to only top national or international photographers.

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

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The petitioner submitted letters of support from American University faculty discussing his work for the School of Communication. With regard to American University's reputation, the petitioner submitted information about the university printed from *Wikipedia*, an online encyclopedia. Regarding information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁵

⁵ Online content from *Wikipedia* is subject to the following general disclaimer:

Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source. Thus, the petitioner has not established that his former employer has a distinguished reputation. With regard to the petitioner's "temporary yearly-appointed" teaching position and oversight of the photography laboratory, there is no evidence demonstrating that his role was leading or critical to the university. For example, there is no evidence demonstrating how the petitioner's role differentiated him from the other faculty members at American University, let alone its tenured professors, division directors, and deans.

On appeal, the petitioner submits a June 25, 2008 letter from [REDACTED] of the UDC to the Dean of the UDC College of Arts and Sciences recommending that the petitioner be hired for a "tenure track position in photography." The petitioner also submits a June 3, 2009 letter from [REDACTED] discussing the petitioner's work for UDC. There is no evidence showing that UDC has a distinguished reputation in relation to other universities. Further, there is no evidence demonstrating that the petitioner's role was leading or critical to the university when compared to that of its other faculty members. The documentation submitted by the petitioner does not establish that he was responsible for the UDC or American University's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international

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See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on January 7, 2010, copy incorporated into the record of proceeding.

level. 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.");

The AAO's *de novo* authority has been long recognized by the federal courts.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.