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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: [Redacted]

Office: Nebraska Service Center

Date:

JUL 30 2002

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)

IN 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 Service 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 THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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 Service 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.

On the Form I-140 petition, under the heading "Job Title," the petitioner lists "Artist." Under "Nontechnical Description of Job," the petitioner states "Artistic Director." Counsel states that the petitioner is "[a] nationally and internationally reputed photographer and lover of wildlife and nature" as well as a film producer. Counsel has since indicated that the petitioner seeks this visa classification based on his work as a film producer.

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). Counsel asserts that the petitioner has won such an award. The film *Agnisakshi*

(produced by the petitioner through his company [REDACTED] won the Best [REDACTED] award at the 1999 [REDACTED] Counsel compares this award to an Academy Award. The award certificate indicates that India's Ministry of Information and Broadcasting issued the award, and [REDACTED] affirms that the annual televised award ceremony is a major cultural event in India.

The petitioner has not shown that the National Film Festival is an international event rather than one that is limited to India. The award, however prestigious within India, can fulfill only the lesser criterion pertaining to national prizes.

On motion and then on appeal, counsel repeatedly stresses the importance of the National Film Festival award. Counsel cites various authorities, all of them from India. Counsel observes that, according to the aforementioned Indian diplomat, 100 million people watch the National Film Festival award ceremony on television. Given that India's total population is many times that number, the figure does not establish a significant viewership outside of India. Even the very name of the film festival indicates that the event is national rather than international.

The "one-time achievement" clause must be interpreted in a highly restrictive manner, particularly in light of the statutory demand for "extensive documentation" of sustained acclaim. The Academy Awards, while based in the U.S., honor international films as well, and the award ceremony is broadcast globally; one need not be an American to recognize the prestigious "Oscar." Only a very small handful of international prizes can be considered to be at this rarefied pinnacle; examples include the Nobel Prize and Olympic medals. However significant the National Film Festival prize may be in India, the petitioner has not shown that the prize enjoys comparable recognition worldwide.

Barring the alien's receipt of a major international prize, the regulation at 8 C.F.R. 204.5(h)(3) 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 director readily acknowledged that the petitioner's [REDACTED] prize readily satisfies this lesser criterion, and we concur with this finding. The petitioner must satisfy at least two additional criteria to qualify for the highly restrictive classification he seeks. *Agnisakshi* also won a [REDACTED] but this award is neither national nor international, instead being restricted to the Indian state of Kerala.

With regard to his work as a nature photographer, the petitioner submits evidence that some of his photographs have won awards and certificates at national exhibitions. Counsel attempts to deem the petitioner's very participation in these exhibitions as prizes and awards; but artistic exhibitions are covered by a separate criterion, further below. Given that prizes are often distributed at these exhibitions, we cannot accept that the very act of participation in the exhibitions is, itself, a prize or award.

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:

The Mathrubhumi Daily recently featured a full page article on [the petitioner's] outstanding achievement as a producer. . . . The article describes [the petitioner's] background and his profound interest in the mystical journeys taken by holy men to the Himalayas. It catalogs his expeditions to the far corners of the globe, capturing nature and wildlife in it's [sic] most virgin of states. It exalts his extraordinary photographic perspectives of wildlife akin to National Geographic portraits.

Counsel refers to a translation but the initial submission contained no translation of the article, which was published in the Malayalam language.

Counsel states "*The Mathrubhumi Daily* . . . has a **circulation of over 850,000 readers** world wide. . . . The Mathrubhumi is considered a virtual giant among journalist[s] all over the world." The petitioner submits no documentation to show that *Mathrubhumi* is a national publication, rather than a predominantly regional publication in Kerala.

