

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

JUL 21 2003

File: [redacted] 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]

PUBLIC COPY

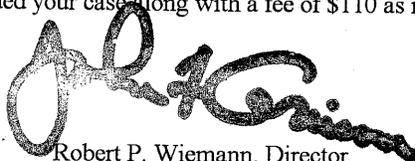
INSTRUCTIONS:

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 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 initially approved by the Director, Texas Service Center (TSC). The petitioner subsequently relocated to California, placing this proceeding under the jurisdiction of the California Service Center (CSC). On the basis of new information received and on further review of the record, the CSC director determined that the petitioner was not eligible for the benefit sought. Accordingly, the CSC director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and his reasons therefore, and ultimately revoked the approval of the petition on December 5, 2002. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

Because it is the CSC director's decision that is under review in this proceeding, the term "the director" in this decision shall refer to the CSC director.

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 revoked the TSC director's approval of the petition, having determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director concluded that the initial approval of the petition was in error.

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 pertinent regulations 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.

The petitioner is an animation artist working in television. Counsel states that the petitioner "is currently employed in the United States with Film Roman, the premier television animation studio, where he was recently assigned to work on the company's flagship, the multi-Emmy Award-winning primetime series 'The Simpsons.'" The petitioner has also worked on other series for Film Roman and Columbia TriStar Television, such as *Dilbert*.¹

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.

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

In a cover letter accompanying the initial filing, counsel states:

Throughout his career, [the petitioner's] talent has been recognized in the form of nationally and internationally recognized awards, grants and scholarships. He has twice received prestigious grants from the Ministerio de Cultura, an agency of the Spanish government, in recognition of his extraordinary achievements in the art of animation. These grants are given only to the top artists in the nation in all disciplines – not only animation – and they represent one of the highest honors available to Spanish artists.

To support the above claim, counsel cites "Exhibit 14." Exhibit 14 consists of untranslated documents in Spanish. The translations provided are only brief summaries of the articles, rather than complete translations. By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which 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).

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 states that the petitioner "is currently a member in good standing of Motion Picture Screen Cartoonists Local 839, the world's most prestigious union for animators, whose membership includes all of the industry's top talents." The petitioner has submitted evidence of his membership in the union, but nothing to show that the union requires outstanding achievements of its members. The fact that some of the union's members have, in fact, outstanding achievements to their credit does not in any way imply that those achievements were required by the organization. In general, it is not clear that trade unions are organizations which require outstanding achievements of their members.²

¹ Counsel refers to "the extraordinary success of 'Dilbert,'" but does not elaborate on the nature of that success. The petitioner provides no evidence regarding the ratings of the short-lived UPN series.

² The official web site of the above union, <http://www.mpsc839.org>, includes a "Frequently Asked Questions"

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.

Counsel has stated that the petitioner "has worked on prime time television series that have been the subject of numerous articles in professional journals and popular media." The plain wording of the above criterion requires "published materials about the alien." Published materials about projects on which the alien has worked, but which do not mention the alien, cannot satisfy this criterion. The director noted this deficiency in the notice of intent to revoke.

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

The record contains several witness letters which appear to have been intended to illustrate the nature of the petitioner's contributions to the field of animation. The witnesses are individuals who have worked with the petitioner on various television programs, rather than independent experts who know of the petitioner through the attention his work has attracted. The witnesses describe the petitioner in vague, general terms, for instance praising "his unique sense of design" and stating "[h]is expertise, professionalism, and work ethic won the admiration and respect from the entire production staff." The witnesses do not specifically identify any contribution or innovation by the petitioner that has affected the field of animation as a whole, nor do their letters show that the petitioner has earned significant recognition outside of the animation production companies that have employed him. The witnesses describe the petitioner as a background artist.

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

Counsel states that the petitioner's "participation as a conference speaker" fulfills this criterion. The record shows that in May 1999, the petitioner spoke about animation to groups in Madrid and Barcelona, Spain. The groups that the petitioner addressed were engaged in "personnel training" and "the temporary assignment of technical personnel." Private training courses and lectures about animation are not artistic exhibitions or showcases, and the record does not even demonstrate that the petitioner's work was "displayed" at these events.

From 1995 to 1998, the petitioner's films were screened at Character Animation Producers' Shows held at the California Institute of the Arts (CalArts). Materials in the record indicate that participation in these shows is limited to students in the CalArts character animation program. There is no indication that this student film festival is nationally or internationally significant, or that it differs significantly from similar exhibitions of student work conducted at countless art schools.

section. One such question is "How do I become a member?," the answer to which is "It's simple. You just get yourself hired by one of our contract studios in one of the job categories in our contract." (http://www.mpsc839.org/Info/Info_h/member.html.) Employment by a contract studio is not an outstanding achievement.

