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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC-02-059-53149 Office: Vermont Service Center Date: JAN 3 1 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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)

IN BEHALF OF PETITIONER:

[redacted]

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classify the beneficiary 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 beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel requests that the Service make an "appointment" to observe the beneficiary's work. As will be discussed below, however, the regulations pertaining to this classification do not permit the Service to adjudicate petitions based on its own subjective opinion of the beneficiary's talent. Rather, the Service must evaluate the evidence of record based on ten objective criteria designed to demonstrate national or international acclaim. Counsel's remaining arguments will be discussed below.

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 Service 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a tattoo 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. Initially and in response to the director's request for additional documentation, neither the petitioner nor counsel addressed any of the criteria other than awards. As such, the director concluded that the petitioner had not demonstrated that the beneficiary qualifies for the requested classification. On appeal, counsel claims that the beneficiary meets the following criteria.

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

Initially, the petitioner submitted the results of a tattoo competition printed in *Tattoo* where the beneficiary's work on his wife's back won second place in the "Large Black-and-Gray" competition and "Best of Convention." In response to the director's request for additional documentation, the petitioner submitted certificates for second place in the category of "Overall Tattooed Female" and third place in "Full Sleeve Tattoo." The certificates are presented by the First Annual NY-NJ Tattoo Extravaganza in 2001. On appeal, counsel asserts that the beneficiary won "superior" awards in the United States, Brazil, Argentina, Spain, France and Canada. The petitioner submits six magazines that counsel asserts supports her claim.

In *Double Coverage, Madrid and Toronto*, a "Tattoo Magazine Supplement," the beneficiary's work on his wife is pictured on the cover and inside as being featured at a tattoo convention in Toronto, Canada. The supplement makes no mention of any awards won at that convention. Simply having one's work pictured in a magazine of unknown circulation is not a nationally or internationally recognized prize. A local New Jersey tattoo special issue of an unknown publication (the full title is obscured on the photocopy submitted) reports the results of the First Annual NY-NJ Tattoo Extravaganza documented initially. *The Big Apple*, another "Tattoo Magazine Supplement" covers a New York tattoo convention but does not identify the beneficiary as the artist for any of the featured tattoos. Nor does this supplement appear to feature the beneficiary's wife. Regardless, the supplement makes no mention of any prizes. *Piel* features the Fourth International Tattoo Convention in Sao Paulo. This publication pictures the tattoo on the arm of the beneficiary's wife with a caption that reads, [redacted] In the absence of a full translation of this section of the magazine, this one photograph cannot be considered evidence of a nationally or internationally recognized award. *Tattoo Revue* features the beneficiary's wife on the cover and inside, but makes no mention of an award or prize. Finally, the petitioner resubmitted the issue of *Tattoo* reporting the "Large Black-and-Gray" and "Best of Convention" awards. The complete article, now in the record, reveals that the beneficiary won these awards at a convention in Puerto Rico.

The record reveals only that the beneficiary won awards at a tattoo convention in New Jersey and one in Puerto Rico. The record contains no evidence regarding whether these awards are nationally or internationally recognized. For example, the petitioner has not submitted evidence that these

conventions are more significant than the numerous conventions and festivals advertised in the tattoo magazines submitted. It is noted that both conventions were the "first," and, thus, had no established reputation at the time the beneficiary won his awards.[1] Without evidence that top tattoo artists aspire to winning these particular awards above and beyond the many tattoo festivals and conventions which occur monthly all around the United States, the petitioner cannot establish that the beneficiary has won a nationally or internationally recognized award.

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.

Counsel asserts that the beneficiary satisfies this criterion because his work is featured in tattoo magazines. The beneficiary's work appears in *Tattoo* and the unidentified New Jersey publication in the context of reporting contest results. He is not singled out or specially featured. The publications do not feature articles specifically about the beneficiary. As stated above, *The Big Apple* does not appear to feature the beneficiary's work or an article about the beneficiary. *Piel* features a photograph of the arm of the beneficiary's wife, but does not identify the beneficiary as the artist of the tattoo. Coverage that does not identify the beneficiary cannot be considered consistent with national or international acclaim.

The beneficiary's wife appears on the cover and inside *Double Coverage: Madrid and Toronto* and *Tattoo Review*. The beneficiary is identified as the artist in both publications. The record, however, contains no information regarding these publications, including their circulation. Thus, even if we concluded that featuring the beneficiary's work on the cover constituted published material about the beneficiary, the petitioner has not established that this material appeared in major media. Thus, the beneficiary does not meet the plain language of this criterion.

Finally, in response to the director's request for additional documentation, the petitioner submitted a videotape of an interview with the beneficiary and his wife on a Spanish-language talk show. The petitioner, however, failed to submit any information about this talk show, such as whether it is broadcast locally or nationally or even its national origin. Media coverage that is in a language that the majority of the country's residents do not comprehend cannot be considered major media. Regardless, the petitioner has not established that the show is a nationally broadcast show in whatever country it originates.

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

On appeal, counsel asserts with reference to this criterion: "[The beneficiary's] documented work should be classified as being 'scholarly' in the field of Tattooing; it should be noted the work he has submitted has been recognized by his peers shown in the prizes and awards he won."

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[1] The New Jersey convention is advertised as the "first" and in a letter to the Service, the co-host of the Puerto Rico convention describes it as the "first."

The record contains no evidence that the beneficiary has made any "scholarly" contribution to his artistic field. The record is absent evidence of articles authored by the beneficiary or presentations by the beneficiary that have analyzed tattoo art in a scholarly way. Moreover, the petitioner has not established that the beneficiary has made an artistic contribution to his field. While he has won awards at two conventions and visited others, the record contains no evidence that his work has made a significant contribution to the world of tattoo art such that other artists emulate his style. In response to the director's request for additional documentation, the petitioner submitted a letter from [redacted] co-host of the First Puerto Rico Tattoo Convention. [redacted] indicates that he judged the contest at the convention and awarded the beneficiary first place. [redacted] describes the beneficiary as a "world class tattoo artist." [redacted] does not, however, indicate that the beneficiary has influenced his own work. Regardless, a single letter from a tattoo artist, even the co-host of a tattoo convention, is insufficient evidence of the beneficiary's contribution to the entire field of tattoo art.

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

Counsel argues that the tattoo magazines that feature the beneficiary's wife reflect that the beneficiary's work is on display. The evidence submitted in support of each criterion must be evaluated as to whether it is indicative of national or international acclaim. The petitioner has not established that the attendance of the beneficiary's wife at any of the numerous tattoo festivals, which are open to all tattoo fans, is comparable to the display of art at an exclusive artistic exhibition or showcase. We note that our determination in this matter is unrelated to the type of art that the beneficiary performs. A more conventional artist who paints on canvas cannot meet this criterion by renting gallery space to exhibit and sell his paintings. Nor could a conventional artist meet this criterion simply by selling his work to local businesses where it is admittedly on display, but not in the context of an artistic exhibition or showcase. Similarly, it is inherent to the field of tattoo artists to tattoo their clients, who will presumably display this art as they live their lives. That these tattoo fans attend tattoo festivals, open to all tattoo fans, bearing the beneficiary's work is unremarkable.

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 beneficiary has distinguished himself as a tattoo artist 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 indicates that the beneficiary shows talent as a tattoo artist, but is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established the beneficiary's 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.