B2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: WAC 01 230 52906 Office: California Service Center Date: APR 21 2003

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]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Elizabeth Hayward
for 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 Administrative Appeals Office on appeal. The appeal will be dismissed.

It is noted that the petitioner was initially represented by attorney [redacted] Mr. [redacted] will be referred to herein as the petitioner's former counsel, or previous counsel. References simply to "counsel" will refer to the petitioner's current attorney of record, who submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, on appeal.

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 that she qualifies 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, filed on April 26, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a "writer, editor, and creator of scripts for films, television, and theatrical plays." The record reflects that the petitioner has been studying and working in California since 1994 and therefore it is reasonable to expect the petitioner to have earned national acclaim in the United States during

that time. We find that the petitioner has had ample opportunity to establish a reputation as a professional writer in the United States.

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 that, counsel 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 petitioner submitted a "Meritorious Achievement Award" certificate presented by the "Regional Chair" of the Kennedy Center American College Theater Festival on February 16, 1997. This award reflects regional, rather than national or international, recognition in a student level competition. The petitioner represented his educational institution, the California Institute of the Arts, at the festival. We note here that student level competitions, by their very nature, exclude experienced professionals in the petitioner's field of endeavor from consideration.

Information from the Kennedy Center's website at www.kennedy-center.org (accessed on March 21, 2003) states:

> The Kennedy Center American College Theater Festival ("KCACTF") is a national theater program involving 18,000 students from colleges and universities nationwide which has served as a catalyst in improving the quality of college theater in the United States. The goals of the Kennedy Center American College Theater Festival are:
>
> > to encourage, recognize, and celebrate the finest and most diverse work produced in university and college theater programs;
> >
> > to provide opportunities for participants to develop their theater skills and insight; and achieve professionalism; to improve the quality of college and university theater in America;
> >
> > to encourage colleges and universities to give distinguished productions of new plays, especially those written by students...
>
> Through state, regional, and national festivals, KCACTF participants celebrate the creative process, see one another's work, and share experiences and insights within the community of theater artists. Regional activities are coordinated through eight KCACTF regional chairs and eight KCACTF playwriting awards chairs. With funding and administrative support from the Kennedy Center, the regional chair coordinates with the Co-Managers of KCACTF all aspects of the adjudication of productions on the local and regional level and supervises regional-level

> KCACTF award competitions. In January and February of each year, regional festivals showcase the finest of each region's entered productions...

The record is not clear regarding how many other students also received "Meritorious Achievement Awards" at the eight KCACTF regional competitions throughout the United States.

The petitioner submitted evidence indicating that he won a "Silver Award" at the Worldfest Houston International Film Festival in 2000. The award certificate states that the petitioner won the "Student Film and Video Production, Graduate Level" category. In this matter, the petitioner cannot restrict his "field of endeavor" to exclude all those writers who have finished their education and therefore do not compete in student or "graduate level" competitions.

The petitioner submitted a letter from the Director of the Peruvian National Board of Cinema, an "organization dedicated to the support and development of art and cinema," stating that the petitioner's film "Rooms" received a "prize equivalent to U.S. $14,500 from [the] institution in its Third National Short Film Contest" (1997). The letter offers no further information about the significance of this contest or the level of the competition. An event program submitted by the petitioner contains a section entitled "Peruvian Short Films – Winners of the Contest of Short Films, 1997, Organized by the Peruvian National Board of Cinema" that lists a total of nine "winners" of the 1997 short film contest. The petitioner was named along with eight other recipients who were similarly recognized as 1997 short film winners, thus diminishing the significance of this award.

The petitioner submitted a letter dated January 30, 2002 from the Executive Secretary of the Peruvian National Board of Cinema stating that the petitioner's short film, "Rooms," was one of two films selected to represent the country of Peru in the International Festival of Latin American Cinema in New Zealand in 2002. The record contains no evidence that the petitioner actually won an award at this international festival. Further, this event came into existence subsequent to the petition's filing. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that aliens seeking employment based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The Great Illusion, a film magazine of unknown circulation sponsored by the School of Communications at the University of Lima, awarded the petitioner a "Diploma of Recognition" for his short film "Rooms." The word "Rooms" was handwritten on the diploma, a pre-printed, form style document. This award appears indicative of institutional, rather than national or international, recognition.

The Peruvian National Institute of Culture awarded the petitioner a "Diploma of Honor" for placing third in a "Young Dramaturgy" contest for his play "Mr. Clouds" (2000). The competition for this contest appears limited to young, upcoming dramatists, rather than established professional playwrights. The petitioner in this case seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

Prior counsel claims that the petitioner was selected as a "finalist" at several other film festivals. While it is certainly recognition of one's talents to be selected as finalist, the plain wording of the regulation clearly requires the receipt of a nationally or internationally recognized "prize or award."

