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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 03 118 54147 Office: CALIFORNIA SERVICE CENTER Date:

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.

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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien with extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

> (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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as an art director in the field of entertainment advertising. The director concluded that the petitioner met none of the ten regulatory criteria. Although we find flaws in the director's analysis of the law and evidence in relation to two criteria, we affirm his ultimate decision. The evidence submitted, the director's decision and counsel's contentions are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The petitioner has won three first-place awards and one honorary mention at the Annual Key Art Awards in each of the four years preceding the filing of his petition. In 1999, the petitioner won the first place award for

film festival posters for his art direction of the poster for "Primal Screen." In 2000, he received an honorary mention for international film posters for his art direction of the Home Box Office (HBO) film "Introducing Dorothy Dandridge." In 2001, the petitioner won the first place award in this same category for his art direction of the poster for the Warner Brothers film "Man on the Moon." Finally, in 2002, the petitioner won the first place award for teaser posters for his creative direction of the poster for the Warner Brothers film "Ocean's Eleven." Although these awards were given to the petitioner's employer, Indika Entertainment Advertising (Indika), the petitioner is named as either "Art Director" or "Creative Director" on each of the awards and the documents announcing the nominees. He is also pictured holding the 2002 award in a photograph taken at the 31st Annual Key Art Awards ceremony in the July 2-8, 2002 edition of *The Hollywood Reporter*.

The director acknowledged the petitioner's receipt of these awards, but found them insufficient to meet this criterion because the petitioner "did not submit evidence to establish the origination, purpose, significance and scope of each award, as well as the criteria used to nominate and judge the participants and award winners." However, according to several press releases of, and articles in *The Hollywood Reporter*, the Annual Key Art Awards were established in 1972 to recognize outstanding individuals "actively involved in the creation, design, and production of art used in the marketing of motion pictures domestically and internationally." The awards honor "artists whose work directly influence[s] a film's Oscar consideration and box office success." Since 1989, the program has been guided by the expertise of movie marketing professionals on the Key Art Advisory Board. Each year a panel of distinguished judges view and rank over 1,000 entries in order to select four nominees for the top prize in 19 categories. Entries are "evaluated based on creativity, concept, impression, craftsmanship and execution" and the winners are honored at a ceremony attended by more than 1,000 entertainment industry professionals.[1]

The director also stated that the petitioner "failed to include evidence that identifies previous winners of each award for the past three to five years. Thus, the evidence does not clearly establish that the awards rise to a national or international level of achievement." We fail to see how the names of previous winners would establish the national or international significance of the awards or why those names are required to establish the petitioner's own eligibility under this criterion.

The evidence submitted establishes that the Key Art Awards are nationally recognized honors in the field of film marketing and advertising. The petitioner has won four of these awards, one award for each of the four years preceding the filing of his petition. The petitioner's awards thus indicate sustained national acclaim in his field. The director failed to fully consider this evidence that we find clearly establishes the petitioner's eligibility under this criterion.

> *Published material 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 director correctly concluded that the materials submitted did not establish the petitioner's eligibility under this criterion. Although counsel claimed that the petitioner had received international and national coverage in major media as an "expert, visionary, and authority in the field of Art Direction," he initially submitted only two

[1] Although this information comes from a potentially biased source (*The Hollywood Reporter* is the sponsor of the Key Art Awards), counsel submits on appeal two articles that independently attest to the significance and prestige of the awards within the field of motion picture advertising and marketing.

articles with the petition. The article from the May 23, 2002 edition of *The Hollywood Reporter* discusses the nominees for the 31st Annual Key Art Awards. The article mentions that the petitioner's employer, Indika, tied with Walt Disney for the most nominations, but does not discuss the petitioner himself except to name him in a list with other nominees. This article is clearly not about the petitioner and does not discuss him or his work. The second article comes from the July 2-8, 2002 edition of *The Hollywood Reporter* and contains a brief review of the 31st Annual Key Art Awards ceremony. Again, the petitioner is not discussed in the article although he is pictured and named in one of several photographs taken at the ceremony that accompany the article.[2] This article is also not about the petitioner or his work. We do not contest the assertion that *The Hollywood Reporter* is a major trade publication for the movie industry. Yet because the articles are not about the petitioner, they cannot establish his eligibility under this criterion.

On appeal, counsel submits an additional article from the July 1, 2002 edition of *The Hollywood Reporter*. This article reviews the ceremony for the 31st Annual Key Art Awards, but does not even mention the petitioner. Counsel also submits an article from the July 9, 2003 edition of *Variety* entitled "Epic pics shift into battle mode: Image is everything for two historical dramas" which discusses the work of the petitioner and his company on the posters for "The Last Samurai" and "Alexander." This article was published four months after the filing of the petition. Consequently, it cannot be used to establish the petitioner's eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submitted evidence that he participated as a judge for the final competition in the print categories of the 30th Annual Key Art Awards in 2001 and as a judge in the preliminary competition for the 28th Annual Key Art Awards. According to [redacted] roducer of the 30th Annual Key Art Awards, the judges were selected "based on their industry experience, expertise and overall commitment to excellence in the design and creation of key art." [redacted] producer of the 28th Annual Key Art Awards, explained that "[a]ll of the judges, both preliminary and final, were chosen from the community of movie-marketing professionals. These 92 individuals represent the editors, art directors, photographers, copywriters, marketing executives and presidents of the companies that have created some of the most exceptional key art today." [redacted] goes on to explain the formal judging process in detail. *See* Petitioner's Exhibit II(c). The director failed to consider this documentation of the petitioner's judging experience.[3] We find the evidence sufficient to establish the petitioner's eligibility in this category.

