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FILE: EAC 04 118 50468 Office: VERMONT SERVICE CENTER Date: FEB 22 2006

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:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is an artistic painting and design organization. The beneficiary is an artist. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him as a decorative artist for a period of three years at an annual salary of \$20,483.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel submits a brief.

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, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts as defined by the statute and the regulations.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

*Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the 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 at 8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) 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; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

- (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
- (3) Evidence that the alien has performed, and will perform, 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 testimonials;
- (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
- (5) 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; or
- (6) 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 beneficiary is a native of Kiev in the Ukraine and graduated from the Lviv Academy of Arts in 1985. The record reflects that he was last admitted to the United States on March 14, 1998, and worked for the petitioner in H-1B classification, as a temporary worker.

The petitioner does not allege, and the evidence does not establish, that the beneficiary has been nominated for, or been the recipient of, any significant national or international awards or prizes in his field of endeavor. The petitioner has submitted evidence that, it claims, meets the following criteria.<sup>1</sup>

*Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.*

According to counsel, evidence submitted by the petitioner to establish that the beneficiary meets this criterion includes documentation of the beneficiary's work in the Ukraine and "evidence relative to his decoration of important public objects in the United States and Canada, such as churches and schools."

With the petition, the petitioner submitted a September 19, 1996 letter from the Ministry of Education of Ukraine Lviv Academy of Arts, which certified that the beneficiary graduated from the academy with honors.<sup>2</sup> The letter, signed by the rector of the Lviv Academy of Arts, further indicated:

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<sup>1</sup> The petitioner does not claim to meet, or submit evidence relating to, the criteria not discussed in this decision.

<sup>2</sup> The petitioner submitted two different translations of this document. The AAO accepts as evidence the translation of Svetlana Shevchenko as her attestation complies with the requirements of 8 C.F.R. § 103.2(b)(3).

Referred by the Lviv Academy of Arts as one of the best graduates, [the beneficiary] was hired by the Scientific and Research Department of the Lviv Academy of Arts, as a Decorative Artist/Designer. He held this position from 1985 through 1991.

During that time, [he] was both the author and performer of the artistic work of the projects listed below:

- Interior design of the Ivan Fedorov Museum . . .
- artistic wall painting of the Barvinok Kindergarten in the city of Lviv;
- interior design of the Museum of Local Lore, History and Economy in the Pidbirtsi [sic] High School . . .
- interior design and artistic wall painting of the Cărpatski Zori Spa, in the village of Modrychi . . . (co-author);
- iconstand of the Olga and Volodymyr Lemkiv Church, in the city of Lviv;
- artistic wall painting of the Lviv Medical School Pharmacy (co-author);
- iconstand of Goleshiv Church, Khodoriv District, Lviv Region.

The petitioner submitted copies of unidentified photographs that are presumably of the beneficiary's work in these locales. The petitioner submitted no other evidence with the petition to corroborate the beneficiary's work as described in the rector's letter. 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)). Additionally, the petitioner submitted no evidence that any of these events or projects on which the beneficiary allegedly worked had a distinguished reputation.

In response to the director's request for evidence (RFE) dated April 22, 2004, the petitioner submitted documentation to establish the reputation of the Fedorov Museum. Other evidence submitted included concerning documentation entitled "Great Churches of Lvov." None of the documentation, however, alluded to the beneficiary or his contribution or indicated that a specific project was particularly esteemed.

Also in response to the RFE, the petitioner submitted an affidavit from the beneficiary in which he stated that he was "entrusted with performing interior design for the National Historic and Educational Site, the Museum of Ivan Fedorov" and "honored with the task of creating the icon stand of the Olga and Volodymyr Lemkiv Church," which he states is a part of the National Architecture Museum and has the status of the national historic site. The beneficiary also stated:

In addition to the above described projects, I was also selected for the following high-complexity and high-prominence projects: interior design of the heritage Museum of Podbirtsi High School, . . . reception hall wall painting at the Lviv national university of Medicine (Ukraine), reception hall wall painting at the Barvinok Day Care Center (Lviv, Ukraine), design and implementation of the traditional styled icon stand of Toloshivsky Church (Lviv region, Ukraine) . . .

[I]n recognition of my past achievements, I was invited to work in Canada . . . My work in Canada included design of Saint Basil Church icon stand Montreal (Canada) and painting traditional style icons at the Ukrainian Residence Chapel in Rosemont, Montreal.

The petitioner submitted no evidence such as critical reviews, advertisements, publicity releases, publications, contracts, or endorsements to establish that any of these projects or the work on them were of a distinguished reputation. The evidence does not establish that the beneficiary meets this criterion.

*Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.*

Counsel asserts that evidence of this criterion “consisted of publications, including publication of the alien’s work product in the major album on the national historical landmarks in Ukraine.”

