



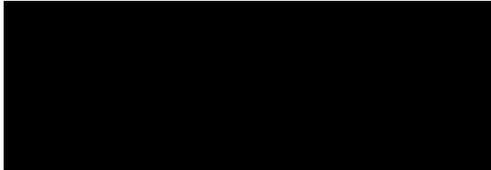
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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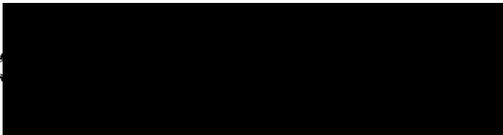
File: [Redacted] Office: California Service Center

Date: JUN 25 2002

IN RE: Petitioner: [Redacted]  
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:



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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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. The director determined the petitioner had not established that the beneficiary had the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel challenges the director's apparent assertion that meeting three of the regulatory criteria is insufficient to establish eligibility. Counsel's main argument, however, is that the beneficiary should automatically qualify for the immigrant visa as an alien of extraordinary ability since he was approved as a non-immigrant alien of extraordinary ability or achievement. Counsel asserts that the criteria are identical for the nonimmigrant visa as for the immigrant visa and quotes legislative history from 1990 but does not provide a copy of the source material.

First, we do not agree that a previous determination in a nonimmigrant classification requires an automatic approval in a related immigrant petition regardless of the evidence of record. Moreover, the beneficiary is a television broadcaster. As such, he works in the television industry. The regulations initially published January 1, 1992 were similar to the regulations for the immigrant category. Later in 1992, however, the regulations were amended to include a different definition of extraordinary achievement in the motion picture or television industry as well as different criteria to meet that definition. The beneficiary's petition for nonimmigrant classification was approved under these new regulations. The current 8 C.F.R. 214.2(o)(3) relating to nonimmigrant visas provides:

*Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

The current 8 C.F.R. 204.5(h), relating to the immigrant classification, on the other hand, makes no distinction as to the alien's field. 8 C.F.R. 204.5(h)(2) provides:

*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.

The beneficiary was approved for the nonimmigrant classification in 1999. At that time the nonimmigrant classification did not involve the same standard as the one for the classification the petitioner seeks in the beneficiary's behalf.

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Moreover, 8 C.F.R. 214.2 (o)(3)(v) provides for entirely different and mostly unrelated criteria for those in the television industry than those for the immigrant classification discussed below. Thus, the beneficiary could meet the nonimmigrant criteria and not the ones necessary for immigrant classification. As such, we will consider below whether the beneficiary meets the regulatory requirements for classification as an immigrant 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a legal correspondent for a television news station. 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. On appeal, counsel asserts that the director erred in stating that an alien could meet three criteria and still not be eligible. The director's assertion, in context, states:

Even if an alien does fulfill at least three of the criteria, or more, it does not necessarily establish that the alien has achieved sustained national or international

acclaim and recognition, and does not mandate a finding of eligibility. Rather than focusing on submitting documentation that “fits” the criteria, it is important to look upon the evidence in its totality. . . . Any submitted evidence must show that the individual is one whose work is looked upon for being at the pinnacle of work in the field.

(Emphasis in original.) The first sentence is admittedly poorly worded. It would be nonsensical, however, for the director to conclude that the beneficiary was eligible under the regulations but that the petition was not approvable. Thus, a more rational interpretation of the director’s decision, especially in light of the language quoted above, is that the petitioner submitted documentation which related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish an alien’s eligibility for this classification merely by submitting evidence which addresses at least three criteria. In determining whether a beneficiary meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the beneficiary has sustained national or international acclaim.

The petitioner has submitted evidence which, counsel claims, establishes that the beneficiary 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 petitioner initially submitted a certificate of appreciation issued to the beneficiary on an unspecified date by The Antelope Valley Human Relations Task Force, a certificate of commendation issued to the beneficiary on September 1, 1998 by the County of Los Angeles, and honor certificates from the Academy of Arts and Science affirming that he was nominated for the Los Angeles Area Emmy Awards for outstanding new feature reporting in 1995 and live coverage of an unscheduled news event in 1993. All of these awards are local awards and cannot serve to meet this criterion.