Counsel states that the petitioner has been featured in the *Times of India* and in the Sunday edition of that newspaper. Counsel states "[t]he August 24, 2000 paper features a photograph taken by [the petitioner] of a bear in the act of catching a fish at a waterfall," whereas the *Sunday Times* article from August 20, 2000 reports on the petitioner's preparations for the filming of *The Myth*. Both of the articles include the same photograph of the petitioner, as well as identical descriptions of the petitioner as "a doctor by qualification, a wildlife photographer by choice, a film producer by desire and a businessman from necessity."

While the *Times of India* is national publication, the sections featuring the petitioner appeared in the [redacted] regional edition of the newspaper. The August 24, 2000 piece appeared alongside advertisements for [redacted] businesses and an article about [redacted]. The *Sunday Times of India* piece about the petitioner appeared in a section entitled "Bangalore Is Talking About." The petitioner has not shown that the two very brief segments about him were carried nationally, rather than only in the [redacted] edition. The petitioner has also not shown that any articles at all have appeared in *Filmfare*, the *Times of India*'s subsidiary publication devoted to the film industry.

We must also note that the film industry, by its nature, attracts massive amounts of publicity. The petitioner has not shown that he has received more major-media press coverage than the vast majority of film producers in India, or that his wildlife photographs are among India's most widely published.

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

Counsel cites only one exhibit pertaining to this criterion. The petitioner submits a letter from [REDACTED] [REDACTED] The Minister states:

I had the pleasure of watching 'Agnisakshi' a feature film produced by [the petitioner] who is currently residing in the U.S.

This National Award Winning Film is truly an artistic documentation of various aspects of the spiritual and cultural heritage of India. It narrates an important Social reform set in the times of India's struggle for independence. The film also throws light on the psychological and moral dilemmas such transformations bring forth.

During these times of crass-commercial show-Biz world, [the petitioner's] attempt, I believe, is a daring and commendable efforts [sic] and it truly deserves all the accolades it received like the Indian National Award and the many other citations from various prestigious international film festivals.

[REDACTED] does not specify what creative role the petitioner had in making the film. The petitioner was not the scriptwriter or director of the film, and there is no evidence that the petitioner had any input into the film other than financing its production and helping to arrange its distribution.

Furthermore, while the Minister is clearly a high government official in India, it is not immediately apparent that the [REDACTED] is a noted authority on India's film industry, any more than India's Minister of Information and Broadcasting would be expected to be an expert on India's railway system. The fact that [REDACTED] personally enjoyed the film does not attest to its major significance. The petitioner has obtained, for various purposes, letters from Indian government officials and individuals of associations that work on behalf of Indian expatriates, but he has not produced any substantive statements from anyone who actually works in India's film industry. Given the considerable size of that industry, and the petitioner's claim to have reached the very top of that industry, we cannot ignore the fact that the petitioner has had to rely on sources outside of that industry to establish his reputation and the significance of his contributions. Similarly, the record is devoid of evidence to establish that the petitioner's nature photographs are viewed as major contributions to that art form.

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

The director acknowledged that showings of the petitioner's films at several international film festivals satisfy this criterion. Not every screening of a film qualifies under this criterion; otherwise every film ever shown in public would satisfy the criterion. Still, a film festival, by its nature, arguably represents the cinematic equivalent of an artistic exhibition. Films at these festivals are not only viewed, but judged and scrutinized by experts. Therefore, a film festival can qualify as an exhibition if the petitioner can show that the festival is nationally or internationally significant,

rather than a strictly local or limited-interest event. The petitioner has also shown his nature photographs at several exhibitions, winning prizes at such events as the All India Exhibition of Photography. The director has not contested the petitioner's 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 the context of the initial filing, the only argument that counsel makes in regard to this criterion is that the petitioner has donated the U.S. and Canadian rights to *Agnisakshi* to a charitable organization, and intends to donate some of the future proceeds from *The Myth*. The charity is Care and Share U.S.A. International, which according to counsel "has donated substantial moneys to feed the hungry in Illinois and is working towards establishing a Hospice center for terminally ill AIDS patients in India amongst other equally ambitious programs."

