



B2

U.S. Department of Justice
Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: EAC 01 013 51654 Office: Vermont Service Center

Date: JUN 13 2002

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:



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, Vermont 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. Counsel states that the petitioner "seeks to work as an Investigative Journalist and Broadcaster," which counsel classifies as "business and 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a broadcast journalist. Counsel briefly summarizes the petitioner's career:

In his 25 years of broadcasting, [the petitioner] has covered many major events, including leadership summits, royal visits, disasters, and even the Superbowl. As an interviewer he has gone toe to toe with Canadian Premiers and Prime ministers. . . . His talk show, "Final Round" was an instant success, when it was launched three

years ago, and its audience continues to grow. [The petitioner] has also served as a regular contributor to a popular current events program named "Provincewide."

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.

Counsel states:

[The petitioner] has received numerous international awards for his artistic work as Broadcaster and/or Reporter for several internationally acclaimed networks and stations. His awards include the following:

Radio-Television News Directors Association ["RTNDA"] of Canada 1997 Bert Cannings Award for Best Newscast (TV)
1998 [REDACTED] Award for Spot News Reporting

[REDACTED] Award honoring [the petitioner's] outstanding achievements in electronic journalism

The Bert Cannings Award was presented not to the petitioner, but to "CKCO Kitchener," recognizing "Best Newscast (TV) – Medium Market." The record contains nothing from the RTNDA to show that the petitioner's work played a significant role in the selection of CKCO as the prize-winning station. Even then, the award recognizes a "Medium Market" news broadcast, rather than a national broadcast.

Regarding the 1999 Edward R. Murrow Award, a photograph of a plaque in the record reads, in its entirety:

RTNDA
The Association of Electronic Journalism
1999 Regional
[REDACTED] Award
CKCO-TV
Kitchener, Ontario
Spot News Coverage
TV – Small Market

The petitioner's name does not appear anywhere on the plaque; the award appears to have been presented to the television station, rather than specifically to the petitioner. Also, the fact that the award is a "Regional" award for a "Small Market" television station casts serious doubt on the assertion that the petitioner is a nationally-known broadcaster, or among the most highly acclaimed and recognized figures in a field that includes not only local journalists but also the anchors of national network broadcasts. The petitioner submits a partial printout from the RTNDA's web site (www.rtna.org/awards/murrow00/index.htm) describing the awards, but this partial printout does not indicate that individual journalists receive the awards. Rather, the awards are for "newscasts" and "news organization[s]." While the winners of regional Murrow awards go on to compete for the national award, there is no evidence that CKCO won the national award. The regional award is, by nature, neither national nor international in scope.

The record contains no direct documentation at all for the other awards listed by counsel, although some witnesses not affiliated with the awarding entities mention the awards in their letters. [REDACTED] president of RTNDA Canada, states that the petitioner "has proven to be extraordinary in our field" and that the petitioner "was instrumental in his station winning" the awards described above. [REDACTED] states that "[t]hese awards should not be taken lightly. The competition is very tough and the judging rigorous." Apart from the RTNDA awards, already described [REDACTED] does not explain the extent of his personal knowledge of the remaining awards. For instance, the record contains no direct evidence about the Ontario Fire Marshals Award, even to establish that this is specifically a journalism award, let alone a national one.

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 states that the petitioner satisfies this criterion through memberships in RTNDA International, RTNDA Canada, the Canadian Association of Broadcasters, and the Canadian Broadcast Standards Council. The petitioner's initial submission includes no direct evidence of the petitioner's membership in any of these associations, and nothing to show that any of these entities require outstanding achievements of their members, as judged by recognized national or international experts.

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

Counsel asserts that the petitioner's work as a news anchor and talk show host satisfies this criterion because his work is on "display" via television. This argument is not persuasive. A television broadcast is not an artistic exhibition or showcase. Furthermore, every television news anchor and talk show host is "displayed" in this manner. Therefore, by counsel's reasoning, every such anchor and host is among the small percentage of anchors and hosts at the very top of the field. A more appropriate criterion would be:

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

While television broadcasts do not involve box office receipts or video sales, the petitioner could submit comparable evidence under 8 C.F.R. 204.5(h)(4) by showing that he is the host of one of the highest-rated national or international news programs and/or talk shows. Television ratings are generally persuasive evidence of commercial success. The burden is on the petitioner to provide direct, objective evidence of his shows' ratings. The burden is not on the Service to rebut unsubstantiated claims that the petitioner's television programs are among the most popular.

██████████ vice president and general manager of CKCO Television, states that the 6:00 news broadcast that the petitioner anchored "was a constant winner in its time period and garnered a 40 plus share of the audience, making it the number one newscast in the market area by a substantial margin." ██████████ adds that the petitioner "produced and hosted a show called 'Final Round.' This was a very successful half-hour show that . . . regularly attracted over 100,000 viewers." While highly rated, it remains that CKCO is a local television station, broadcasting not nationally or internationally, but rather serving a "Small" to "Medium" market according to documents in the record. Commercial success that is limited to a small region of the country is not national or international, and thus cannot provide strong support for a claim of national or international acclaim.