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

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[2] Counsel initially only submitted the page with the petitioner's photograph. On appeal, he submits the entire article.

[3] The director not only disregarded this documentation, but stated that the petitioner should have submitted "corroborative evidence of judging [which] would include, at a minimum, the actual evaluation sheets with the self-petitioner's personal comments." Such a requirement goes beyond the regulation and would not evidence a reputable competition. We cannot imagine that any professional organization would allow its judges to retain their evaluation sheets upon completion, thus compromising the integrity of the competition.

The director correctly concluded that the petitioner did not meet this criterion. The petitioner submitted seven recommendation letters written by advertising and marketing executives in the motion picture, television and music recording industries. The letters attest to the petitioner's talent and success as an art director, but only one letter describes him as "one of the top people in what is a highly competitive field." Letter of [redacted] Vice President of Marketing, United Artists. More importantly, all of these letters were solicited in preparation for the visa petition and were written by executives who retained the petitioner to work on specific projects. The letters thus carry less weight than pre-existing, independent evidence of the petitioner's contributions to his field.

The petitioner also submitted numerous examples of his work on major film posters. On appeal, counsel contends that the petitioner's mere selection by major film companies to work on important projects establishes his eligibility under this category. Counsel misconstrues the nature of this regulatory criterion. The petitioner's portfolio demonstrates his successful employment as an art director in the field of motion picture advertising, but it does not establish that he has made original artistic contributions of major significance to his field. The petitioner does not provide evidence, for example, that other art directors in the entertainment advertising industry have been influenced by his work. Accordingly, the petitioner does not meet this criterion.

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

The director correctly determined that the petitioner did not meet this criterion. On appeal, counsel maintains that the petitioner's successful work on numerous high-profile film posters and his duties as creative director establishes his leading or critical role for his employer [redacted] To support this contention, counsel submits 32 copies of movie posters on which he has worked. Four of these posters appear to have been completed after the petition was filed and consequently cannot be considered as evidence of the petitioner's eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. Although the remaining posters demonstrate the company's success, they say nothing about the reputation [redacted] or the petitioner's role in the company. Counsel also re-submits the seven recommendation letters that initially accompanied the petition. The letters all speak of the petitioner's talents and value as an individual. They do not discuss his role within or the reputation of Indika. The most that any of the letters say in relation to this criterion is [redacted] brief attestation that the petitioner "and his team at [redacted] have a unique creative vision."

Other evidence speaks to the petitioner's successful work for Indika, but also does not establish his actual role in the company. The petitioner is individually recognized on four Key Art Awards won by the company and [redacted] attests that the petitioner's work contributed to the successful premier of the WB Television Network's program, "Everwood." However, the record is devoid of any evidence from Indika that describes and explains the petitioner's exact role within the company. Although counsel refers to the petitioner as "Creative Director" [redacted] no evidence corroborates that claim and another individual [redacted] is also listed as creative director on many of the Key Art Awards and nominations won by the company. Consequently, the petitioner does not meet this criterion.

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

The director correctly concluded that the petitioner did not meet this criterion. The petitioner initially submitted evidence of his income from 1999 through August, 2002. In 1999, the petitioner's gross income was $60,586.

In 2000, his gross income declined to $51,923. In 2001, the petitioner earned a gross income of $217,218. The petitioner's gross income for 2002 through August was $71,154, or $8,894 per month.[4] If multiplied by 12 months, this would equal a total annual income of only $106,728 in 2002. Although the petition was mailed on March 4, 2003, the petitioner provided no evidence of his total income for 2002 or his income for 2003 through February. The petitioner also did not provide evidence of the income of other art directors working in entertainment advertising. Consequently, the director could not find that the petitioner's income was significantly higher than others in his field.

On appeal, counsel submits a printout from the U.S. Department of Labor website stating that as of January 3, 2004, Level 2 art directors in all industries earn an annual salary of $109,782.[5] The petitioner's income in 2001 was substantially higher than the salary of art directors listed by this printout. However, better evidence would be that the petitioner's salary is comparable to the salary of top art directors in the field of entertainment advertising, rather than simply being higher than the average salary of art directors in all industries. In addition, the petitioner does not appear to have matched his 2001 income in any previous or subsequent years. Thus the evidence does not show that the petitioner repeatedly earned compensation high enough to reflect sustained national acclaim. Accordingly, the record is insufficient to establish the petitioner's eligibility under this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not met that burden. The evidence shows that the petitioner is a talented art director who has won awards and judged the work of others in his field of entertainment advertising. However, the record is insufficient to establish that the petitioner is an alien with extraordinary ability in the arts. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[4] This figure is obtained by dividing the petitioner's income of $71,154 from January through August of 2002 by eight.

[5] Although the petitioner submitted evidence of his income in the years 1999 through August, 2002, counsel only submitted Department of Labor information regarding the salary of art directors for 2004.