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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 02 286 54510 Office: CALIFORNIA SERVICE CENTER Date: MAY 06 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]

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 O'Brien
for 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 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.

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 pertinent regulations 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.

The petitioner is a graphic artist employed as a senior designer at Imaginary Forces, a Los Angeles-based design firm. Counsel states that the petitioner "has been a graphic artist extraordinaire for over ten years in both Asia and the United States. [The petitioner's] extraordinary career in the graphic arts has made him one of the most influential and widely noticed masters of his generation."

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, he 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 won an International Design Award from the Broadcast Design Association in 2000, as lead designer for the graphics used by the HBO Family program *What Matters*. The record includes a photograph of a trophy for this award, showing the petitioner's name. It is the only documented award to specifically include the petitioner's name. From the available evidence, this award appears to qualify as a lesser nationally recognized award.

The petitioner was one of two designers of a graphic sequence for PBS digital HDTV that won a Gold Award at the Telly Awards. According to a printout from http://www.telly.com in the record, "[t]he Telly Awards was [sic] founded . . . to showcase and give recognition to outstanding non-network and cable commercials . . . [and non-broadcast] film and video productions." Other pages on the same site indicate that winners must purchase their award statuettes and that there is no set limit on the number of Telly Awards issued each two-year award cycle (http://www.telly.com/faq.html). In 2002 (the earliest year for which figures are available), out of roughly 10,000 entries, 674 entrants won awards – 331 for commercials, 343 for other video and film productions (http://www.telly.com/pastwinners.cfm).

Less significantly, several of the petitioner's works have placed as finalists for various awards. The petitioner's former employer, Ogilvy & Mather Taiwan, attests that the petitioner "received numerous awards," including three Gold Awards from the China Times Advertising Awards, for his earlier work with print advertisements.

The director requested further evidence. In response, counsel has simply re-listed the awards the petitioner claimed initially.

> *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.*

Counsel claims that the petitioner satisfies this criterion through membership in the American Institute of Graphic Arts (AIGA) and ACM SIGGRAPH, but counsel does not discuss the membership requirements of either association. The petitioner's initial submission includes no evidence that the petitioner is a member of either association; the documentation from AIGA and ACM SIGGRAPH is limited to background materials about both organizations.

The petitioner submits excerpts from AIGA's web site, http://www.aiga.org. These printouts, however, do not address membership requirements. Review of the site shows that other pages within the site specify AIGA's membership requirements. The "Join AIGA" page, http://www.aiga.org/content.cfm/join, lists four different individual membership categories (and a fifth group membership category for design firms). The four categories, and their requirements, are as follows:

> Professional - An individual who has practiced or taught in any design community for two years or more.
>
> Associate - An individual who has practiced in any design community for two or fewer years.
>
> Student - A full-time student who presents a copy of a dated bursar's receipt or current ID from an accredited college or university.
>
> Full-time faculty - Current full-time faculty members.

None of the above categories requires outstanding achievement.

Similarly, the petitioner's excerpts from http://www.siggraph.org do not show ACM SIGGRAPH's membership requirements. The organization's bylaws, at http://www.siggraph.org/gen-info/bylaws.html, list no membership requirements at Article 8, "Membership," apart from enrollment and payment of dues. ACM SIGGRAPH is a special interest group of the Association for Computing Machinery; membership links lead to ACM's site. The page at https://campus.acm.org/public/ProfQJ/qjprof_control.cfm?form_type=Professional&promo=QJSIG lists the requirements for "professional membership":

> Membership Qualifications
> You must satisfy one of the qualifications below:
> 1. Bachelor's degree (in any subject area); or
> 2. Equivalent level of education; or
> 3. Two years full-time employment in the IT field.

The only other membership category listed is "student member," which is clearly a lower level of membership than "professional member."

By consulting the web sites named in the petitioner's own submission, it is immediately clear that neither AIGA nor ACM SIGGRAPH requires outstanding achievements of its members. If counsel knew the associations' membership requirements, counsel would have known that those requirements are minimal and easily satisfied. If counsel did not know those requirements (despite having ready access to them), then counsel was not in a position to make any statement at all regarding those requirements. Either way, counsel's claim that the above organizations "demands [sic] significant achievements" has inevitable consequences in terms of counsel's overall credibility and reliability.

In response to the director's request for additional information, counsel has simply repeated the assertion that the petitioner is a member of the above associations. This response includes no actual documentation of membership, let alone evidence to establish that the associations (despite the information in their own web sites) require outstanding achievements of their members.

> *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 states that the petitioner's "achievements and artistic triumphs are widely reported and profiled in media both in the United States and the world stage."

Communication Arts ran an article about Imaginary Forces. The petitioner's name appears only in a caption that lists everyone involved in the creation of a piece for IBM.