The petitioner also submitted evidence of his promotion to staff writer at Telemax Entertainment and his Master of Fine Arts degree from the California Institute of the Arts, but these institutional documents would not qualify as nationally recognized prizes or awards.

We find that the petitioner does not appear to have competed against top writers/directors for his awards, nor has it been demonstrated that the petitioner's "short film" awards are viewed throughout Peru as particularly significant achievements. In sum, the petitioner has failed to establish that he has received artistic awards that enjoy significant national or international acclaim.

> *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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien would not earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted several articles in Spanish with incomplete translations or no translations at all. By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Without complete translations, it cannot be determined whether the petitioner was the main subject of the articles or that he was featured because of his extraordinary achievements as a writer.

Many of the articles refer to the petitioner as a "promising" young filmmaker embarking on a new career rather than as a nationally acclaimed professional writer. Furthermore, the majority of the articles devote only a few brief sentences to the petitioner. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles that barely even mention the petitioner would not satisfy this criterion. Involvement in an event, such as film festival competition, that, as a whole, merits media coverage is not sufficient to demonstrate individual

acclaim. As noted by the director, "[t]he petitioner cannot satisfy this criterion simply by establishing that his name has appeared in print."

Two articles published in English appear in the Santa Clarita Edition of the *Daily News*, a local California newspaper. One of the 1997 *Daily News* articles makes only a single, brief reference to the petitioner, stating:

> VALENCIA [redacted] [redacted] and [the petitioner] accepted their master's degrees in directing for theater, video and cinema with a dash of cynicism about their job prospects in the entertainment industry.
>
> "Will direct for food," "Would you like a script with your fries?" and "I have a M.F.A. Can I take your order?" read the hand-lettered sandwich boards the three CalArts grads wore, along with paper In-N-Out Burgers hats, to Friday's commencement ceremonies.

The other *Daily News* article, in describing the petitioner's employment situation, stated: "Days since graduation are spent living in Los Angeles and looking for work as an intern in the film industry." Local media coverage such as this is hardly indicative of national acclaim as a writer.

Thus, the petitioner has failed to demonstrate that he has been the subject of sustained major media coverage.

> *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.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, the petitioner must demonstrate that his sustained national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level and involve accomplished professionals in the petitioner's field. For example, judging an international film festival would carry far greater weight than judging a student competition at a local university.

[redacted], General Coodinator, IPAE, submitted a letter stating that the petitioner served "as the President of the Film Selection Committee for the International Film Festival Expecta CADE 2000, held in the City of Lima, Peru from January 16 to January 22, 2001." No further details regarding the festival or the level of competition were provided, nor did the petitioner submit any documentary evidence of national or international publicity surrounding the event.

Norma Rivera, Executive Director, Filmoteca de Lima, states that the petitioner "served as a member of the Jury for the Contests of Film Criticism (1999) and Cinema Essays (2000), organized by the Filmoteca de Lima, the University of Lima and the French Embassy in Peru."

[redacted] Director, The Film and Audiovisual Arts School of Lima, states:

> [The petitioner] lead a selected group of renowned filmmakers and film critics as President of the Jury for the Film School's National Short Film Contest, held during the first week of August 2000 in the City of Lima, Peru.
>
> The purpose of this contest is to reward and encourage those young artistic voices that will, in the future, be in charge of defining the landscape of Peruvian Cinema.

It appears that experienced professionals in the petitioner's field were excluded from participation in the above competitions and therefore the petitioner's participation as a judge of those contests carries little evidentiary weight. Further, [redacted] letter did not specifically identify the other "renowned filmmakers and film critics" who participated as judges in the school's film contest.

The letters submitted by the petitioner offer few details of the petitioner's involvement and therefore fail to satisfy the statutory demand for "extensive documentation" set forth in Section 203(b)(1)(A)(i) of the Act. We further note the absence of evidence demonstrating that the petitioner has served as a judge at the national level in the United States (particularly given that he has been residing here since 1994).

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

The petitioner submitted several witness letters, mostly from individuals who have collaborated on various projects with the petitioner or those having ties to the California Institute of the Arts.

[redacted] Executive Producer, Telemax Entertainment, describes himself as an "independent creator and producer" of television shows for the Spanish language Telemundo Network. He states:

> [The petitioner's] exceptional skills as a creative writer not only are very much in demand, but they have been an important factor in the success of our reality based law enforcement and rescue television shows, *Placas* and *Operation Rescue*. In his host segments, his crime reenactments, and his live-action footage narratives, [the petitioner's] writing is fresh and vital, and always of superior quality.

