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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536

[redacted]

APR 17 2003

File: WAC-02-234-52316 Office: California Service Center Date:

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.

for Elizabeth Heyward
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and 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. 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, counsel cites *Muni v. INS,* 891 F. Supp. 440 (N.D. Ill. 1995), for the proposition that the Service, now the Bureau, must consider all the facts supporting the petition. We do not contest that proposition. The issue is whether the evidence has the significance claimed by counsel. Counsel later cites several non-precedent decisions from this office where the appeals were sustained. That this office has previously sustained appeals in this classification has no bearing on this petitioner's eligibility. We will discuss counsel's specific arguments 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 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 graphic designer. 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 submitted evidence which, she claims, 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.

The director concluded that the petitioner meets this criterion. We do not find that the record supports that conclusion. The petitioner submitted a letter announcing the result of the 2001 Summit Creative Awards. While the letter identifies only the petitioner's employer, Hill and Knowlton, as Bronze winners, the record is not convincing that this award is exclusive. The letter offers winners the opportunity to purchase award statues. We note that the most prestigious national and international awards, such as Pulitzer Prizes and Nobel Prizes, do not charge a fee for the award. In addition, according to the presenter's own website, www.summitawards.com, in 2001 Summit Creative Awards issued silver and bronze awards to 74 companies in California alone. Moreover, the award was issued to the petitioner's employer, and not to her personally.

In addition, the petitioner submitted a letter from Graphic Design:usa announcing the selection for an American Graphic Design Award for 2000. The letter is not addressed to either the petitioner or her employer, suggesting that the letter is a bulk-issued letter. The petitioner submitted certificates for two 1998 American Graphic Design Awards, three 1999 American Graphic Design Awards, and one 2000 Graphic Design Award. While the 1998 and 1999 awards name the petitioner, the awards do not specify any award level, such as first or gold. Rather, the awards are simply "for excellence in communication and graphic design." Further, while Graphic Design:usa's website, www.gdusa.com/CallForEntries03.php, identifies 24 different categories, none of the certificates of record reflect the category in which they were issued.

As evidence for another criterion, the petitioner submitted copies of *Graphic Design:usa* displaying the award winners. Every page includes five awardees in a given category. The winners are listed alphabetically with only a small section of the alphabet represented per page. Thus, a single page does not appear to represent all the winners in the category. As further evidence that the list of awardees in a given category may continue for several pages, the petitioner submitted two pages for the category "Announcements, Invitations, Cards" in 2000. Thus, there were at least 10 winners in that category in 2000. Moreover, as the second page of this category, page 84, ends with firms beginning with the letter "J," it appears that there may have been significantly more than 10 winners. Furthermore, as they are listed alphabetically, the numbering does not reflect how they were ranked. As such, it is not clear that the American Graphic Award certificates represent competitive awards issued to only the one to three top entries per category as opposed to lesser recognition. Moreover, the letter announcing the award indicates that publication in the awards annual requires "an image conversion and production fee." The amount of this fee is not indicated. The website also indicates that a fee of at least $45 is required to enter the competition in the first place, with bulk fees available for multiple entries. The most significant national and international awards do not require entry fees or fees for publication.

Further, the petitioner submitted photographs of a first place 1999 PRo Award, a 1999 Creativity in Public Relations Award (CIPRA), 1997 and 1999 awards from the Public Relations Society of America (PRSA), and a 1998 Silver Six Award of Merit from the International Association of Business Communicators (IABC) issued to "The Healthy Families Team" at Hill and Knowlton. The record includes several certificates issued to the petitioner by Hill and Knowlton in appreciation for her work on the Healthy Families campaign. While team awards can meet this criterion, the record in this case contains no evidence regarding how many individuals at Hill and Knowlton were on the Healthy Families Team or what role the petitioner played on that team.

Finally, the petitioner submitted company and local awards as well as scholarships and student awards. Local awards or national awards limited to employees of a company do not meet the definition of nationally recognized awards. Further, academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work and scholarships cannot be considered awards in a field of endeavor. Moreover, only students compete for such awards. As the petitioner did not compete with national or international experienced experts in the field, the awards cannot be considered evidence of the petitioner's national or international acclaim.

