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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, DC 20536

[redacted]

JUL 18 2003

File: WAC-98-192-52547 Office: California Service Center Date:

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)

ON BEHALF OF PETITIONER:

[redacted]

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.

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.

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 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 Bureau regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a "writer, poet and teacher." 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, he claims, meets the following criteria.

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

Counsel asserts that the petitioner meets this criterion based on his receipt of the Harold Taylor Prize from the Academy of American Poets and another award from the University of Hawaii. The petitioner submits a University of Hawaii press release reporting that the petitioner won the [redacted] and [redacted] Award and an award certificate for the Harold Taylor Prize. The director found both awards to be local in nature. Counsel does not contest this finding on appeal and we concur with the director.

[redacted] a professor of English at the University of Hawaii and Editor of *Manoa*, asserts that the Stryker award is the English department's "highest award in writing." The information regarding the Harold Taylor Prize reveals that it was also a local award limited to students at the University of Hawaii. A letter from the Academy of American Poets states that the University of Hawaii notified them that the petitioner was a "co-winner" of the Harold Taylor Prize, suggesting that the Academy itself did not choose the awardees. In a letter from Professor [redacted] Director of the Creative Writing Program at the University of Hawaii to the *Kathmandu Post*, Professor Shapard asserts that the competition was open only to students at the university's 10 campuses and that poems were judged locally, by a faculty member of the university's English department.[1]

As both awards are local, the petitioner has not established that he meets this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Counsel asserts that the petitioner meets this criterion through his membership in the Kappa Tau Alpha National Journalism Honor Society. The petitioner submits a certificate verifying his membership, but no evidence of the membership requirements. We note that honor society membership awarded based on academic achievements does not meet this criterion as academic success is not an outstanding achievement indicative of national or international acclaim.

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[1] This information is supported by the National Academy of Poets' website, www.poets.org/awards.cfm. The website lists the national awards that it issues. The Harold Taylor award is not listed as a current or defunct national award. On a separate page, www.poets.org/awards/college.cfm, the website indicates that the academy sponsors college and university awards at 180 schools, one of which is the University of Hawaii. The page further indicates that only students registered at the participating school can compete for the award and that awardees are selected by the school itself. Thus, while sponsored by a national association, the Harold Taylor award is ultimately a local award for which the petitioner competed against students at the university, and not experienced experts nationwide.

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 submitted articles about himself in *CampusLife*, the *OHIOana*, *The Kathmandu Post*, and *The Rising Nepal*.

The article in *CampusLife* is not an article about the petitioner but, rather, an advertisement for his upcoming speech at the University of Hawaii. The article in *OHIOana* reports the petitioner's receipt of an Ohio University grant. Both publications are university-based, and the record does not reflect that either constitutes major media. The other two articles report the petitioner's receipt of the Harold Taylor Prize and appear to be based on a press release. Regardless, the petitioner has not submitted any evidence regarding the circulation of these papers. Thus, the petitioner has not established that they are major media.

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.

Counsel asserts that the petitioner meets this criterion through his work as an editor. The petitioner submitted a letter from the managing editor at the *Hawaii Review*, a University of Hawaii publication, indicating that the petitioner worked as co-fiction editor for that publication. The petitioner served as an associate editor for *Southeast Ohio*, a magazine published by the School of Journalism at Ohio University where the petitioner was a student. The petitioner also submitted a letter from the executive director of MD Publishing Company in Nepal asserting that the petitioner worked from 1994 to 1995 as the company's assistant editor in charge of the in-flight magazine for Royal Nepal Airlines. In 1993, the petitioner received an "editing assignment" to edit the "Guidelines for Environmental Planning in Nepal." As a tutor at Ohio University, the petitioner served as an "editor" for a student working on a nonfiction book.

In addition, we acknowledge that the petitioner taught courses at the Federation of Business and Professional Women in Nepal and at King Abdulaziz University in Saudi Arabia and, as a graduate student, has taught classes at Ohio University and the University of Hawaii.

[redacted] the Editor in Chief of the *Hawaii Review*, writes that he hired the petitioner as an editor "for his knowledge and prowess in the comprehension of quality fiction." The remainder of the letter, however, suggests that Mr [redacted] is a fellow student who has "worked with the petitioner" in a few writing classes. The record is silent regarding how the petitioner was selected for his other editing responsibilities. It is inherent to the position of editor to review the work submitted by journalists and contributing writers. The record does not reflect editing experience consistent with and indicative of national or international acclaim. More persuasive evidence might include evidence that the petitioner was selected as a chief editor for a major publishing company based on his national or international reputation as a writer, that the petitioner participated on a panel to review submissions for major literary awards, or similar rare judging honors.

