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

[redacted]

File: EAC 01 129 51321 Office: Vermont Service Center Date: JUN 18 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)

PUBLIC COPY

IN BEHALF OF PETITIONER: Self-represented

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 sustained and the petition will be approved.

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 for that visa classification.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner states that he is "one of the most distinguished personalities in documentary filmmaking and television broadcast in Albania and one of the pioneers of the Albanian National Television. As head of the Albanian Public Television Department of Culture and the Arts, [the petitioner] is one of the master-minds behind the process of reconstruction and transformation of the Albanian National TV into a Public TV [network]."

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

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

The petitioner asserts that the Naim Frasheri Medal is "the highest, most prestigious award in Albania for extraordinary achievements in the arts." The certificate accompanying the medal states that the Presidency of the People's Assembly of the People's Socialist Republic of Albania presented the medal to the petitioner in 1989 "for tireless work and quality in preparing and realizing the TV programs, being an example for the others."

The petitioner was among the first recipients of the [redacted] The prize certificate issued by the General Directorate of Albanian Radio and Television, recognizes "high artistic results in the field of scenario and film direction." The [redacted]nd the Naim Frasheri Medal appear to constitute national awards of sufficient significance to satisfy the regulatory criterion. The evidence is less persuasive concerning the petitioner's other awards. For instance, the petitioner states that he won the "Velija 1998 International Prize in Journalism," but the prize certificate does not indicate that the award is international. It refers only to "the Journalism Competition," and identifies the awarding entity as the Albanian Cultural Federation.

> *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.*

The petitioner states on appeal that he is a member of the Journalist's Union of Albania and the Union of Albanian Artists and Writers, although the initial submission contains no direct evidence of Journalist's Union membership. The petitioner adds that he further satisfies this criterion as a "Journalist of NATO" and through his "Cooperation with 'ALBAUTOR' – the Association of the Artists of the musical works and broadcasting transmissions" and "with Gallery XXI and Bardha Foundation for the Arts."

The petitioner has submitted nothing to show that the trade unions to which he belongs require outstanding achievements as a condition for membership. His press credentials and work with

outside organizations do not constitute membership in exclusive associations. Therefore, we cannot find that the petitioner has satisfied this criterion.

> *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.*

An article from the newspaper Republika highlights the conversion of Albanian Television "from a National Television to a Public one," and discusses the petitioner's work as head of the new Art and Culture Department at the network. The translation of the article is incomplete; it is substantially shorter than the Albanian-language original in the record. Therefore, we cannot determine the extent to which the petitioner is the focus of the full article. Also, the record does not establish that Republika is a highly circulated major national publication. We note that the photocopied fragment of the newspaper in the record contains three articles, all of them written by the same correspondent. The record contains a copy of a second article, from Koha Jone, but the record contains no translation of this article.

The petitioner submits videotapes of national television programs on which he has appeared, including panel discussions and television coverage of the [redacted] This coverage carries some weight, but we cannot ignore that the petitioner was a ranking executive of the television network that carried these programs.

> *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 states that he satisfies this criterion because he headed the Art and Culture [redacted] acted as a jury member for the [redacted] competition, and was a "UNDP collaborator with the [redacted]

The [redacted] competition was in fact a beauty pageant. The petitioner's work as a juror in this context cannot be considered judging the work of others in the petitioner's own field or an allied field. The contestants do not appear to have been judged on the basis of their accomplishments as television directors. Furthermore, the record shows that the petitioner was one of the main organizers of the pageant, and was therefore conceivably in a position to name himself as a jury member.

It is not clear how the petitioner's duties as director of [redacted] involve judging the work of others, apart from routine oversight of subordinates. We will, however, consider this work in the context of performing in a leading or critical role for a distinguished establishment, further below.

[redacted] of the United Nations Development Program affirms that the petitioner "is ou[redacted] collabora[redacted] but does not explain how the petitioner judged the work of others in that capacity. Rather, the petitioner and the [redacted] orked together very closely to realize and produce a series of TV programme[s] under the title 'The disarmament bell,'" as well as "other TV programs which are very important for the democratic developments" in newly-democratic Albania.