An article in *Graphics International* reports on Imaginary Forces' advertising campaign for the mutual fund company Janus. The article describes the campaign as the work of "Imaginary Forces' creative directo[redacted]nd her team." The petitioner's name does not appear in the body of the article. As with the *Communication Arts* article, the petitioner's name appears only in some captions, showing credits for particular pieces.

Counsel notes that some of the petitioner's designs appear in *Branding: From Brief to Finished Solution*. The excerpts submitted, however, do not mention the petitioner's name at all.

The online publication *Design in Motion* has featured various advertising and promotional projects. As with the above print articles, the *Design in Motion* articles mention the petitioner as a member of the design team, but these references are fleeting and the articles are not "about the alien" as 8 C.F.R. § 204.5(h)(3)(iii) demands. The only *Design in Motion* piece to focus on the petitioner is a three-sentence piece from November 1998, stating that the petitioner "created the on-air packaging for PBS's HDTV digital television week." The PBS HDTV campaign is also the subject of very short print pieces in other publications. Once again, the petitioner is among several credited creators.

None of the submitted materials meet the regulatory description of published materials about the alien.

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

Counsel asserts that the petitioner's "original contributions to the field of graphic design have significantly added to the diversity and vitality of the design field in the United States and the world. [The petitioner's] design for the United States' Public Broadcasting System (PBS) has become ubiquitous on television screens all across America," and "has become the standard setting promo in the industry." Counsel also cites the petitioner's work designing the title sequences for CBS' *48 Hours*, the 74th Academy Awards broadcast, and various feature films.

The petitioner submits a number of witness letters [redacted], creative director and principal of Digital Soup and president of AIGA Los Angeles, states:

> I first became familiar with his work through the many high profile projects to which [the petitioner] has contributed. . . .
>
> [The petitioner] consistently contributes his unique sense of aesthetics and superior technical skills to the feature film titles, broadcast projects, and commercials on which he works. Examples of his design and animation are featured in film and video pieces produced for the Academy Awards, Cartoon Network, Nickelodeon Films, Columbia Pictures, and IBM, and in nationally broadcast commercials for Janus Mutual Funds, Honda and Chevron Texaco. I know that in many of these projects he was irreplaceable. . . .
>
> One need not look further than his portfolio for evidence of his excellence.

[redacted] owner and executive creative director of Imaginary Forces, states:

> It was while working on the 74th Annual Academy Awards that I came to unravel the true talent and skills behind [the petitioner]. Together we created all the broadcast design and animation elements for the award show. In addition, [the petitioner] helped incorporate a four-minute sequence for a Tribute to Film Composers consisting of animation and story-telling. This year's ceremony, with the help of the creative abilities [the petitioner] brought to the project, graphically helped capture a new look for the show.

> As a Senior Designer since June of 2000, [the petitioner] has also designed and animated for numerous commercials – including the Janus Mutual Funds campaign – and for such feature films as Four Feathers, Blade 2, Stuart Little 2, Clockstoppers, and The One.

Other employers and clients who have worked with the petitioner offer praise for the petitioner's work on various projects. Employer and client satisfaction, however, do not establish major significance. Similarly, work undertaken for a high-profile client is not synonymous with major significance. The initial submission lacks objective evidence to show that specific creations by the petitioner are recognized throughout the field, nationally or internationally, as contributions of major significance.

In response to the director's request for further evidence, the petitioner has cited additional contributions. The petitioner submits excerpts from *The Twenty-third Annual of the American Institute of Graphic Arts*, indicating that the façade of the Morgan Stanley building in Times Square "knocked the jury's socks off" in an environmental graphic design competition. The record does not indicate when this competition took place.[1] The fact that this project was not mentioned at all in the initial submission suggests that it had not yet been executed as of the petition's filing date. Pursuant to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971), the petitioner must establish eligibility as of the petition's filing date; future developments cannot retroactively establish eligibility. On this project, the petitioner was one of seven designers, including a creative director and an art director who presumably exercised control over the project.

The petitioner submits materials regarding other projects that did not come to fruition until after the September 2002 filing date, such as the title sequence of the film *Daredevil*.

Counsel has also further emphasized the petitioner's work on graphics for the broadcast of the 74th Academy Awards, asserting that only the top animators and designers could possibly qualify to work on a project of such magnitude. The record contains nothing from the Academy of Motion Picture Arts and Sciences to establish the terms by which the petitioner came to collaborate on the broadcast. The record indicates that Kyle Cooper enjoys significantly more recognition than his employee, the petitioner, and it appears that the commission was given to Imaginary Forces as a company rather than to the petitioner as an individual. The petitioner also offers no evidence to show that the graphic designers involved with previous Academy Awards broadcasts have universally been prominent and acclaimed in the field. In the absence of such evidence, it is extremely difficult to accept counsel's contention that sustained acclaim is an inevitable result of, or prerequisite for, involvement in an Academy Awards broadcast. Newly submitted documents show that the petitioner was one of fourteen designers working on the broadcast, and one of four working on the "Salute to the Composers" segment.

