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FILE: SRC 04 225 52570 Office: TEXAS SERVICE CENTER Date: **JUL 19 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:  
[Redacted]

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.

*Meri Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the nonimmigrant visa and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as an employment-based immigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 101(a)(15)(O)(i), as an alien of extraordinary ability in the arts, in order to employ him as a plastic artist for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in the arts.

On appeal, counsel asserts that the director erred in denying the petition.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

According to the regulation at 8 C.F.R. § 214.2(o)(3)(ii):

*Extraordinary ability in the field of arts means distinction.* 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 specific requirements for supporting documents to establish that the alien qualifies as an alien of extraordinary ability in the field of arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the alien has achieved distinction in his or her field of endeavor.

This petition, filed on August 19, 2004, seeks to classify the beneficiary as an alien with extraordinary ability as an artist. The beneficiary is a native of Peru and received refugee status in France. He entered the United States as a nonimmigrant visitor on September 29, 2004. The beneficiary studied at the Escuela Superior de Formacion Artistica in Puno, Peru from 1987 through 1990. According to the petitioner, the beneficiary has approximately 11 years of highly specialized experience as a plastic artist, painter and professional caricaturist. The petitioner further indicated that the beneficiary works in many different media, including cartooning, mural painting, abstract acrylic painting, logo design, computer graphics and crafts. According to the evidence on the record, the beneficiary also founded and taught at a Latin dance academy in Pau, France; owned a shop in France, selling Peruvian textiles, clothing and musical instruments; and founded a nonprofit organization, Eco-Solaire.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) indicates that an alien can establish he or she is recognized as being prominent in his or field of endeavor through evidence of a one-time achievement (that is, a significant, nationally or internationally recognized award, such as an Academy Award). Barring the alien's receipt of such an award, the regulation outlines six criteria, at least three of which must be satisfied for an alien to establish the prominent necessary to qualify as an alien of extraordinary ability in the field of arts. The petitioner has submitted evidence that it claims satisfies at least three of the six criteria. At no point has counsel or the petitioner specifically identified and addressed the regulatory criteria discussed below.

*Evidence that the alien has been nominated for or has been the recipient of significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award.*

According to the evidence on the record, the beneficiary has been awarded the following:

- Honorable mention from the Ministry of Education, Regional Office, for his determined and brilliant participation in the strengthening of the art and culture in Puno, Peru, 1993.
- Honorable mention (honor diploma) from the Ministry of Education, Department Directorate of Education, Puno, Peru, in recognition of his meritorious labor on the execution of the mural "Puno in History," 1987.
- Five certificates of completion of programs of study at the National School of Fine Arts of Lima, Peru.
- Certificate of participation as an exhibitor in Puno, Peru, 1996.
- Prize in painting contest held by the city of Orthez, France.
- A patent for his invention, the polychromatic drawer, a calligraphy tool.

The evidence on the record is devoid of documentation establishing the significance of any of the above listed awards. Certificates of participation are not awards, per se. While the petitioner submitted copies of the honorable mentions and certificates, it failed to submit corroborating evidence of the prize awarded by the city of Orthez. 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)).

The petitioner also provided evidence of an approved patent granted to the beneficiary for a calligraphy tool. The granting of a patent documents that an invention or innovation is original, but not every patented invention or innovation constitutes a significant contribution in one's field. The petitioner failed to demonstrate that the beneficiary's patented technique is a significant contribution in relation to others in the field.

The petitioner has failed to establish that the beneficiary satisfies this criterion.

*Evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonial.*

According to the evidence on the record, the beneficiary opened a shop selling traditional Peruvian textiles and folk art in France. The petitioner submitted an undated article captioned "That's Peru," which describes the beneficiary's shop. The article was featured in the commerce section of an unnamed publication. The petitioner submitted a captioned photograph of the beneficiary selling caricatures at a stand in an unnamed undated publication. The AAO will not consider undated and unnamed publications. The record contains a photograph of the beneficiary captioned "[REDACTED] Visiting Pau's Fair" published in the September 14, 2002 edition of *L'Eclair*. The petitioner failed to submit circulation data of *L'Eclair*. The petitioner submitted photographs of

the beneficiary's art exhibitions. There is no evidence of when and where these photographs were published. The petitioner failed to submit evidence establishing that the beneficiary's shop or art exhibitions are organizations or establishments with a distinguished reputation. The beneficiary does not satisfy this criterion.

*Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.*

As evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in satisfaction of criterion number five, the petitioner submitted the following letters:

- [REDACTED] artist, attested that the beneficiary's invention has received a "great positive reception."
- [REDACTED] Director, Educational Sciences Faculty, National University of the Altiplano in Puno, Peru, subscribed that the beneficiary has "demonstrated extraordinary abilities in the art of calligraphy" during his lecture at the university in 2002.
- Dr. [REDACTED] Chairperson and Professor, [REDACTED] Florida International University, Miami, Florida, wrote, "[the beneficiary] has demonstrated his professional qualifications as an exceptional artist in an impressive career with numerous exhibitions and unique creative projects."
- [REDACTED] Acting General Director, Escuela Superior de Formacion Artistica, Ministry of Education, Puno, Peru, certified that the beneficiary "demonstrated extraordinary ability and superlative accomplishment in the art of the [sic] calligraphy."
- [REDACTED] 4th year art student at the University of Fine Arts in Mirail, Toulouse, attested to her use of the beneficiary's patented invention, "polychromatic drawer" calligraphy tool.
- [REDACTED] artist, wrote that the beneficiary's work has received international exposure at exhibitions.

While all of the letters' authors praise the beneficiary's work, they fail to establish that the beneficiary has received significant recognition for his achievements. The beneficiary does not satisfy this criterion.

*Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.*

The petitioner submitted a signed contract indicating that the petitioner would pay the beneficiary an annual salary of \$35,000. As evidence that the proffered wage may be considered "high," the petitioner quoted the 2004-2005 Edition of the U.S. Department of Labor Occupational Handbook, which states: "only the most successful fine artists are able to support themselves solely through the sale of their works [and] most fine artists must work in an unrelated field to support their art careers." The petitioner asserts that since most fine artists cannot support themselves by selling the art, or in effect, earn nothing, the proffered wage is high in comparison. Salary blurb. This criterion must be indicative of national acclaim in the field. To evaluate whether the salary is high, Citizenship and Immigration Services (CIS) needs to compare it to the median and highest wages offered

nationwide to fine artists. There is no such documentation in the record that would provide a basis for comparison.

After a careful review of the entire record, the AAO finds that the petitioner has not shown that the beneficiary is a person of extraordinary ability in the fine arts.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the director's decision will not be disturbed.

**ORDER:** The appeal is dismissed.