Moreover, with regard to the Emmy nominations, it is noted that while 8 C.F.R. 214.2(o)(3)(v)(A) regarding the eligibility requirements for nonimmigrant aliens with extraordinary achievement in the television industry permits evidence of an Emmy nomination to establish eligibility, the regulations regarding immigrant aliens of extraordinary ability makes no such provision. The petitioner has not demonstrated that local Emmy nominees receive the type of national publicity which might reflect national acclaim or that the nominations are decided nationally rather than locally.

Subsequently, the petitioner submitted evidence that the beneficiary received the 1998 Golden Mike award, the Southern California Journalism Award issued by the Greater Press Club of Los Angeles for best investigative reporting, and the Best News Writing Award issued by the Associated Press Television-Radio Association on February 3, 2000. In his letter, [REDACTED] director of the Television Department at the American Federation of Television and Radio, asserts that the Radio Television News Association (RTNA) presents the Golden Mikes and that the judges

are selected from the twenty largest markets in the United States. [REDACTED] also praises the credentials of the judges for the Greater Press Club of Los Angeles. According to [www.rtna.org/history.html](http://www.rtna.org/history.html), RTNA's official website, The Radio Television News Association of Southern California presents the Golden Mike awards. The rules as posted on the website provide:

Competition for the RTNA Golden Mike Awards is limited to the news departments of radio, and television stations licensed and/or operated within the following southern California counties: Los Angeles, Orange, San Diego, Riverside, San Bernardino, Ventura, Santa Barbara, San Luis Obispo, Inyo, Kern, Imperial, Kings and Tulare.

That the judges are selected from a national pool might be indicative of the judges' national acclaim, but not the awardees'. It remains, the beneficiary did not compete against the most experienced and expert correspondents in other major markets or against correspondents working for national news broadcasts for either the Golden Mike or the Southern California Journalism Award. As such, these awards are both local awards that cannot be considered for this criterion, which requires a nationally or internationally recognized award. Finally, the beneficiary won the best news writing award after the date of filing. As such, it cannot be considered evidence of the beneficiary's eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

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

Initially, counsel asserted that exhibits 7, 8, and 9 served to meet this criterion. Exhibits 7 and 8 include the local awards and nominations discussed above and do not reflect a contribution of major significance in the field at a national level. Exhibit 9 includes two letters. Arnold W. Schwartz, the 1998 President of Consumer Attorneys Association of Los Angeles asserts that the beneficiary provides coverage of legal issues "with a clarity and insight sadly missing from the great majority of journalism [sic] in this field." He praises the beneficiary's ability to explain to viewers what they can do to seek redress in the legal system. Finally, he asserts that the beneficiary's coverage of the O.J. Simpson criminal and civil trials "demonstrated an understanding of legal principle and practice that not only surpassed his peers but which should put some working in that system to shame!"

In his letter, the Honorable [REDACTED] retired judge with the Los Angeles Superior Court, praises the beneficiary's coverage of court proceedings as fair and accurate. Judge Katz further states that the beneficiary avoids "exploitation and innuendo," and "understands that judges are restricted in their ability to counter unfair and intemperate accusations leveled against them by irresponsible persons." Finally, Judge Katz asserts that the beneficiary's previous experience as a legal correspondent in Britain allows him to provide comparisons between their legal system and that of the United States. In addition to the exhibits referenced by counsel, the record also includes a letter from an official of the petitioning entity.

Diana Vargas, Vice President and General Manager of Fox 11 in Los Angeles, writes:

[The beneficiary] is regularly stationed in Southern California and his services are utilized from time to time nationally or fed to FBC affiliates throughout the United States in connection with news stories of major local or national significance. . . .

