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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

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)

ON BEHALF OF PETITIONER:

[redacted]

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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.

Elizabeth Ossie
Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to 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 business. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 has 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 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 he 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 creative and technical designer of custom motorcycle products. 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.

Through counsel, the petitioner has submitted evidence that, it 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 petitioner claims that the beneficiary won the "best in show" awards at the 1999, 2000 and 2001 European Hog Rally; the 2001 Stadium HD Open House (one in the custom Harley class and one in paintwork); and the 1998 Freewheels Rally France. It also claims the petitioner placed first and second in the radical custom class at the 2000 and 2001 chopper and custom show in Venice, Italy.

Counsel states that there is no "printed literature" describing these awards and that the organizations do not "maintain well-kept records of each year's winners." As evidence that the beneficiary won these awards, the petitioner submits a statement from Ian Mutch, editor of *Streetbiker* magazine. Mr. Mutch, while confirming that the beneficiary won the awards claimed, acknowledges that there are no available winners lists, and states that the beneficiary's awards are too numerous to list.

On appeal, counsel asserts that the beneficiary's industry is not one "that sits around and documents accomplishments." Counsel argues that Mr. Mutch's letter constitutes "comparable evidence" under 8 C.F.R. § 204.5(h)(4) and establishes that the beneficiary won these awards. Counsel misreads or misapplies the language of the regulatory provision.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." [emphasis added]. The regulation makes clear that this provision applies only if the beneficiary's *occupation* cannot be evaluated under the ten enumerated criteria. Counsel does not suggest that the enumerated criteria do not apply to the beneficiary's occupation, or that the awards criterion is inapplicable. Counsel would have us apply a lesser evidentiary standard because of the lack of documentary evidence. Counsel's argument is unpersuasive.

Mr. Mutch does not state the basis for his comments on the history of the beneficiary's awards. If his information is based on memory, the petitioner provides no corroborating evidence to verify the accuracy of Mr. Mutch's memory. If Mr. Mutch bases his information on records, then those records should be provided in support of the petition. As accurately noted by the director, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The statute requires extensive documentation of extraordinary ability.

Further, the petitioner has not established that these nationally or internationally recognized awards for excellence in the field were not documented, either by the sponsoring organizations or by the trade media.

Counsel states that the beneficiary's bikes were selected as part of an exhibit entitled "The Art of the Harley" at the Barbican Art Gallery in London and its sister gallery, the Klanshielm in Sweden.[1] There is no evidence

[1] According to Mr. Conrad Bodman, curator of the Barbican Centre, its sister gallery in Sweden is the Kulturhuset.

that selection for inclusion in the exhibit constituted a nationally or internationally recognized award for excellence in the field.

The petitioner has submitted no evidence to establish that the beneficiary meets this criterion.

> *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.*

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The record includes an article in the April 7, 2000 edition of the *Evening Times* of Scotland, reporting on the beneficiary's opening of a new custom style shop in Glasgow. The record also contains a copy of a newspaper article from the March 1, 1999 edition of *The Times*. No further information regarding the newspaper is provided, although the petitioner and counsel refer to it as *The Times of London*. A reading of the article, however, which is about the beneficiary and his company, reveals it to be a Maltese newspaper. The petitioner presents no evidence that *The Times* of Malta is major media or professional or major trade media.

The petitioner submitted a copy of two articles from the January 20, 1998 edition of the *Daily Echo*. The articles discuss the annual sales show of the beneficiary's company. A January 24, 1998 article, which also appeared in the *Daily Echo*, discussed a "first-ever public show" put on by the beneficiary's company. Although these articles discuss the beneficiary's company, none mention him. Additionally, the petitioner presented no evidence that the *Daily Echo* is major media, or major trade or professional media.

The April-May 1997 edition of *Big Twin* magazine features photographs of bikes manufactured by the beneficiary's firm with a brief description of each cycle. A feature in an undated copy of *Heavy Duty* magazine discusses a new bike manufactured by the beneficiary's company. Again, the beneficiary is not mentioned in these publications. The articles focus on the designs of the new bikes but do not attribute the designs to the beneficiary. These articles are not about the beneficiary relating to his work.