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 membership cards for the Society of Publication Designers, Inc. (SPD) and the American Institute of Graphic Arts (AIGA). The director concluded that the petitioner had not established that either organization requires outstanding achievements of its members. Counsel does not challenge this conclusion on appeal and we find no evidence of record to disturb the director's finding.

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.

The petitioner submitted photocopies of the newspaper *La Opinion* demonstrating the layout prior to her design and her final design for the layout. In addition, the petitioner is identified as the designer of several graphics in the same publication. Further, as discussed above, the petitioner's projects receiving American Graphic Design Award recognition are pictured in a special awards issue of *Graphic Design:usa*. Finally, the petitioner submits an interview with her in the campus newsletter of American InterContinental University (AIU), her alma mater. While counsel initially asserted that all of the above evidence relates to this criterion, in response to the director's request for additional documentation, counsel listed only the campus newsletter. The director considered the *Graphic Design:usa* and campus newsletter materials, concluding that publication of one's work is intrinsic to the field and that a campus newsletter is not major media.

On appeal, counsel argues that less than seven and a half percent of designers "get recognized" in

Graphic Design:usa and that "*La Opinion* is the oldest and leading Spanish language publication in the United States and is a subsidiary of *The Los Angeles Times*." Counsel's arguments are not persuasive. As discussed under the awards criterion, the petitioner has not demonstrated the significance of the awards from Graphic Design:usa. Regardless, picturing the petitioner's work as one of several recognized designs in a publication dedicated to listing awardees, possibly for a fee, is not journalistic reportage about the petitioner herself. Similarly, that the petitioner assisted with the graphic design of a publication, *La Opinion*, and is credited with that design is not published material about her. It is inherent in the work of a graphic artist employed by a publication that her graphic designs will appear in the publication. The record contains no media coverage of the petitioner personally except in the campus newsletter. Counsel does not continue to argue on appeal that the newsletter constitutes major media and we find that it does not. We note that in her interview, when asked if she thinks she is a success, she responds that she is "working her way up." Thus, even the petitioner did not believe at that time, admittedly two and a half years before the petition was filed, that she was one of the very few at the top of her field, the ultimate standard for this classification.

Finally, while claimed to be evidence relating to another criterion, counsel claims initially and on appeal that the petitioner was interviewed on KMEX television as part of a story on successful Latin women. The record contains no evidence of this interview. Regardless, a single interview on a local television station in her own community is not evidence of national acclaim.

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.

On appeal, counsel faults the director for not considering a letter to the petitioner discussing arrangements for her to review student portfolios. We note that while the letter is in the record, counsel did not claim prior to appeal that the petitioner met this criterion. Rather, counsel previously asserted that the letter related to the display of artistic work criterion. We will consider the evidence on appeal. The letter is from [redacted] Vice President of Education for AIGA, Los Angeles, but the letter is on Design Group, Inc. letterhead. An earlier letter from AIU reveals that the petitioner was scheduled to review student portfolios there. As the AIU letter references AIGA, it appears that both letters may refer to the same review event. The petitioner did not submit any other evidence regarding the nature of the event or sponsor. Similarly, the record contains no evidence regarding the selection process for student portfolio reviewers. Participation in an event where professionals volunteer their time to mentor students at their alma mater preparing for a similar career is not evidence of those professionals' national acclaim.

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

On appeal, counsel asserts for the first time that the petitioner's dissertation meets this criterion. The petitioner submits a letter from [redacted] the Head of the Communications Design Program at Syracuse University, where the petitioner obtained her Master's degree, praising the dissertation. While the petitioner's dissertation is available from the Library of Congress, it is not published in a professional or major trade publication or other major media and, thus, cannot meet the plain language

of this criterion. Regardless, the dissertation was completed after the date of filing and cannot be considered evidence of the petitioner's eligibility at that time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Finally, it is expected of Master's degree candidates that they complete a dissertation. Any evidence submitted to meet a criterion must be evaluated as to whether it demonstrates national acclaim. The record contains no citations to the petitioner's dissertation or other evidence of its influence in the field.

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

[redacted] Program Chair of Visual Communication at AIU, asserts that AIU displayed the petitioner's posters, logotypes, and an assortment of collateral materials in its gallery. The record contains no information regarding the nature of this exhibit, such as its focus and the selection process for the designer(s). Display in the art gallery of her college while still a student is not necessarily evidence of national acclaim.

