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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: WAC 02 111 51254 Office: CALIFORNIA SERVICE CENTER Date: JAN 17 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: 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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hagmann

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 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. 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 CFR 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 CFR 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.

The petitioner states he seeks "to work for education/training, video production and music CD production and/or broadcasting business in USA." On his resume, the petitioner identifies his "area of specialization" as "accounting." Under "area of competence," the petitioner lists several varieties of accounting as well as "computer language" and "video and music CD production."

The regulation at 8 CFR 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.*

The petitioner cites a number of school awards that he received between 1966 (when he was 11 years old) to 1971. None of these awards relate to the field of endeavor (i.e. media production) and none appear to be national or international awards. The awards were presented by school principals and superintendents rather than national or international authorities.

The petitioner states that he "received excellent member awards of supervisory team twice from Korean Broadcasting Commission ["KBC"] on July 1, 2001 and November 5, 2001." The petitioner states the value of each award as approximately US$154.00. The initial submission included no documentary evidence of these awards to establish their significance or to confirm that the petitioner received them.

In response to a request for further evidence, the petitioner submits documentation showing that the petitioner was one of five persons selected as "excellent members of supervisory team of internet broadcasting at Korean Broadcasting Commission." The awards were in the form of "cultural coupons." The record contains no definition of a "cultural coupon."

> *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 only membership the petitioner claims is in the American Accounting Association. The petitioner does not submit any evidence that this association requires outstanding achievements of its members, nor does he explain how it is an association "in the field." While the petitioner has an accounting background, he has stated that his intention is "to work for education/training, video production and music CD production and/or broadcasting business in USA." These endeavors are not closely tied to the field of accounting. In a subsequent submission, the petitioner states that membership in the American Accounting Association is open to "students, professors and scholars who study accounting."

> *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.*

The petitioner submits copies of articles from the monthly alumni association newsletters of Sungkyunkwan University and Yunsei University. Alumni association newsletters are not major media, because by nature they are distributed only to the alumni of the particular university. The materials described by the petitioner appear to be typical "alumni updates" in which the alumni themselves provide short bulletins to their *alma mater* in order to keep former classmates and other alumni apprised of their activities. The newsletters show similar bulletins for several other alumni; the petitioner has not been singled out for special, in-depth 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.*

A certificate in the record shows that the petitioner is "a member of supervisory team of internet broadcasting" at the KBC, but the initial submission included no clear evidence to indicate what this team does. The petitioner is also a member of the Korean Broadcasting System ("KBS") internet evaluation team. According to the petitioner, the purpose of this team is "to present and evaluate TV program[s] and take part in surveys which are done by KBS." Documentation from KBS indicates that the petitioner "has participated in TV program evaluation and surveys." It is not clear whether the petitioner was involved in orchestrating the surveys, or simply answered questions as a participant in the surveys. If the latter, the petitioner's activity appears akin to that of a member of a focus group, used to calibrate marketing, "target audiences," and so on. There is no indication that the petitioner has been employed as an official of KBS or that he was selected based on his reputation in the field of broadcasting.

In response to a request for additional information, the petitioner has submitted a document indicating that the duties of the supervisory team of internet broadcasting are to search for "nudity, violence and grotesque contents," recommend acceptable web sites, and "express sound opinion for internet culture."[1]

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submits copies of scholarly writings but there is no evidence that these writings have actually been published anywhere, let alone in major media. Rather, these writings are papers and theses prepared in conjunction with his studies and postdoctoral training. Furthermore, all of these writings concern business-related topics such as accounting. The petitioner has not shown how any of these scholarly writings pertain to the work he intends to do as a permanent resident of the United States, i.e. "education/training, video production and music CD production and/or broadcasting business."

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[1] According to the KBC web site (www.kbc.go), which has a mirror page in English, "[t]he Commission has entrusted 200 volunteers to supervise and regulate internet TV services." The petitioner, on appeal, confirms that he is one of 200 individuals performing such work.

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

The petitioner states that he "displayed audiovisual works at Palo Alto High School . . . as an International Speaker on March 14, 1997 on the occasion of Palo Alto High School's International Festival." The petitioner has not demonstrated that a high school "International Festival" constitutes an artistic exhibition of national significance, as opposed to a purely local educational event orchestrated for the benefit of the students at that high school. A letter from a school official thanks the petitioner "for sharing your time and energy with our students and faculty," and a program for the festival shows that the events took place during the school day.

