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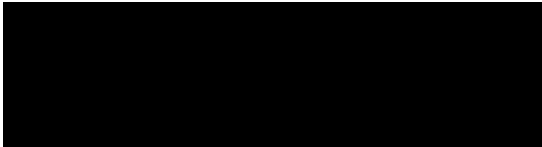


FILE: EAC 05 047 51751 Office: VERMONT SERVICE CENTER Date: **JAN 17 2006**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



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 nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an art gallery. The beneficiary is an artist. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her as a fine artist/art consultant for three years at an annual salary of \$40,000.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel submits a brief and additional documentation.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts as defined by the statute and the regulations.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

- (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
- (3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
- (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
- (5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
- (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The beneficiary is a resident and native of Germany and has earned a master's of arts degree in architecture and studio. According to the Form I-129, Petition for a Nonimmigrant Worker, the beneficiary currently resides in Berlin, Germany.

The petitioner does not allege, and the evidence does not establish, that the beneficiary has been nominated for, or been the recipient of, any significant national or international awards or prizes in her field of endeavor. The petitioner submitted evidence that, it claims, meets the following criteria.

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

According to counsel, the beneficiary satisfies this criterion based on the exhibitions of her work, particularly in solo and two-person exhibitions. Counsel asserts that the regular exhibition of the beneficiary's work "indicates that she is a leading participant in productions of distinguished reputation."

The petitioner submits evidence that the beneficiary's work has been exhibited at such venues as the Galerie Am Arkonaplatz in Berlin, the Luxe Gallery, ZOOLook Gallery and Clocktower Art Space in New York, and Modern Culture in Milan. However, although the record contains numerous examples of the beneficiary's work, this criterion is not satisfied by volume alone. The petitioner must establish that the events that featured the beneficiary's work have distinguished reputations. The petitioner submitted no documentary evidence to establish the reputation of the various events. Only one document, a May 18, 2004, press release on the ninth International Modern and Contemporary Art Fair in Milan, which addresses the number of participants and the attendance, would seem to constitute evidence under this criterion. However, a single documented event does not constitute extensive documentation that would establish that the beneficiary is prominent in the field of art. Therefore, the evidence does not establish that the beneficiary satisfies this criterion.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.

Counsel asserts that the beneficiary meets this criterion based on her receipt of “several important, competitive grants and awards,” including “first prizes” in design competitions by Atelier Brückner, a student excellence award from New York University, an academic fellowship from Deutscher Akademischer Austausch Dienst (DAAD), the Erwin-Stephan Prize from Technische Universität in Berlin, and a visiting scholar fellowship from the Illinois Institute of Technology.

A evidence, the petitioner submitted what purports to be a “work certificate” from Atelier Brückner, indicating that the beneficiary had won several competitions for the studio. However, the translated document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from German into English. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Although the petitioner submitted evidence that Atelier Brückner published the beneficiary’s work in a book and that the studio attributed some of its success to design competitions won for it by the beneficiary, the submitted no other evidence regarding the nature of these competitions. The evidence does not establish that information regarding these competitions was published in major newspapers, trade journals, magazines or other publications.

Counsel also asserts that the beneficiary satisfies this criterion based on her receipt of scholastic awards and fellowships. However, fellowships and scholarships awarded by a specific college or university and limited to students at that particular institution are not nationally or internationally recognized prizes or awards in the field. A scholarship does not measure a recipient's standing in the field, but is limited to students in an academic endeavor. Academic training is not the field of endeavor, but preparation for entry into the field of endeavor. Thus, scholarships do not qualify as awards under this criterion.

The beneficiary indicates in her résumé submitted on appeal that she has “applications” pending for three other “awards or honors,” which counsel asserts meets this criterion. The petitioner submitted no evidence regarding the nature of these “awards or honors”. Further, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The record contains several documents announcing locations in which the beneficiary’s work would be shown. However, these announcements do not provide a critical review of the beneficiary’s work or constitute published material “about” the beneficiary. The evidence indicates that the beneficiary’s work has appeared in the March 2004 edition of the *Architecture Journal*, accompanied by a review of the her work. Copies of other documentation that identifies the beneficiary are not accompanied by English translations as required by the regulation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The record, therefore, consists of one document that may be relevant to this criterion and is far from the extensive documentation required by the statute and regulation to establish that the beneficiary is at the top of her field. Accordingly, the evidence submitted by the petitioner does not establish that the beneficiary meets this criterion.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.