The Myth was unfinished at the time of filing, and indeed the record contains no evidence that the film has yet been completed or released (the projected release date was December 2001). Regarding the film rights to *Agnisakshi*, we do not agree with counsel's contention that the petitioner has played a leading or critical role for Care and Share U.S.A. International simply by making a donation to that charity. Furthermore, the record does not establish the size of the donation. There is no evidence in the record that a film in the Malayalam language has earned, or will earn, significant profits from screenings in the United States and Canada. Finally, the petitioner has not demonstrated that Care and Share U.S.A. International is a distinguished charity. Distinction, for a charitable organization, arises not from its goals but from its success in reaching those goals, and from its overall reputation compared to other charities. The record offers no basis for any meaningful comparison between Care and Share U.S.A. International and other charities that seek to address the same problems.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

While the petitioner claims to be a top film producer, the record contains no evidence of any kind to establish the commercial success of any film he has ever made.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. The director noted that *Agnisakshi* appears to be the petitioner's "first film production," and that the record contained no translation of the *Mathrubhumi Daily* article.

In response, counsel asserts that the petitioner's "field of expertise for the purpose of this petition is **film production** and not wildlife photography or medicine" (emphasis in original), but counsel maintains that the petitioner's reputation as a wildlife photographer "directly contributed to the immense success of his prior films." Counsel discusses the petitioner's "work in establishing a rich cinematographic tone." Counsel's language is taken from a letter by V.V. Babu, managing director of Srishti Films, the company through which the petitioner produced *Agnisakshi*. Mr. Babu states that the petitioner contributed to the cinematography of the film, but in another letter, Shyama Prasad, director of *Agnisakshi* and *The Myth*, states that the petitioner "worked as the

official still photographer for the production” and “contributed immensely through his production stills in the designing of the publicity materials, brochures and so on.” [REDACTED] does not state or imply that the petitioner took any creative part in the cinematography of the film itself, as distinct from still shots taken for promotional purposes. We note that the credited cinematographer of *Agnisakshi* is [REDACTED]

Counsel asserts “*Agnisakshi* is [the petitioner’s] fourth film,” and contends that a newspaper article (calling the above film the petitioner’s first) contained incorrect information; it was in fact the director’s first film, not the producer’s. The petitioner’s first three films were released, respectively, in 1983, 1994 and 1996. The record contains no independent evidence that any of these films won national acclaim or were widely screened outside of the state of Kerala. Statements by the petitioner’s business partner do not constitute documentation to support such claims.

The petitioner submits a translation of the *Mathrubhumi* article, which indicates that the petitioner “moved his business empire over to Chicago and established a viable niche for himself in the software industry,” suggesting that nature photography and film production are sidelines for the petitioner rather than his principal field(s) of endeavor. This is consistent with the *Times of India*’s repeated characterization of the petitioner as a “businessman” as well as a photographer and producer.

The bulk of the petitioner’s submission in response to the director’s request for evidence relates to film festivals that have screened *Agnisakshi* and to personnel who have been hired to work on *The Myth*. The film festival documents focus on the film’s director, Shyama Prasad, rather than on the petitioner who was a co-executive producer.

The director denied the petition on July 24, 2001, stating that while the petitioner has produced one highly successful film, the overall pattern of evidence in the record does not establish sustained national or international acclaim. The director concluded that the petitioner has satisfied only two of the ten regulatory criteria, specifically those pertaining to lesser national awards and to display at exhibitions.

The petitioner filed a motion to reconsider, in which counsel has listed the petitioner’s accomplishments and restated prior arguments. Counsel asserts that the newspapers that carried the aforementioned articles “are not local or regional. In fact, they are national and international in circulation.” Counsel cites no new evidence to support this claim, nor to support other claims made on motion.

Having previously claimed that the inclusion of the petitioner’s photographs in exhibitions represents prizes and awards, counsel claims on motion that the exhibitions also demonstrate that the petitioner’s photographs are contributions of major importance. This argument forces the conclusion that every exhibited photograph is a major contribution, automatically fulfilling two plainly distinct criteria.