Counsel also asserted that the petitioner's presentations as a guest speaker meet this criterion. We do not find that presentations as a guest speaker or instructor meet the plain language of this criterion. A speech is not a display of visual art and a seminar is not an artistic exhibition or showcase.

Initially and on appeal, counsel refers to the petitioner's student exhibitions at the Pacific Design Center and a feature story on the petitioner on KMEX Television. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While the record includes a letter from [redacted] of KCET Public Television who expresses a willingness to continue working with the petitioner, the letter does not reference any television interviews. As stated above, the record contains no evidence from KMEX Television. Regardless, a single interview on a local television station relating to successful women in a specified ethnic group is not evidence of national acclaim in the field as a whole.

Finally, while not argued by counsel as relating to this criterion, we acknowledge that the petitioner's work appears in three annual awards editions of *Graphic Design:usa*. As discussed above, however, inclusion in this edition was as one of hundreds of graphic designers and required payment of a fee. It does not appear that inclusion in this publication is indicative of national acclaim.

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

Counsel asserts that the petitioner has played a leading or critical role for her employer and its clients on whose projects she has worked. The petitioner works as a Junior Art Director for Hill and Knowlton, Inc. The record contains letters from Hill and Knowlton, Inc., its clients, and organizations for which the petitioner has donated her time. [redacted], Executive Vice President for Hill and Knowlton, Inc., asserts that the petitioner's designs have impacted the clients' target audiences. Mr. [redacted] continues that the petitioner "brings visual communications to a new level in our industry" and that she is a "key member" of the firm's staff. Mr. [redacted] comments are echoed by others at Hill

and Knowlton, sometimes nearly verbatim. We note that [redacted], Senior Account Executive at Hill and Knowlton, asserts that the company has 65 offices in 34 countries. We cannot conclude that a junior art director in one of those offices plays a leading or critical role for the company as a whole. Moreover, the general, boilerplate accolades fail to sufficiently establish that the petitioner, as a junior art director, plays a leading or critical role even for the Los Angeles office. The record does not establish how many employees work at the Los Angeles office or the organization of that office.

While the petitioner worked for *La Opinion* for a summer and submits layouts of this publication credited to her, the record includes no evidence that this work, inherent to the position of graphic designer, played a leading and critical role for the publication as a whole.

[redacted] Executive Director for the Capital Campaign at the Performing Arts Center of Los Angeles, asserts that the petitioner's work "is vital to the development of our ongoing visual strategic communication plans in several ways, including in print, digital format for the Internet and promotional campaigns." Ms. [redacted] further asserts that the petitioner is a key contributor to the success of the campaign. Other clients provide similar sentiments, sometimes verbatim.

Advertising is obviously important to any company and major companies spend considerable sums of money on advertising. We cannot conclude, however, that every junior art director who designs a print advertisement plays a critical role for the company featured in the advertisement. Of even less significance to the company is the design of intercompany invitations. While a company obviously wants to commission aesthetic intercompany invitations, it is not clear that the design of these invitations plays a critical role for the company. Moreover, it is not clear that a petitioner can demonstrate that she has performed a leading or critical role for a company for which she was never employed.

The petitioner has not established that she played a critical role for Hill and Knowlton. The Hill and Knowlton officials who write on the petitioner's behalf provide only general praise and do not provide examples of how their own success has increased overall as a result of the petitioner's work. The Hill and Knowlton officials do not assert that their campaigns that do not involve the petitioner do not do as well.

[redacted] Vice President of Outreach for the American Society for the Prevention of Cruelty to Animals (SPCA), includes boilerplate language appearing in many other letters and also praises the petitioner for volunteering with the SPCA. Ms. [redacted] fails to explain how the petitioner has played a leading or critical role for the SPCA as a whole.

Finally, the petitioner submits several general letters of recommendation, including seven letters on appeal that include verbatim boilerplate language. While the various authors signed these letters, attesting to their contents, the use of boilerplate language suggests that the language is not their own. Further, some of these authors fail to explain how they became familiar with the petitioner and her work. Regardless, 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. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

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 graphic designer 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 graphic designer, 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.