Counsel contends "[f]uture designers and animators undoubtedly will study [the petitioner's] innovative designs . . . for inspirations and instructions." This assertion is, and can be, nothing more than conjecture and speculation. Even graphic artists are not in a position to reliably predict what "future designers and animators undoubtedly will study." The petitioner has not even shown that his work has attracted unusual attention among *present* designers and animators. Predictions about the impact of his work on posterity are unsubstantiated and therefore baseless.

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

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[1] According to http://www.isbn.nu/1884081037, *The Twenty-third Annual* . . . was published May 1, 2003, several months after the petition's September 2002 filing date.

The petitioner's initial filing did not address this criterion. Subsequent to the director's request for additional evidence, the petitioner submits new materials and counsel states "[a]ccording to the new evidence, [the petitioner's] salary is about $95,000 per year. The national overview average compensation for Art director is $60,000, Senior director is $52,000 and Designer is $40,000. The average compensation for Art director in Los Angeles Area is $70,000." The evidence of the petitioner's salary is an earnings statement, dated June 13, 2003, several weeks after the director's April 24, 2003 request for evidence regarding the petitioner's compensation. The pay statement does not document the petitioner's remuneration as of the petition's September 2002 filing date – a time when the petitioner made no claims regarding his salary. The statistics cited by counsel refer to graphic artists in general. There is insufficient data to establish whether or not artists working in film and television routinely earn more than graphic artists working in other media.

The director denied the petition, citing numerous deficiencies in the petitioner's evidence. On appeal, counsel contends that "the officer deciding this case does not understand the [extraordinary ability] category." Counsel contests the director's finding that the petitioner has not established his receipt of lesser national or international awards. We concur with counsel on this point. The petitioner provided background information about the awards, and documented that at least one of these awards was presented to him individually. While the petitioner has not shown that these awards are as significant as, for instance, a Clio Award, an award need not be the single most important award in a given field in order to meet the "lesser awards" criterion. That being said, an award cannot be merely of trivial importance. The petitioner has not established that all of his awards qualify under this criterion, but we disagree with the director's finding that *none* of the awards qualify.

Regarding the petitioner's claimed contributions of major significance, counsel quotes from previously submitted letters. These letters show that the petitioner's employers do not hesitate to recommend him as a talented and creative graphic designer, but these letters do not establish that the field as a whole has embraced the petitioner's work as being especially significant. There is no evidence that the petitioner's efforts have influenced the work of others in the field, and counsel's speculative contention that it will one day have such influence is not proof of present-day acclaim.

Counsel contends that, by observing that most of the witnesses are connected to the petitioner, "***the Service is accusing [the petitioner's] thirteen expert witnesses of being dishonest or in some way incapable of fully understanding the nature of his contributions***" (counsel's emphasis). The question is not one of honesty or competence. Rather, the issue is this: The petitioner's employers and clients do not represent the sum total of the entire field of graphic design. Customer satisfaction is not tantamount to national or international acclaim.

Counsel observes that some of the witnesses have not worked with the petitioner. It remains that witness statements, while useful in providing explanatory or background information, generally do not carry the same weight as objective, documentary evidence. Objective evidence, unlike witness letters, exists independently, rather than being created specifically to support an immigrant petition. The statute requires "extensive documentation" of sustained acclaim. It seems unlikely that Congress intended for a petitioner to be able to satisfy the "extensive documentation" clause simply by selecting witnesses, requesting letters from them, and selecting for submission those letters which are most favorable to the petitioner's claim.

Regarding counsel's appeal to the reputations of many of the witnesses, the credentials of these witnesses serve only to demonstrate that graphic designers in film and television are capable of attaining heights that the petitioner himself has not yet reached. This necessarily weakens the assertion that the petitioner has reached "the very top of the field" - a term, derived from the legislative history, which appears at 8 C.F.R. § 204.5(h)(2).

8 C.F.R. § 204.5(h)(3)(vii) refers to evidence of the display of the alien's work in the field at artistic exhibitions or showcases. The petitioner had not specifically referred to this criterion prior to the denial of the petition, but the director assumed that the petitioner had this criterion in mind when referring to published appearances of his work. The director nevertheless found that "[n]ot all artistic exhibiting or showcasing would show the alien to be of extraordinary ability." On appeal, counsel states "[t]he regulations are unambiguous on this point. The 'display of the alien's work at artistic exhibitions or showcases' is, ***in and of itself***, evidence of extraordinary ability. The regulations could not be any clearer; ***the language with regard to this criterion is not qualified in any way***."