Counsel claims that Srishti Films, the production company behind the petitioner’s films, is a distinguished establishment (a claim not made in the initial filing). Counsel condemns the

director's assertion that [REDACTED] has not earned a worldwide reputation. Counsel correctly observes that the "national acclaim" standard does not require worldwide or international recognition.

The director granted the petitioner's motion and issued a new decision on October 2, 2001. The director reaffirmed the earlier conclusion that the petitioner has won a national award and that his work has appeared in artistic exhibitions, but the director maintained that the petitioner has not met a third criterion. The director asserted "the content of the published material [about the petitioner] does not support the petitioner's claim of having sustained national or international acclaim" and that "the evidence does not establish that the petitioner's most renowned production, *Agnisakshi*, while successful, has had a major influence on the film industry." The director acknowledged counsel's observation that [REDACTED] need not be recognized worldwide, but the director stated "the evidence does not establish that the firm is considered to be distinguished relative to other firms active within India's large and active film industry."

On appeal from the director's second decision, counsel appears once again to attempt to establish the National Film Festival Award as a major international award, thus qualifying the petitioner for the benefit sought. All of counsel's arguments in this regard relate to the reputation that this award enjoys within India and its expatriate community.

Counsel asserts that the director did not give sufficient weight to the letter from "a distinguished Cabinet Minister of the Government of India." Counsel, on appeal, neglects to specify that the cabinet minister in question runs the Ministry of Railways and has not been established as any kind of recognized expert on India's film industry.

Counsel cites 8 C.F.R. 204.5(h)(4) which states that, if the ten criteria in 8 C.F.R. 204.5(h)(3) "do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." Counsel does not explain how the ten criteria "do not readily apply to the beneficiary's occupation." If the ten criteria do, in fact, readily apply, then the "comparable evidence" clause is not triggered. The inability of this particular alien to meet those criteria does not show that the criteria do not apply to his occupation.

Counsel stresses, once again, that *Agnisakshi* was shown at film festivals in many different countries. The director has never contested that these festivals constitute qualifying displays, and we will not dispute that finding. Nevertheless, the materials from the festivals themselves show that it is the film's director, [REDACTED] who reaped the lion's share of the attention for the film. The petitioner, as producer, financed the film and handled logistical issues, but [REDACTED] himself has not credited the petitioner with any artistic contribution to the film except for the taking of promotional photographs.

Counsel offers several further arguments on appeal, many repeated from previous submissions. The general theme of these arguments is that the petitioner's award and exhibitions – acknowledged by the director – serve to demonstrate that the petitioner has met other criteria as well (for example, because [REDACTED] produced an award-winning film, it must therefore be a distinguished establishment). The director has already addressed many of these arguments on motion and found them not to be persuasive.

The petitioner's involvement in financing one successful motion picture – which appears to reflect on its director's abilities far more than those of its producer – does not represent a sustained pattern of national or international acclaim as a film producer. The record indicates that the petitioner is primarily a businessman, for whom film production has always been a sideline pursuit rather than a career.

The National Film Festival award – presented traditionally to the film's producer – is indeed impressive but it can go only so far in establishing the petitioner's overall reputation as a producer. We will note here, also, that the award was in the category of "Best Malayalam Film," indicating that it was not voted best overall picture of 1999 (as counsel has sometimes implied), and that it was not compared at all with films shot in other major Indian languages such as Hindi or, for that matter, English (spoken widely in India). While *Agnisakshi* was indeed shown at festivals in Japan, Yugoslavia, and other countries, the record contains no evidence that the petitioner had earned any recognition in any of those nations before or after the festivals in question. One-time festival appearances do not establish sustained acclaim. The petitioner's lasting reputation appears to be largely restricted to [REDACTED] and to former residents of [REDACTED] with whom the petitioner has associated.

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 film producer (or, for that matter, as a nature photographer) 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.