Apart from the criteria specified in the regulations, counsel states:

In addition to [the petitioner's] other impressive skills he has also been invited to speak at the following events:

1. National Hardware Show
2. Ontario Firefighters Educational Seminar
3. Retailer of the Year
4. United Way Annual Meeting

██████████ vice president of Sales & Marketing at ██████████ as well as a board member and former chairman of the American Hardware Manufacturers Association, affirms that the petitioner "was a guest speaker at our annual meeting and contributed to our workshop session at the National Hardware Show" following the petitioner's work "preparing an in-depth series of programs dealing with the [NAFTA] agreement." The record contains no direct documentation of the other three invitations.

The petitioner has also submitted several witness letters, which counsel deems "recognition by peer group" even though several of the witnesses are not television journalists. ██████████ CEO of the advertising agency ██████████ America, who first became aware of the petitioner from seeing him on television in Toronto, states that the petitioner is "an intelligent, insightful broadcaster" whose "representation of the issues was exceptional, and his treatment of the subject fair and balanced." ██████████ president of the Toronto-based production and distribution company Rhombus International, states "we have called upon [the petitioner] on many occasions to

assist in the development of documentaries,” and that the petitioner “always exceeds our expectations.” [REDACTED] senior vice president of Marketing & Communications at Cineplex Odeon Corporation, Toronto, states that the petitioner’s “reporting has always been insightful, intelligent and accurate” and that “he continually raises the standards of broadcast journalism.”

[REDACTED] mayor of the city of Kitchener, Ontario, states:

[The petitioner] served as anchor person at CKCO Television located here in Kitchener, Ontario, Canada. . . . [The petitioner] played an integral role in CKCO being awarded the prestigious Edward R. Murrow Award for efficient, yet sensitive, coverage during the tragic drowning (summer, 1998) of a young boy and a police diver who was attempting to retrieve the boy’s body. Last year, CKCO won the “Best Newscast of The Year” Award and, in addition, [the petitioner] was chosen to receive the auspicious Ontario Fire Marshals Award for coverage and community service.

[REDACTED] now president of St. Mary’s College, Calgary, was previously a Political Science professor at the University of Waterloo, where he was “a regular viewer of the daily news programs on CKCO TV.” He continues:

Later, when I became somewhat of a regular commentator on CKCO, I discovered how hard [the petitioner] worked off camera to make sure that his broadcasts were absolutely first rate; he didn’t just read the news, he reported it in the proper sense of the word. . . . He went into the field to handle stories and in one instance played a strategic and crucial role in the coverage of a major news story that won for CKCO the coveted [REDACTED] Award.

Another University of Waterloo professor, [REDACTED] states that he appeared twice on the petitioner’s local talk show “The Final Round.” [REDACTED] asserts “[t]he show has a loyal following in the region,” and has become well-established despite the petitioner’s departure from CKCO.

[REDACTED] identified above as the vice president and general manager of CKCO Television, states that the petitioner worked at the station for ten years, during which time he “always met or exceeded the company’s expectations.”

The only broadcast journalist among the witnesses is [REDACTED] a prominent figure who has hosted national news, talk, and game shows in the United States. [REDACTED] states:

[The petitioner] is a well-known, award winning, Canadian broadcaster. Among his distinguished awards are The [REDACTED] Award, The [REDACTED] Award and the Bert Cannings Award. These awards recognize [the petitioner’s] work as outstanding and accomplished.

His contributions to the broadcast industry are exemplary and he is deserving of his many accolades.

Please regard this letter, as my endorsement of [the petitioner's] many achievements and his outstanding abilities.

For the most part, these letters detail the personal experiences that the writers have had with the petitioner. While the writers attest to the personal character and professional skill of the petitioner, their letters do not demonstrate that the petitioner is acclaimed, at a national rather than local level, as one of the very top broadcast journalists in Canada and/or the United States.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, counsel states that, since leaving CKCO Television in 1999, the petitioner "has been employed as a highly acclaimed Broadcaster for Content Incorporated." Counsel claims that the petitioner has satisfied a previously unclaimed regulatory criterion:

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

As the anchor for CKCO's 6:00 news, the petitioner has performed a critical role for the television station, and the news broadcasts that he anchored have won some level of industry recognition. As noted above, the president of RTNDA Canada asserts that the petitioner "was instrumental in his station winning" several awards. Still, the record does not show that CKCO has attained a level of distinction that elevates it above other local network affiliate stations. Evidence of the station's awards, in isolation, does not show that CKCO has consistently won more awards than other stations of its kind, or that those awards inherently confer a sufficient level of distinction.