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

The petitioner describes his education and career. The petitioner's statements regarding his college degrees do not readily suggest a leading or critical role for any particular organization or establishment, because one does not perform in a leading or critical role for a university merely by studying there. Similarly, the petitioner's various teaching positions (most, if not all, of which have been part time) at colleges in South Korea are not leading or critical roles, because most if not all faculty members have teaching duties of this kind. The petitioner's year of research as a visiting scholar at Stanford University likewise cannot be considered leading or critical for that university.

Regarding the petitioner's work overseeing internet broadcasting on behalf of the KBC, the petitioner states that he plays a leading or critical role because KBC can ban television programs and web sites based on his reports. The petitioner has submitted evidence showing that there are numerous individuals performing these duties. The fact that the top five receive quarterly awards suggests that there are considerably more than five such individuals. The KBC states that there are 200 such individuals. The petitioner's role as one member of this large group appears to be neither leading nor critical.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submits South Korean tax records showing earnings of US$18,870.51. The petitioner has not shown that this is a significantly high salary in his field in South Korea. Also, the above figure is from 1995, before the petitioner assumed most of the positions which he deems to be indicative of sustained acclaim. If the petitioner has indeed risen to national prominence since 1995, he has not shown or even claimed that his remuneration has increased accordingly.

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

The petitioner submits copyright certificates, showing that he has registered copyrights on audiovisual works that he has created. These certificates prove that he is the owner of the

copyrighted works, but they are not evidence of commercial success. Indeed, copyright law already protects recorded works before they are released for sale. The petitioner has not submitted any evidence to show that his copyrighted works have sold more copies than almost any other comparable works.

The director denied the petition, stating that the petitioner had not met his burden of proof. The director indicated some uncertainty as to what, exactly, the petitioner considered his field of endeavor to be. This is a relevant issue because 8 CFR 204.5(h)(5) requires the petitioner to demonstrate that he is coming to the United States to continue work in the area of expertise, in keeping with section 203(b)(1)(A)(ii) of the Act which requires evidence that the alien seeks to enter the United States to continue work in the area of extraordinary ability. The director acknowledged the petitioner's "wide range of activities" but concluded that the petitioner had failed to show acclaim in any one area of endeavor.

On appeal, the petitioner states that he is "now working as a type of Korean Government censor." The petitioner states that he is at the top of his field because only five out of 200 KBC supervisory team members received excellent member awards. The petitioner's "awards" in regard to his work for the KBC appear to amount to bonuses, offered as incentives, rather than any kind of significant prizes or awards. The petitioner has not even demonstrated that his work for KBC is compensated rather than unpaid volunteer work; the record does not justify the assertion that the 200 team members make up an entire field.

The petitioner has not shown that any employment opportunities even exist in the United States that involve comparable work, and thus he has not shown that he is coming to the US to continue work in the area. While television networks employ experts in "Standards and Practices" to oversee the content of programming, the petitioner has not shown that this is done by hundreds of volunteers as is the case in South Korea.

The petitioner repeats several previous claims but adds nothing of substance to the record regarding those claims. The petitioner also claims to have satisfied a previously unclaimed criterion:

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

Relating to this criterion, the petitioner states "I am pursuing B.S. (in Accounting) at Excelsior College. I earned 131.50 credits. I am waiting [for] the result of college algebra (3 credits). I can fulfill requirement for graduation. I exceed 120 credits. Then I can earn American B.S. degree. American degree is recognized nationally and internationally in South Korea." The petitioner offers no explanation as to how his still-incomplete efforts to secure a US bachelor's degree represent an original contribution of major significance in the field. He also fails to offer any explanation as to how this work relates, even tangentially, to his work as a "censor" for the KBC. As to his assertion that an "American degree is recognized nationally and internationally," such a degree is "recognized" to the extent that foreign educational authorities consider the degree to be

valid. It is groundless to assert that a US bachelor's degree is a form of "recognition" in the sense of acclaim, and even if it was, the petitioner did not even have such a degree when he filed the petition.

Upon thorough review of the record, we concur with the director that the petitioner has offered vague and conflicting information about what his field of endeavor is. While he appears to be an ambitious entrepreneur, the petitioner has not shown that he has reached the top of any of the fields described in the record (accounting, instruction, media production, government censorship, etc.). The petitioner has not established that he is a nationally or internationally acclaimed figure in any of the fields in which he has engaged.

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 in any particular field 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 any 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.