Finally, evaluating one's students is inherent to the position of teaching. We cannot conclude that every graduate teaching assistant or even every instructor has national or international acclaim.

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

Counsel asserts that the petitioner meets this criterion through his "creative works in newspapers and some of the top literary journals in the United States." We acknowledge that the record contains numerous published news articles, editorials, short stories, and poems authored by the petitioner. Writing and getting published are inherent to the field of journalism and creative writing. An ability to earn a living in one's occupation is not evidence of national or international acclaim. Moreover, the record does not indicate that the petitioner has authored any *scholarly*, peer-reviewed articles in the field of journalism, creative writing, or poetry, as opposed to news stories, personal reflections and fiction.

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

On appeal, counsel claims for the first time that the petitioner meets this criterion based on the March 1, 1999 acceptance of one of his stories to appear in *The Best American Short Stories*. A book is not a showcase or artistic exhibition. We need not decide whether appearing in an anthology is comparable evidence to meet this criterion as the anthology had not been published as of the date of filing and cannot be considered evidence of the petitioner's eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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

Counsel initially asserted that the petitioner "performs a critical role as Fiction Editor for the literary journal, *Hawaii Review*." Counsel reiterates this claim on appeal. While the editor of the *Hawaii Review* asserts that the publication is prestigious, the record contains no evidence that this University of Hawaii publication has a significant national circulation. Thus, we cannot conclude that *Hawaii Review* has a distinguished reputation nationally.

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

Counsel stated in her initial brief that the petitioner meets this criterion based on his sale of articles, fiction, and poetry to nationally recognized journals and newspapers. Counsel further noted that the petitioner has written editorial reviews, has been requested to submit his work for review, and has a novel under review. Finally, counsel referenced the petitioner's awards as additional evidence to meet this criterion.

The petitioner submitted a letter from the Federation of Nepalese Chamber of Commerce and Industry advising him of his selection to write articles to be submitted for publication in four Nepalese publications, payment to be made only upon publication.

The petitioner is listed as a "contributing writer" for the College of Wooster in Wooster, Ohio, and, according to a letter from the Director of Sports Information, the petitioner worked as an intern there in 1987 and 1988.

In June 1998, [redacted] of the literary agent firm Sanford, Greenburger and Associates requested that the petitioner submit more work for submission to publications.

In addition to having work published in campus publications for universities where the petitioner was a student, the petitioner's articles and poems have also appeared in *NDQ*, *Chelsea*, *Indiana Review*, *The Athens Messenger*, the Himalayan magazine *Himal*, *The Sunday Post*, the complimentary *Travellers' Nepal*, *Taai News*, the *Nepal Travel Trade Journal*, *Rising Nepal*, and *Green Mountain Review*. His work was also considered for publication in *Milkweed Editions*.

In response to the director's request for additional documentation, the petitioner submitted evidence that other publications have accepted his poems after the date of filing. This documentation, however, is not evidence of the petitioner's eligibility at the time of filing. *See Matter of Katigbak, supra.*

Creative writing and journalism are not performing arts. Thus, this criterion does not appear applicable to the petitioner. More applicable to the petitioner's field would be the criterion set forth at 8 C.F.R. § 204.5(h)(3)(ix) regarding a high salary or remuneration. Yet, counsel does not claim, and the petitioner does not document, that his compensation for his published work is remarkable in comparison with other published authors. Even if we considered the commercial success of written work, such as a best selling novel, to be comparable evidence to commercial success in the performing arts, getting published in literary publications and serving as a correspondent is not evidence of commercial success indicative of national or international acclaim. Rather, it is evidence of the petitioner's ability to earn a living in his field.

Comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4)

Counsel asserts that the petitioner's reference letters constitute comparable evidence to the above criteria. As far as the letters address the ten criteria above, they have been considered. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3), however, reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

Finally, the letters are entirely from University of Hawaii and Ohio University faculty, students, former students, the petitioner's literary agent, and others who have worked directly with the

petitioner in Nepal and Saudi Arabia. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim. By definition, acclaim implies that the petitioner is known outside of his immediate circle of colleagues.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a writer, poet, or teacher 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 petitioner shows talent as a writer, poet and teacher, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.