Counsel repeats several prior claims, occasionally supplementing them with information pertaining to the petitioner's current work in the United States. For instance, counsel repeats the list of organizations of which he claims the petitioner is a member, and adds to that list the National Association of Broadcasters. The petitioner submits a copy of a letter from an official of that association, indicating that the petitioner "is an Associate Member of the National Association of Broadcasters." The letter offers no indication as to the requirements for becoming an associate member. The petitioner also submits a letter to show that he is "a member in good standing with the RTNDA." This letter, too, fails to state the association's membership requirements, although it does indicate that the RTNDA "is the world's largest professional organization devoted exclusively to electronic journalism."¹

¹ As note above, the petitioner has submitted material from RTNDA's web site. This web site includes the association's membership requirements, although the petitioner chose not to submit that information. A review of the association's membership requirements at <http://rtnda.org/membership/join.html> (accessed May 14, 2002) indicates that "RTNDA membership is open to anyone who supports the goals of the association." Either counsel was not aware of RTNDA's open membership policy, in which case counsel had no knowledge on which to base the claim that RTNDA is a qualifying association, or else counsel was aware of this policy, in which case counsel's claims to the contrary raise very grave questions of credibility. Doubt cast on any aspect of the petitioner's proof may

Two new letters accompany the petitioner's response to the director's notice. [REDACTED] executive vice president of BNTV and executive producer of the program "Business Now," states that the petitioner's "skills have been a tremendous asset to Business Now. He is able to report on complex technologies in a way few others can. [REDACTED] states that "Business Now" is shown "in several major markets" but she stops short of asserting that the program is nationally broadcast. All of the named markets (New York, Boston, and Washington D.C.) are located along the northern half of the U.S. eastern seaboard.

[REDACTED] formerly program manager and news director at CKCO, states "I often called on [the petitioner] to judge and appraise the work of his peers." This statement appears to be intended to satisfy yet another regulatory criterion:

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

The letter contains no information at all about the type of "judging" that the petitioner conducted (and which counsel did not mention in the initial submission). Also, the fact that the news director of a medium-market local television station sometimes solicited the opinion of his news anchor does not appear to be an extraordinary circumstance that establishes national or international acclaim.

The director denied the petition, stating that the petitioner has failed to submit sufficient background evidence to establish the significance of the awards and other materials in the record. On appeal, counsel argues that the director "ignored the totality of the evidence." This argument fails because, as shown above, there are numerous deficiencies and omissions in the petitioner's evidence, as well as inaccuracies in counsel's descriptions of that evidence. These inaccuracies continue on appeal, such as counsel's assertion that CKCO "won the [REDACTED] award for continuous coverage." The award was for "spot coverage," which according to RTNDA documents is a separate and distinct category from "continuous coverage." While this particular error is a relatively minor one, it underscores our finding that counsel's assertions cannot form the foundation of a successful claim of eligibility. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel states "[a]s the beneficiary of an approved O-1 Visa, [the petitioner] has already been found to possess extraordinary ability by the Immigration Service." The principal rebuttal to this argument derives from a review of the regulations pertaining to the O-1 nonimmigrant visa. While the criteria set forth in the regulations at 8 C.F.R. 214.2(o)(3)(iii) are similar to the

lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

evidentiary criteria at 8 C.F.R. 204.5(h)(3), the regulation at 8 C.F.R. 214.2(o)(3)(v) sets forth a very different set of criteria specifically for aliens employed "in the motion picture or television industry." Furthermore, without the record of proceeding pertaining to the petitioner's nonimmigrant visa, we cannot determine whether we would concur with the approval of that visa or else conclude that it had been approved in error. If this office were irrevocably bound by adjudicative decisions made at the field office level, we would have no power as an appellate body. Indeed, the very filing of this appeal demonstrates the petitioner's belief that field office adjudicators are capable of error. It is arbitrary and insupportable to hold that the Service is only capable of error when that error is against the interests of the petitioner.

Much of counsel's appeal brief essentially repeats the statement that accompanied the initial filing of the petition, such as the unsubstantiated assertions that the petitioner "has covered many major events, including leadership summits, royal visits, disasters, and even the Superbowl." Even if the petitioner had submitted specific evidence to support these assertions, counsel does not explain how it is in any way unusual, let alone extraordinary, for a television news anchor to report on major news stories. The central, critical issue is not whether the petitioner is a competent journalist, or whether he is well-regarded in the Kitchener-Waterloo television market. Rather, the petitioner must establish that he is among the most highly acclaimed television journalists at a national or international level. Because every major network has several recognized national anchors and reporters, we cannot find that the petitioner has risen to the top of his field merely by attracting sporadic national attention while broadcasting to a strictly regional viewership. The record does not contain persuasive evidence that the petitioner has earned sustained national or international acclaim in the United States or Canada, and several critical claims are either entirely unsupported or else contradicted by the evidence that the petitioner has submitted. The director's finding of ineligibility was neither arbitrary nor capricious as counsel contends.

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 broadcast journalist 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.