The evidence reflects that the beneficiary's work has been shown in solo and two-person exhibitions, as discussed under criterion one above. Counsel asserts that these one- and two-artist shows reflect that the beneficiary has performed in a leading or starring role for an organization. Nonetheless, the petitioner submitted no evidence that these organizations or establishments that have featured the beneficiary's work in one- or two-artist exhibitions are organizations that have a distinguished reputation. Counsel asserts that the Armory Show, Galerie Am Arkonaplatz, MiArt & Modern Culture meet this criterion. However, the petitioner submitted no evidence to establish the stature of these organizations in the field of art. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence does not establish that the beneficiary meets this criterion.

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.

Counsel asserts on appeal that the evidence establishes that the beneficiary has been critically successful based on her winning "competitive grants and awards." However, as discussed above, the petitioner submitted no documentary evidence of the competitions that it states the beneficiary won. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A letter from the Deutscher Akademischer Austausch Dienst indicates that the beneficiary was selected as an exchange student during a national competition; however, the letter is clear that the beneficiary was competing with other students for the purpose of furthering her education as an exchange student. The record does not establish how many scholarships in the beneficiary's field were awarded, or that the award of this scholarship conferred any specific standing on the beneficiary in her field of endeavor.

The petitioner also submitted several letters of recommendation and reference on behalf of the beneficiary written by individuals in the art field, which counsel cites as evidence that the beneficiary satisfies this criterion.

In a letter dated January 11, 2005, Barry Neuman, the director and proprietor of the gallery Modern Culture, stated:

I first saw [the beneficiary's] work in 2001, and I immediately invited her to produce a solo exhibition at Modern Culture At The Gershwin Hotel, New York, a gallery of

contemporary art, or which I was the director and a partner . . . Since then, I have presented her work in group exhibitions at Modern Culture and at The Armory Show 2004 . . . I had presented a solo exhibition of [the beneficiary's] work at MIArt, the Milan international art, in May in 2004. I have also sold her work to appreciative collectors.

Steven Stoyanov, the director of the Luxe Gallery, stated in a letter dated January 10, 2005:

The very strongest recommendation I could make for the importance of [the beneficiary's] work (photographs, conceptual drawings and video), is already apparent because I exhibited her work I the extremely selective Toronto Art Fair, in 2003, and in the exhibit "Simply Drawn" in 2003. These exhibits garnered much acclaim for [the beneficiary], and the attention was fully deserved. What's more, many other reputable galleries and exhibitions have showcased [her] work as well, and her presence in these shows has done justice to their reputation for excellence.

David Gibson of "Article Projects" stated in a letter dated November 3, 2004, that he has "over 15 years of expertise within the art world, both as a curator and critic" and "currently write[s] for a number of art periodicals . . . and curate for several galleries in New York City." Mr. Gibson states that the beneficiary's solo exhibitions of her work and her contributions in shows at the ZOOLOOK Gallery and Portland Institute for Contemporary Art, as well as an upcoming contribution to *Videoseries, NYC* are "testaments to the critical and aesthetic accomplishments" of the beneficiary.

Other letters submitted by the petitioner attest to the beneficiary's artistic skills and innovativeness in the field; however, none indicate that the beneficiary's successes in art have been distinguished by a specific title or standing in the field that would evidence her critical success under this criterion.

Although the authors state that presentation of the beneficiary's work is evidence of her critical success, the petitioner submits no evidence of the beneficiary's success beyond these statements. *See Matter of Soffici*, 22 I&N Dec. at 165. The petitioner submitted no documentary evidence that the showcasing of the beneficiary's work is critically acclaimed in publications. The petitioner also submits no evidence that a specific title or particular standing in the field has recognized the beneficiary's success in the field of art.

The evidence does not establish that the beneficiary meets this criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

As noted above, the petitioner submitted several letters of recommendation and reference from her teachers, peers, art gallery owners, and from one art critic/curator. All note that the beneficiary's work has been shown in various exhibitions in different countries. The documentation also includes evidence that the beneficiary's work has been featured in solo and two-person exhibitions, and featured in others. The evidence sufficiently establishes that the beneficiary has received significant recognition for her work as an artist.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The petitioner does not allege, and submits no evidence, that the beneficiary satisfies this criterion.

The petitioner also submits evidence that the beneficiary has served as a teaching assistant, and which it states indicates that the beneficiary has served as a judge of the works of others. The petitioner asserts that this evidence should be considered under 8 C.F.R. § 214.2(o)(3)(iv)(C), which provides, "If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility." The petitioner submitted evidence that it claimed met five of the six criteria; therefore, it has not established that the stated criteria is not applicable to the beneficiary's occupation and thus use comparable evidence in an attempt to establish the beneficiary's eligibility. Notwithstanding this however, the beneficiary's duties as a teaching assistant was not judging the work of her peers, but rather, of her subordinates. She evaluated the work of others as an integral part of her job. The beneficiary's work evaluating others in this capacity is not indicative of prominence in the arts field.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in piping.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.