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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: EAC-01-179-54032 Office: Vermont Service Center Date: AUG 19 2003

IN RE: Petitioner:
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:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center for abandonment. The director reopened the petition and denied it a second time after considering supplemental documentation submitted on motion. The matter is now before the Administrative Appeals Office 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.

On appeal, as part of counsel's specific arguments relating to the various criteria, he argues generally that Boston's cosmopolitan population elevates any recognition in that city to national and even international acclaim. This argument is not persuasive. National acclaim requires acclaim outside one's local geographical area. The acclaim must, by definition, be nationwide, not simply among a cross section of Americans and citizens of other nations who all reside in a single city or state. Thus, in evaluating the evidence submitted to meet each criterion claimed, we must determine whether it is indicative of and consistent with notoriety and acclaim beyond the petitioner's home state of Massachusetts.

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 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 Bureau 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 photographer/artist. 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, international 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 never clearly explained which three criteria she claims to meet, so we will discuss all the regulatory criteria.

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

The record contains evidence that the petitioner's art was accepted into a juried exhibit. While neither the petitioner nor counsel claim that this evidence meets this criterion, we note that acceptance into an exhibit is not a prize or award. The exhibit will be considered below.

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.

The petitioner submitted a letter from the Boston Photo Collaborative thanking the petitioner for her membership support. The petitioner did not submit any evidence that the collaborative requires outstanding achievements of their members or that membership candidates are judged by national or international experts in the field of photography.

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.

A photograph taken by the petitioner appears on the cover of *Buffalo Woman's Vision*. Inside, the petitioner personally discusses the photograph. A biography written by the petitioner herself is not the type of independent journalistic reportage contemplated by the regulation. Moreover, the record contains no evidence regarding the circulation of this publication. As such, the petitioner has not established that it constitutes major media.

In addition, the petitioner submits a photograph of herself with her work in the *Somerville News*. The headline reads "Getting to Know You: Artist [the petitioner]. Photographing the Sacred." The article below has been removed in both copies submitted. Thus, the petitioner has not established that the issue included an article by an independent journalist about her work. Regardless, as with the above publication, the petitioner has not established that the *Somerville News* constitutes major media such that appearing in this publication is indicative of or consistent with national acclaim. Specifically, the petitioner has not demonstrated that this local article gave her nationwide publicity.

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 petitioner does not claim to meet this criterion and the record contains no evidence relating to it.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner does not specifically claim to meet this criterion. We note that the record contains numerous letters from satisfied customers and invitations to exhibit the petitioner's work, almost exclusively in Massachusetts. The director determined that the letters did not come from persons well known in the field of photography. On appeal, counsel asserts that "many of her affidavits were from curators and art scholars." The petitioner submits new affidavits from artists, critics, "spiritualists," and academia.

The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Regardless, while the witnesses provide general praise of the petitioner's skills, they do not claim that she is nationally acclaimed or among the very few at the top of the field. S. A. Bachman, a professor at the School of the Museum of Fine Arts in Boston, Massachusetts, asserts that the petitioner has made "extraordinary contributions" by building community through the artistic process but that it is difficult for an artist to receive prizes and exhibit their work in prestigious museums. We recognize the difficulty in meeting the regulatory criteria in any field. We note, however, that the classification sought is extremely exclusive and the regulations were designed to specify criteria that only those at the very top of the field could meet.

Karin Wells of Classical Oil Portraiture in New Hampshire asserts that the petitioner "has made outstanding contributions to the way we view and interact with people that society can no longer ignore." Vague claims of contributions to the field of photography through the petitioner's spiritual focus are insufficient. We note that the biographies of the witnesses, who claim to have won awards and to have artwork on permanent exhibit at major museums, suggest that the top of the petitioner's field is significantly higher than the level the petitioner has achieved.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner does not claim to meet this criterion and the record contains no evidence relating to it.

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

The majority of the documentation submitted relates to this criterion. The petitioner initially submitted a letter agreeing to host a show of the petitioner's work in April 2001 at the BloodRoot Restaurant in

Connecticut. In addition, Marian Groot, Co-Director of the Women's Theological Center, offered to exhibit the petitioner's work in November 2001. Sonia Hofkosh, Director of Women's Studies at Tufts, writes that the petitioner's work would be exhibited as part of the "Sacred Journeys/Local Visions" show featuring women artists from Somerville, Medford, and Cambridge, Massachusetts. Libby Augton, Coordinator of a small gallery in South Shore, offered space to the petitioner to sell her work. The gallery would take a 20 percent commission on the sales. The Reverend Paul LaCharite, Director of the Episcopal Divinity School in Cambridge, Massachusetts, offered the petitioner gallery space in the library for an art show in the fall of 2001. Leonora Torres advises that she has invited the petitioner to show her photography at the grand opening of Sozo Therapeutics in Assonet, Massachusetts. Gilda Bruckman, President of New Words Live in Cambridge, Massachusetts, offers space in their gallery for an exhibition. The Reverend Dr. Claudia Ann Highbaugh, a Chaplain at Harvard University's Divinity School, thanks the petitioner for her exhibition at the school's Andover Hall Chapel and offers an opportunity for an additional exhibition. Finally, L. Douglas Freeman, President of the West End Salon in Provincetown, Massachusetts, also invites the petitioner to exhibit her work at one of their shows.