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

The petitioner submits videotape copies of several of his television documentaries. The very existence of these documentaries is not evidence of major contributions, because by definition, every documentary director creates documentary films. For these films to count as major contributions, the petitioner must establish that the films have won national or international acclaim, and are regarded in the field as being among the most significant and/or influential films of their kind.

The petitioner submits a number of witness letters. [redacted] ead of the Union [redacted] states that the petitioner is "a well-known figure of the cinematography art and Albanian publicists" (sic)[1] and that the petitioner's "work . . . as a scenarist and documentary film director is vast and passionate.' [redacted] hairman of [redacted] and Television, states that the petitioner's work "is registered in the most valued part of the Albanian Television Archives," and that the petitioner has managed "the most important departments of [redacted] and Television."

[redacted] director [redacted] states that the petitioner "is one of the founders of the documentary film genre in [redacted] and, as director of the [redacted] petitioner is "giving his contribution in completing the legal framework for the transformation of our institution to a real public television network. [redacted] director of [redacted] refers to the petitioner as "a well-known documentary film director." [redacted] of [redacted] mphasizes that the petitioner's work has won national prizes.

[redacted] president of the [redacted] states that the petitioner "directed the spectacle [redacted] It was the first time this kind of beauty pageant has been organized in Albania. He was the scenarist, the organizer and the director of the spectacle and a member of the jury as well, composed of the most famous intellectuals, film directors, scenarists and artists in Albania."

---

[1] The original letters are in the Albanian language. Because the translations of these letters are sometimes uneven, we have corrected grammar and syntax except in instances where the meaning of the translated passage is not sufficiently clear to allow such substitutions.

The petitioner submits additional letters from members of the Albanian-American community, but there is no evidence that the petitioner (who arrived in the U.S. only a few weeks before filing the petition) is recognized in the United States by significant numbers of non-Albanians. While the petitioner has, in the past, shot documentary footage in the United States, this footage was for broadcast in Albania or for Albanian-Americans rather than for the U.S. viewing public at large.

On balance, the witness letters and supporting documents indicate that the petitioner has played a major role in Albanian Television's transition and adaptation at a time when Albania itself has changed from an authoritarian socialist state to a democratic system.

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

The petitioner, as director of the Art and Culture department of a national television network, appears to satisfy this criterion. Several witnesses have attested to the importance of the petitioner's role at Albanian Television.

The director denied the petition, acknowledging the petitioner's "awards, memberships and publications" but asserting that the petitioner has "failed to establish their prestige and comparisons [sic] to United States awards, memberships and publications. It is unknown how [the petitioner] can be compared to another extraordinary alien in documentaries of filmmaking and television broadcast." On appeal, the petitioner states "I do not understand how this office made a decision on my case when no comparison was possible." If a comparison is necessary, then without any basis for that comparison, the Service cannot conclude that the petitioner stands at the very top of his field of endeavor. The burden of proof is on the petitioner to demonstrate that his evidence establishes sustained acclaim and, thus, extraordinary ability. The submission of obscure or unfamiliar evidence does not by any means create a presumption of eligibility that the director must actively rebut.

Having made the above point as a general observation, we cannot concur with the director's finding that the petitioner must compare his Albanian evidence with analogous American awards, publications, and so on. The statute and regulations call for sustained national or international acclaim. If the petitioner has achieved sustained national acclaim in Albania, he does not bear the additional burden of establishing that the evidence establishing this acclaim is comparable to specific evidence that would be found in the United States. The record contains ample evidence, for instance, that the television system in Albania is not as highly developed as that in the United States, and therefore it would be unreasonable to demand evidence that an Albanian television award enjoys the same standing or prestige as an Emmy Award. As the petitioner observes on appeal, his evidence comes from the most prestigious sources in Albanian broadcasting.

Apart from the single paragraph in which the director states that the petitioner has failed to compare his Albanian evidence to U.S. evidence, the director's decision consists entirely of citations of statutory and regulatory language and other "stock" language that is not specific to the facts in this proceeding. The sole stated ground for denial cannot stand, for reasons already explained.

In review, while not all of the petitioner's evidence and arguments is persuasive, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.