[redacted] Senior Vice President, Twentieth Century Fox Animation, states: "I have spoken with [the petitioner] about a number of ideas of his, and I look forward to collaborating with him on them soon." He further states: "I believe [the petitioner's] unique talent should have every opportunity possible to express itself." [redacted] letter does not indicate that the petitioner has actually worked for his company, nor does it describe how the petitioner's work has already influenced the industry.

[redacted] Inca Film Productions, describes himself as "a Peruvian film director with more than ten feature films and multiple other productions to [his] credit." He states:

> I had the opportunity to see firsthand [the petitioner] at work during development of my latest feature film, "Red Ink." Though he was not attached to the project, [the petitioner's] initial offer of creative consultation grew into a series of story break sessions with myself and my writing partner. During this process I was struck by his passion, his eloquence, and his command of story telling."

[redacted] an independent producer, attended the California Institute of Fine Arts at the same time as the petitioner. He states:

> Being from South America, I know for a fact that if [the petitioner] returns to Peru, his talents will be lost. It is not that his country cannot recognize his talent, far from it and [the petitioner] has enough awards and recognition to prove it, but rather, I believe that Peru doesn't have the cultural and economic infrastructure to help sustain a career as promising and inspiring as that of Javier.

The witness letters provided describe the petitioner as a talented writer, but they provide no information regarding how the petitioner's individual contributions have already influenced the theatrical field or the film and television industries. The issue here is not the skill level, professional experience, or educational qualifications of the petitioner, but, rather, whether any of his past endeavors would qualify as a contribution of major significance in his field. In this case, the record does not indicate the extent of the petitioner's influence on other writers/filmmakers. Although the petitioner was formally recognized in some amateur short film competitions, such awards do not constitute "contributions of major significance" in the filmmaking industry.

The witnesses' general descriptions of the petitioner's writing talent fail to distinguish the petitioner's work as far superior to that of other established professional writers. On appeal, counsel states: "These letters establish [the petitioner's] extraordinary achievement. Why else would these prominent individuals submit these letters?" Reputation by association cannot suffice to establish that the petitioner himself enjoys national or international acclaim. We acknowledge that the witness letters submitted by the petitioner are from impressive experts whose opinions are important in the television and filmmaking industries and the theatrical field. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of this petition would carry greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. While the petitioner has attracted the favorable attention of several prominent individuals in his field, a simple comparison of their achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment placing him at or near the top of his field.

Information from the published media portrays the petitioner as a "promising filmmaker" and an "up-

and-coming young director." This evidence supports the director's conclusion that the petitioner has not yet risen to the very top of his field. Further, the assertions from various witnesses that the petitioner has a promising future does not establish eligibility, for the regulations clearly call for evidence that the petitioner already enjoys major success and acclaim. Even if it were unanimously agreed that the petitioner would one day reach such a level, this visa classification is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

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

Prior counsel argued that the petitioner's participation in short film festivals would satisfy this criterion. The wording of the criterion, however, strongly suggests that it is intended for visual artists, such as sculptors and painters, rather than "commercial writers." The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

Given that the petitioner's writing and directing is closely linked with the film industry, theatrical performance, and television broadcasting, the petitioner would not satisfy this criterion simply by demonstrating that his work has been featured in a theater production, on television, or at an amateur film festival. The petitioner in this case must demonstrate that his films or written works have consistently been the centerpiece of major productions at prestigious venues. Such a standard must be set for the petitioner to establish that he enjoys sustained acclaim near the top of his field.

In this case, the record indicates that the petitioner's short films have generally been displayed among those of other amateur filmmakers and it has not been shown that those other filmmakers enjoyed national or international reputations. The petitioner has not shown that participation in his festivals was a privilege extended only to top filmmakers. A film or theatrical festival limited to college students, such as the Kennedy Center American College Theater Festival, would hardly satisfy this criterion.

Prior counsel cited the approval of the petitioner's O-1 nonimmigrant visa petition as evidence that he has already been found to be an alien of extraordinary ability. Extraordinary ability in the arts in the non-immigrant context means distinction, which is not the same as sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes nonimmigrant O-1 criteria less restrictive for a petitioner in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel the Service to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or case law that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act

when the alien already holds an O-1 nonimmigrant visa.

The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every writer/director who has won a prize in a short film festival and participated in writing scripts for a television show, or whose name has appeared in print, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as a commercial writer 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 the 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.