The record contains copies of pages from two documents entitled the “Great Churches of Lvov.” The petitioner identifies these documents as international editions of photograph albums about Lvov that are published by the Ukrainian government to promote tourism. However, neither of these documents mentions the beneficiary and therefore is not about him or his work. The petitioner highlights portions of the pictures apparently to depict the beneficiary’s work. However, none of the captions credit the beneficiary in any way.

The beneficiary stated in his affidavit that icons he designed for the Ukrainian Residence Chapel and the icon stand for the St. Basil the Great Church “have received national and international acclaim.” In her letter of July 14, 2004, ██████████ an associate professor of graphic design at the University of the Arts in Philadelphia, stated that the beneficiary’s achievements “received national recognition in his home country of Ukraine.” Her comments are echoed by ██████████, an artist and member of the Philadelphia City Mural Arts Program, and ██████████ of the Division of Public Programs of the National Endowment for the Humanities. However, the petitioner submitted no primary evidence to support these statements. *See Matter of Soffici*, 22 I&N Dec. at 165. The evidence, therefore, does not establish that the beneficiary meets this criterion.

*Evidence that the alien has performed, and will perform, 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 testimonials.*

Counsel asserts that this criterion is met by the evidence discussed under criterion one above as well as by “expert testimonials.”

The petitioner submitted evidence to establish that the Museum of Ivan Fedorov enjoys a distinguished reputation and that some of the churches for which the beneficiary worked were included in documentation on the “Great Churches of Lvov.” However, the petitioner submitted no evidence that the beneficiary performed in a leading or critical role. While the beneficiary and the petitioner assert the significance of his design of the icon stand in the churches and other work by the beneficiary, the petitioner submitted no evidence to corroborate that the beneficiary performed in a leading or critical role for these churches.

Ms. ██████████ basing her opinion on the beneficiary’s affidavit, noted the beneficiary’s work on the Fedorov Museum and concluded, “Based on my professional experience, I may confidently confirm that only artists of the very top caliber are allowed to perform the work of this nature.” Ms. ██████████ and Ms. ██████████ again echo her

comments. Nonetheless, the petitioner failed to establish that the beneficiary played a lead, starring or critical role for the Fedorov Museum.

The evidence does not establish that the beneficiary meets this criterion.

*Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.*

According to counsel, the petitioner documented that the beneficiary met this criterion by his work in the decoration of nationally and internationally recognized landmarks and historic sites and that the "importance of this work was confirmed by expert testimonials."

As previously discussed, the petitioner submitted no primary evidence to corroborate the beneficiary's work on any of the projects claimed. Further, the letters of recommendation submitted into evidence do not document the critical success of the beneficiary's work. All of the letters provided are based on a review of the beneficiary's photographic work and personal statements. Most repeat this precise language that is included in Ms. [REDACTED] letter:

Based on my professional judgment . . . I may attest that [the beneficiary's] past record clearly establishes that his skills and expertise in the field have received sustained national and international acclaim. [The beneficiary] has established himself as an extraordinary professional in the field though [sic] proven track record of success, as he has been selected to perform the work of national and international importance involving his extraordinary expertise in the field. [The beneficiary's] achievements received national recognition in his home country of Ukraine, and his track record further confirms [his] recognition in the field on the national level.

These affirmations of the beneficiary's achievements do not provide details to support the conclusion that the beneficiary has achieved sustained acclaim in his work. The petitioner submitted no evidence that the beneficiary's achievements have been publicly documented. The evidence does not establish that the beneficiary meets 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.*

Counsel asserts that the letters of recommendation submitted by the petitioner clearly establishes that the beneficiary meets this criterion.

Letters of recommendation from [REDACTED] and [REDACTED] have been previously discussed. We note that recommendations and assessments of these authors are not based on an independent knowledge of the beneficiary's work but on a review of his affidavit and photographs of his work.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its

discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS 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; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; See also *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)).

Further, letters from independent references who were previously aware of the beneficiary through his reputation are far more persuasive than letters from independent references who were not previously aware of the beneficiary and are merely responding to a solicitation to review the beneficiary's statements regarding his work and provide an opinion based solely on this review.

The petitioner also submitted a letter from [REDACTED] of [REDACTED] who stated that she has known the beneficiary for a few years and can "attest to his character and integrity," however, Ms. [REDACTED] does not indicate that the beneficiary's work has received significant recognition.

The beneficiary stated in his affidavit that he had received an award from the Ukrainian Canadian Centennial Commission for the design of the symbol of the 100<sup>th</sup> anniversary of the Ukrainian emigration to Canada. The petitioner submitted a copy of a letter from the Ukrainian Canadian Centennial Commission – Quebec, indicating that it awarded the beneficiary a "special recognition award" in recognition for his "important work and in appreciation of his beautiful design of the symbol of the Centenary of Ukrainian Settlements in Canada." While the award recognizes the beneficiary's achievement, the evidence does not establish that it constitutes a "significant recognition" as required by the regulation. Further, a single award is not indicative of the beneficiary's sustained acclaim in his field of endeavor.

The evidence does not establish that the beneficiary meets this criterion.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in art.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.