[The beneficiary] has distinguished himself professionally in many respects during his five year tenure with KTTV. In 1993 he was nominated by the Academy of Television Arts and Sciences for "Live Coverage of an Unscheduled News Event," for his reporting on the rash of fires throughout Southern California. He served as the principal correspondent for our coverage of both O.J. Simpson trials in Los Angeles, and his reports were broadcast throughout the United States on FBC. He received a second Academy nomination for "Outstanding News Feature Reporting" in 1995 for his series of reports on consumer fraud in Los Angeles. He currently serves as KTTV's "Chief Legal Correspondent" and has gained a wide audience as a consequence of his reporting of the Heidi Fleiss trials (both state and federal), the Michael Jackson civil litigation and more recently the [REDACTED] murder trial in Los Angeles. He has additionally appeared as a legal analyst on Fox's morning program "Good Morning L.A.," "Access Hollywood" and the "E" entertainment cable channel. His series of investigative reports on hate crimes in Los Angeles County resulted in the issuance of a "Certificate of Appreciation" for his "extraordinary service" to the Antelope Valley Human Relations Task Force. His work additionally resulted in a commendation for "exemplifying the highest standards of broadcast journalism in American journalism today" by the Los Angeles County Board of Supervisors on September 1, 1998.

The petitioner also initially submitted a letter from Jay V. Barnett, Director of Television Programming for the American Federation of Television and Radio Artists in Los Angeles, a labor organization. On appeal, the petitioner submits a more detailed letter from Mr. Barnett. He states:

[The beneficiary's] work has been picked up and disseminated across America by Fox's 108 affiliates regularly for six and a half years and by the Fox News Channel since it started broadcasting three years ago. As a result, his work has been seen in every major city across the nation with hundreds of reports by [the beneficiary] broadcast to audiences beyond Los Angeles. Fox 11 News' live coverage of both O.J. Simpson verdicts, criminal and civil, was carried live in just about every major market across the Fox Network. Several hours of live broadcasting was dominated by [the beneficiary's] reporting from the courts. The coverage was also beamed to Sky Television in London for dissemination in Europe. Fox 11 News['] live coverage of the verdict in the Ennis Cosby murder trial was also beamed all over the United States, with [the beneficiary] giving repeated live updates from inside and outside the Santa Monica courthouse over a four hour period. In addition, developments in the Michael Jackson and Heidi Fleiss court cases led to significant national and international exposure for [the beneficiary.] For example, [the

beneficiary] was interviewed by the BBC World Service on the Heidi Fleiss case - an organization with an estimated 143 million weekly listeners from most countries in every continent on the planet. [The beneficiary's] live reporting of breaking news stories has been carried on Fox stations all over the country and on the Fox News Channel. The include the Malibu Fires, storms, floods, the LA earthquake, the Jewish Community Center shooting, etc.

Being a TV news reporter in Los Angeles is NOT a "stepping stone" or "lower rung" in a broadcast journalist's career. It is a career of choice for journalists motivated by a desire to inform, serve and participate in the community. Los Angeles is the second biggest market in the United States. The fact that anyone holds a job for six and a half years in this intensely competitive environment is strong evidence of extraordinary ability. Working in Los Angeles is the pinnacle of a career in local broadcast news. Only a tiny percentage of television reporters ever make it to LA or New York. For [the beneficiary] to have achieved the degree of national and international exposure that he has while working in a local market, rather than a national one, is truly extraordinary in itself.