The overall language of the statute and regulations is clear: eligibility is limited to aliens who enjoy sustained national or international acclaim. Counsel's assertion that public display "is, in and of itself, evidence of extraordinary ability" is unrealistic and untenable. By this standard, every art student who presents a thesis show in pursuit of a Master of Fine Arts degree is "extraordinary," and the same goes for high school students whose artwork is "showcased" at a local shopping mall or public library. These "displays" and "exhibitions" cannot, by any rational standard, be held to be equal to a solo exhibition at the Museum of Modern Art. The fact that an alien can establish extraordinary ability through displays and showcases does not imply that *every* display or showcase necessarily implies extraordinary ability.[2] All of the petitioner's evidence, including that pertaining to display, is subject to evaluation.

Even if we were to accept an extremely broad definition of "display" to include publication, many of the "displays" do not credit the petitioner individually, and therefore they cannot enhance the petitioner's individual acclaim and recognition. Furthermore, the fundamental purpose of graphic arts is to be seen; thus, the work of every graphic artist is "displayed" in some capacity.

Regarding the petitioner's remuneration, counsel states ***"[t]here is absolutely no requirement that a petitioner's salary be compared to people 'at the top of the field.'"*** The "top of the field" reference derives from the regulatory definition of "extraordinary ability" at 8 C.F.R. § 204.5(h)(2). It is disingenuous to assert that the criteria at 8 C.F.R. § 204.5(h)(3) are entirely separate and independent from that definition. Also, as noted elsewhere in this decision, the general documentation provided by the petitioner fails to distinguish between graphic artists in film and television, and those who work in other media. If graphic artists in film and television routinely earn more than those who work in print, then aggregate statistics are of reduced value. To offer an analogy, surgeons tend to earn more than pediatricians. The *Occupational Outlook Handbook*, 2002-2003 edition, offers the following data at page 264:

Median net income of M.D.s after expenses, 1998

All physicians..... $160,000
Surgery..... 240,000

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[2] By way of analogy, we observe that 8 C.F.R. § 204.5(h)(3)(iii) calls for 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. The regulatory language says nothing about the content of these published materials. By counsel's logic, published materials about pharmacis[redacted] are, in and of themselves, evidence of Mr.[redacted] extraordinary ability. Mr[redacted] certainly did receive substantial major media coverage regarding his activities as a pharmacist. These articles, however, centered on his arrest and prosecution for diluting chemotherapy drugs in order to increase his profits at the expense of the health of cancer patients. The articles fit the letter of the regulatory language, but they do not establish acclaim. Obviously, this is an extreme example, provided for illustration. We intend no direct comparison between the petitioner's very successful career and Mr[redacted] serious crimes. The analogy is only to demonstrate that the regulatory criteria list types of evidence that *can* establish acclaim, rather than standards that *mandate* a finding of eligibility.

Pediatrics.....126,000

Using the above data, a surgeon with relatively low earnings would still exceed the median for "all physicians" by a substantial amount. This does not imply that all surgeons are "extraordinary." It indicates only that surgeons, as a whole, occupy a more lucrative specialty than many other kinds of physicians.

This is not to state that the petitioner's $95,000 salary cannot possibly satisfy 8 C.F.R. § 204.5(h)(3)(ix). Rather, the petitioner (upon whom the burden of proof rests) has not submitted sufficient information to allow the conclusion that he has satisfied the criterion.

Counsel asserts that the director "chose to ignore all of the . . . evidence" regarding the petitioner's leading and critical roles for distinguished organizations, covered by the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The petitioner, however, had not previously made any specific claim to have satisfied that criterion. Counsel states that the petitioner "***has lent his extraordinary talents to the most distinguished organizations in the field***," for instance collaborating on the title sequences of feature films. Performing services for well-known clients is not tantamount to "a leading or critical role" for those clients. Counsel cites box office figures for *Blade II* and other figures, but the record is utterly devoid of evidence that these movies owe their success, in any discernible way, to the opening title sequences. While it is true that an acclaimed graphic artist would be able to attract business from distinguished clients, it does not inevitably follow that a graphic artist who has worked for such clients must enjoy acclaim that is comparable to that of the clients. Also, the petitioner has fulfilled these various commissions while employed by well-known design firms. If the clients selected the firms on the basis of the *firms*' reputations, and firm officials then delegated the projects to the petitioner, we cannot conclude that the firms specifically chose the petitioner for the projects in question.

The petitioner has clearly had a successful and productive career as a graphic artist, and he has won some recognition for his work. The record as a whole, however, fails to demonstrate a pattern of sustained national or international acclaim sufficient to establish eligibility for the extremely restrictive immigrant classification that the petitioner seeks. Working for an acclaimed employer, on behalf of even more highly acclaimed clients, is not the same thing as acclaim itself. From the evidence presented, the petition appears to be premature at best.

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 himself as a graphic 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.