On motion, the petitioner submitted documentation of more exhibits and invitations to exhibit her work in Massachusetts. For example, the petitioner participated in the "To the Infinite Becoming" exhibit at the Cambridge Swedenborg Chapel. The promotional materials specifically state that the event includes art, readings, and songs "by many local spiritual artists." The other exhibit locations include Roxbury Community College in Roxbury, Massachusetts; the Follen Church Society in Lexington, Massachusetts; M.S. Murphy Picture Framing and Art in Somerville, Massachusetts; the Stebbins Gallery in Cambridge, Massachusetts; the Gibbs Gallery in Arlington, Massachusetts; New Words in Cambridge, Massachusetts; Somerville Open Studios in Somerville, Massachusetts; the Arlington Street Church in Boston, Massachusetts; Renee's Café in Somerville, Massachusetts; and the Center for Holistic Arts in Acushnet, Massachusetts. The record also includes promotional materials for the "Body Conscious" exhibit sponsored by the Arlington Center for the Arts in Arlington, Massachusetts. This juried exhibit was open to national and international artists and the center selected one of the petitioner's photographs for exhibition. The petitioner did not submit evidence, however, demonstrating that the center actively sought or received entries from nationally or internationally acclaimed artists. Nor has the petitioner demonstrated that the exhibit is particularly prestigious nationally and that acceptance to the exhibit is sought by artists nationwide. For example, the record contains no evidence of major media coverage of the exhibit.

Finally, the petitioner submitted evidence that she has donated her work to the Somerville Homeless Shelter in Somerville, Massachusetts and for auctions to support this shelter; to Shelter, Inc. in Cambridge, Massachusetts; to Fenway Community Health in Boston, Massachusetts; to the Massachusetts Breast Cancer Coalition; to a charity tennis tournament sponsored by Genome Therapeutics Corporation in Waltham, Massachusetts; and to Jane Doe, Inc. in Boston, Massachusetts. The petitioner also donated greeting cards to the Somerville Public Schools in Somerville, Massachusetts.

As part of her motion to reopen the director's denial for abandonment, the petitioner submitted an invitation to exhibit her photographs at a public exhibition in Toronto sponsored by Sistering.

The director concluded that the petitioner had not established that the locations where she exhibited her art and those to which she donated her work were the type of places where nationally acclaimed artists exhibit their work and to which they donate. On appeal, counsel argues that any exhibit in Boston is within "a national or international market."

We agree with the director's ultimate conclusion that the petitioner's exhibitions are insufficient, although we phrase our concerns somewhat differently. Any photographer who makes a living as a photographer must exhibit her work for sale. It is insufficient to merely submit evidence relating to a criterion; the evidence itself must be indicative of or at least consistent with sustained national or international acclaim. All but two of the petitioner's exhibits were in Massachusetts. The petitioner's exhibit in Connecticut is fairly local to her Massachusetts base. Her one invitation to exhibit her work in Toronto is not evidence that she is nationally or internationally acclaimed in the field of photography.

While the petitioner's exhibition history is certainly evidence of her recognition within the spiritual photography community in Massachusetts and suggests the possibility of lesser recognition in the northeast, we concur with the director that this history is not evidence of sustained acclaim nationwide.

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

The petitioner does not claim to meet this criterion and the record does not contain any evidence relating to it.

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

The record contains evidence that the petitioner consistently sells her photographs and greeting cards, and that she designed an album cover for Kellie Hajjar. Making a living in her field is not evidence that the petitioner is one of the very few at the top of her field. The record contains no evidence demonstrating that the petitioner's photographs sell for significantly high amounts in comparison with photographs by the nation's top, most acclaimed photographers.

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

The petitioner does not claim to meet this criterion and we note that it does not apply to her field.

On appeal, counsel states that the petitioner has submitted evidence that meets at least three of the above criteria. Counsel elaborates on this claim as follows:

> [T]he petitioner did the photograph for a compact disc for musician Kellie Ha[j]jar's recording, "My Shirt Dripping Blue."

> [The petitioner] is featured on the web site "Soulstirring.org"
>
> [The petitioner's] work has been showed at art galleries, institutions of higher learning and churches.
>
> [The petitioner's] artwork has been sold to art collectors, laypersons, churches and others.

Counsel then goes on to discuss the "profound healing effects [the petitioner's] photographs have on the subjects of her work" and the "cosmopolitanism" of Boston.

The only criterion that the above quoted statements address, however, is exhibitions under 8 C.F.R. § 204.5(h)(3)(vii). Having clients in the music industry, appearing on a website, and selling art in the Boston area are unrelated to any of the regulatory criteria discussed above.

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 photographer 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 shows talent as a photographer, 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.