It is acknowledged that many stories which have attracted national attention occurred in Los Angeles. The record does not establish that the national exposure received by the beneficiary was due to his contributions of major significance to the field of broadcast journalism as opposed to the fact that he happened to be the Fox affiliate's legal correspondent in the location where the events took place. Even acknowledging that the Los Angeles area is competitive, the mere fact that the beneficiary was the legal correspondent for Fox's affiliate in Los Angeles is not evidence of that the beneficiary is esteemed by the industry nationwide. The petitioner has not submitted any letters from its parent corporation, the news directors of Fox News Channel, the directors of "Access Hollywood," or high level correspondents at other national networks affirming that the beneficiary's coverage of events taking place in his location was significant and influential on the field. The record contains no letters from legal correspondents outside Los Angeles who attest to being influenced by the beneficiary. In fact, the record contains no letters from anyone outside the Los Angeles area. By definition, national acclaim requires that experts in the field outside Los Angeles were familiar with the beneficiary prior to the preparation of evidence for the petition and that they were aware of his contributions to his field. The O.J. Simpson trial was a major world story, and hundreds of correspondents from all over the world were sent out of their local reporting areas to cover the story. The record does not demonstrate that the beneficiary's reporting on this story was viewed by the broadcast journalism industry nationwide as significant. Nor does the record reflect that the beneficiary has ever reported for Fox's national cable channel on any events outside of the Los Angeles area.

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

Counsel did not initially claim that the beneficiary met this criterion. On appeal, counsel asserts, without explanation, that the beneficiary does meet this criterion. Even if we concluded that broadcast journalism is an art, appearing as a legal correspondent on news broadcasts and daily

morning shows does not constitute a display at an artistic exhibition or showcase. While counsel argues that the record contains “comparable evidence,” he does not specify what that evidence is. That the beneficiary appeared on local network television as part of his job is not “comparable” evidence for this criterion as permitted under 8 C.F.R. 204.5(h)(4). The plain language of 8 C.F.R. 204.5(h)(4) limits consideration of comparable evidence to instances wherein the regulatory criteria at 8 C.F.R. 204.5(h)(3) “do not readily apply to the beneficiary’s occupation.” In cases where the original criteria do, in fact, readily apply to the beneficiary’s occupation, the beneficiary’s own inability to meet those criteria does not trigger the “comparable evidence” clause. In the instant petition, several of the criteria do apply to the beneficiary’s field. As such, vague assertions that the record contains comparable evidence under 8 C.F.R. 204.5(h) are insufficient. Moreover, appearing on television is inherent to the job of broadcast journalists. We cannot conclude that every correspondent who has appeared on television is one of the very few at the top of the field.

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

Even if we concluded that the beneficiary plays a critical role for Fox 11 News, the record does not establish that this local news department has a distinguished reputation nationally. The petitioner has not submitted any evidence that Fox 11 has been awarded more national awards than other local stations. Simply working for a network affiliate in a large city is not sufficient evidence of national acclaim. While Fox, Inc. may have a distinguished reputation, the record does not establish that the beneficiary plays a leading or critical role for Fox, Inc., Fox Television Stations, Inc. (a subsidiary of Fox, Inc.) or the Fox Broadcasting Network (a subsidiary of Fox Television Stations). While Mr. Barnett asserts that the beneficiary’s reporting on Los Angeles stories with national interest has appeared on the news coverage of other Fox affiliates around the nation and the Fox News Channel, the record contains no letters of support from anyone at Fox Television Stations, Inc. confirming the frequency of the beneficiary’s appearances nationwide or its significance. No one at Fox above the Vice President and General Manager at the Los Angeles affiliate has provided any letters regarding the beneficiary’s role for the corporation as a whole. In light of the above, the petitioner has not established that the beneficiary meets 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.*

Counsel did not initially claim that the beneficiary meets this criterion but raises this claim for the first time on appeal. In his most recent letter, ██████████ asserts “in today’s market, [the beneficiary’s] rate of compensation clearly reflects the industry’s recognition of his status as a broadcast journalist of extraordinary ability.” Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The record contains no evidence that the beneficiary’s salary is significantly high as compared with others at the top of his field, a field which necessarily includes the anchors of the national news on the top networks, hosts of prominent national morning shows, investigative reporters for national

television magazine programs (such as 60 Minutes, 20/20, and Dateline) and the anchors appearing on prominent national cable news channels such as CNN, MSNBC and Fox News.

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 beneficiary 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 indicates that the beneficiary shows talent as a broadcast journalist, but is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field. Therefore, the beneficiary 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.