A feature in an undated edition of *Custom Machines* appears to be coverage of a bike show put on by the beneficiary's company. An article in the August-September 1998 edition of *Moto Journal* appears to be about the beneficiary's company. However, neither document is accompanied by English translations as required by the regulation.[2] The evidentiary value of these documents is therefore limited.

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[2] The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language must be accompanied by a full English translation.

The petitioner also submitted a copy of a photograph of one of the bikes manufactured by the beneficiary's company that appeared in a 1999 edition of *Road Cruisers* magazine.[3] The photograph is unaccompanied by any text. No evidence attributes the creative design of this bike to the beneficiary.

Contrary to counsel's assertions, the articles presented by the petitioner in support of this criterion are generally not about the beneficiary and his accomplishments. They discuss the beneficiary's company and various bikes manufactured by it. However, the articles do not attribute particular designs to the beneficiary, and do not indicate his national or international acclaim through media coverage as envisioned by this criterion. The record does not establish that the beneficiary meets this criterion.

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.

As noted by the director, the petitioner first claimed that the beneficiary met the requirements of this criterion in its response to the director's request for evidence (RFE) dated February 28, 2003. As evidence, it referenced the second letter written by Mr. Mutch that was included with the response to the RFE. Mr. Mutch wrote that the beneficiary is "routinely called upon to judge custom bike competitions," and names a few of the shows. However, Mr. Mutch doesn't specify when the beneficiary acted as a judge in these shows or how often he has been called to judge the shows. No other evidence substantiates Mr. Mutch's statements, and no evidence is presented about these shows, the nature of the competition, or the significance of the beneficiary's participation. The evidence does not establish that the beneficiary meets this criterion.

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

As evidence that the beneficiary meets this criterion, the petitioner presented copies of two issues of a quarterly in-house magazine published by the beneficiary's company. The introduction to the first issue, written by the beneficiary, states that the purpose of the magazine was to keep "friends and customers in touch with what is new and happening in our custom Harley world." The magazine appears to be a mixture of advertisements, practical tips and information on current events. The petitioner refers to this as an "original quarterly magazine" but does not explain how it constitutes a contribution of major significance to the field.

The petitioner also submitted a copy of a photograph that it states is from the April 3, 2001 edition of the *Financial Times*. The photograph contains a caption that the beneficiary's company has developed a revolutionary petrol tank for its motorcycles. A brief reference to a "steady order for [the company's] fuel tanks by none other than Arlen Ness himself" appears in the book *The Art of the Harley*. While the assumption is that the passage refers to the "revolutionary" gas tank developed by the beneficiary's company, the petitioner submits no other evidence regarding this gas tank, including the extent of its use or production or that it was otherwise a contribution of major significance to the custom design of motorcycles, and no evidence that the beneficiary created or designed the tank.

[3] The magazine does not carry a publication date.

Counsel argues that the beneficiary also meets this criterion based on his "professionalizing" the custom bike market in the United Kingdom. The evidence reflects that the beneficiary built his successful business in part by marketing custom motorcycle parts, and by delivering the custom built motorcycles in a timely manner. This was apparently a unique experience for customizing motorcycles in the United Kingdom. While this is a laudatory accomplishment, the evidence fails to establish that the British system of marketing and delivery of custom motorcycles and motorcycle parts has as yet been affected on a large scale. Further, the evidence does not establish that meeting customer demands and contractual obligations constitute a contribution of major significance to the field. No evidence establishes that the beneficiary meets this criterion.

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

The petitioner claims the beneficiary meets this criterion based on the inclusion of four bikes that he customized in a 1998 museum exhibition entitled "The Art of the Harley."

The evidence shows that four motorcycles that were custom designed by the beneficiary were included in a temporary exhibition featured at the Barbican Centre, a museum in London. According to the curator of the museum, only one other builder, the petitioner in this case, equaled the number of motorcycles by the beneficiary included in the exhibition. The curator stated that, after applying rigorous selection criteria, 28 motorcycles from over 100 considered were selected for inclusion in the display. The curator also deemed the exhibition, which later moved to its partner gallery in Sweden, "the best-attended expo the Barbican ever had and garnered tremendous attention form the news media," and led to the successful publication of a book entitled *The Art of the Harley*.

Although the wording of this criterion strongly suggests it is for visual artists such as sculptors and painters, we find that the beneficiary's work was displayed in an artistic exhibition in satisfaction of this criterion.

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

In order to meet this criterion, the petitioner must establish that the beneficiary performed a leading or critical role for an organization or establishment and that the organization or establishment enjoys a distinguished reputation.

The beneficiary was the co-founder, along with his brother and one other, and managing director of the company that bears his name. He performed a leading role for that company. The record reflects that the company is one of the leaders in custom designed motorcycles and motorcycle parts in the United Kingdom with a high profile client list. The evidence also shows that the beneficiary's company has established a reputation for providing quality customer service in a timely manner. We find that the beneficiary's company possesses a distinguished reputation.

The beneficiary serves as the creative and technical design expert for the petitioner, responsible for creating the visual concept and technical design for the petitioner's custom Harley-Davidson motorcycles. The petitioner attributes a significant increase in its 2002 business to the beneficiary. The record reflects that the petitioner plays a leading role for the petitioner. The petitioner is a world leader in custom built motorcycles

and motorcycle parts. The evidence reflects that the petitioner is a "trend-setter" in customized motorcycle parts and "the" name in the customized Harley-Davidson community. We find that the petitioner enjoys a distinguished reputation.

We find that the beneficiary meets this criterion and withdraw the director's determination.

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

The petitioner asserts that the beneficiary meets this criterion based on the prices that he commands for his customized bikes and the success of the companies with which he has been affiliated.

In its letter accompanying the petition, the petitioner states that a typical bike from the beneficiary's company costs between £20,000 and £30,000 ($30,000 to $43,000 in the U.S.). As evidence, the petitioner includes a letter from Richard La Plante, who states he has two customized motorcycles by the beneficiary and "estimates" the value of the first at $50,000 and puts the value of the second at $60,000. Mr. La Plante's letter is unclear as to what he actually paid for the work by the beneficiary. An article in a 1998 copy of *Financial Mail* states that bikes by the beneficiary's company sell for £30,000. A letter from Jeff McCann, a custom painter in California, states that customers are willing to pay a minimum of $45,000 for the beneficiary's creations. Mr. McCann, who concludes by stating that "sophisticated buyers" will pay as much as $200,000 for this "unique art form," does not specify the basis for his statements. While these documents indicate that the beneficiary's work commands a high price, no evidence was submitted to establish that this price was significantly high relative to others in the field.

Mr. Mutch indicates that the beneficiary's custom bikes command prices of between $40,000 and $60,000 which is "30% to 50% higher than those charged by his peers and colleagues." However, as with other statements in his letter, Mr. Mutch does not explain how he arrived at these numbers and no other evidence in the record substantiates his statements. As noted previously, simple declaratory statements without corroborating documentary evidence are not sufficient to meet the burden of proof in this proceeding. *Matter of Treasure Craft of California, supra.*

The petitioner states that its business has increased significantly since the beneficiary became associated with it and that, as a result, it increased the beneficiary's salary to $125,000, which is "double to triple" that of his counterparts. The petitioner states that creative and technical designers in its industry typically receive between $45,000 and $60,000. However, the petitioner does not provide evidence to indicate the basis for these salary comparisons.

Additionally, the petitioner submits evidence of the success of the beneficiary's business in the United Kingdom. The *Financial Mail* article states that the beneficiary headed a £2 million "turnover workshop." However, it is clear from the evidence that much of the success of the beneficiary's business was based on the inventory of parts it maintained, including those manufactured by the petitioner. Further, the beneficiary's business is not a one-person operation, and no evidence establishes the compensation he received from the company.

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 his field of endeavor.

Review of the evidence of record, however, does not establish that the beneficiary has distinguished himself 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 is highly skilled in custom motorcycle design, 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 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.