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

Counsel states that the petitioner's "extraordinary skills have made him a critical member of the animation team at Film Roman." Counsel also indicates that the petitioner previously held "a position at Columbia TriStar Television as an Assistant Animation Director." Film Roman's distinguished reputation is beyond dispute; its long-term involvement with *The Simpsons* alone secures its place as a major television animation studio. Columbia TriStar Television is also a recognized entity in the industry. In contention is whether the petitioner has performed in a leading or critical role for either of these entities.

Counsel asserts that the petitioner's "assignment to the creative team that produces . . . 'The Simpsons' is clear evidence of the critical role he plays within the organization." We do not accept counsel's claim that the petitioner's involvement with *The Simpsons* is *prima facie* evidence of a leading or critical role. Furthermore, it is not clear that the petitioner had done a significant amount of work on *The Simpsons* as of the petition's filing date. Counsel states that the petitioner's "next assignment, as a key member of the animation team that brings 'The Simpsons' to life, will continue his track record of working on commercially successful and critically acclaimed television series." The wording of this passage suggests that the petitioner had been assigned to work on *The Simpsons* but had not yet begun that work. [REDACTED] director of Human Resources at Film Roman, has stated that "approximately on July 11, 2000, [the petitioner] will be transferred to "The Simpsons."" The petition was filed less than two weeks later, on July 24, 2000. If the petitioner had indeed been transferred to *The Simpsons* by July 24, 2000, he had barely begun his work on that show and there is no indication that, during his first two weeks on the show, the petitioner had played a leading or critical role.

In a letter submitted after the filing of the petition [REDACTED] president of Film Roman, states that the petitioner "is currently serving in the critical role of Background Artist on . . . '*The Simpsons*.' . . . He has achieved the seemingly impossible task of keeping the program's background art fresh even after 12 years on the air. By so doing, he has played a critical role in the success of our company by keeping viewers and critics interested in the program [and] tuning in week after week." Certainly background art is integral to animated cartoons, but the petitioner has not persuasively shown that the continued success of *The Simpsons* is a result of fresh-looking background art rather than, for example, consistently high-quality scriptwriting. We are not persuaded that superior background art would suffice to retain audience and critical interest in an otherwise mundane or declining program.

On October 25, 2002, the director issued a notice of intent to revoke, which discussed many of the shortcomings listed above. In response, the petitioner, through counsel, did not directly respond to the director's specific observations. Instead, counsel simply contended that the petition "was indeed properly approved by [the Texas] Service Center." Counsel also stated:

Now, we add a significant new, positive development to the mix:

In your [notice], you quote 8 C.F.R. 204.5(h)(3), for the proposition that a petition for extraordinary ability status should be accompanied by evidence of a "major,

internationally recognized award...” **We are very pleased to inform you that last year, after the submission and approval of the I-140 petition, [the petitioner] was awarded an EMMY for his outstanding contributions to the art of animation.**

(Emphasis in original.) The petitioner submits a copy of a certificate from the Academy of Television Arts and Sciences, to be discussed in detail below. Counsel stated “[I]eaving aside the jurisdictional and *res adjudicata* issues, we believe it fair and reasonable to allow [the petitioner’s scheduled consular] interview to proceed.”

The director revoked the approval of the petition on December 5, 2002. The director acknowledged that the petitioner had participated in the creation of several films that had won awards of unexplained significance. The director found, however, that the petitioner has not shown that he had won any awards as an individual. The director stated that the petitioner’s involvement in an award-winning film does not establish that the beneficiary himself had won any award.

The director acknowledged the certificate that the petitioner received in recognition of his participation on *The Simpsons* (and which counsel has identified as an Emmy Award), but the director observed that the petitioner did not receive this certificate until well after the petition’s filing date. The director indicated that developments occurring after the petition’s filing date cannot retroactively establish eligibility as of the filing date. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), indicates that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The director acknowledged the petitioner’s membership in a trade union, but found that the petitioner has not established that the organization requires outstanding achievements of its members. The director also observed that the published materials about various television series do not mention the petitioner at all, and therefore the articles cannot be said to be “about the alien” as the regulation plainly requires.

The director noted that the witnesses offering letters on the petitioner’s behalf have worked with the petitioner, and thus the letters do not demonstrate that the petitioner has earned a reputation that extends significantly beyond his employers and co-workers. The director acknowledged that “numerous letters . . . mention the petitioner’s contributions to the industry’s most critically acclaimed and commercially successful animated television series,” but the director found that the letters do not establish that the petitioner performs in a leading or critical role for that series.

The director acknowledged the commercial success of Film Roman, the company that produces animation for *The Simpsons* and several other animated television series, but found that the petitioner has not established that he is responsible in any meaningful way for that commercial success.

On appeal, as in response to the notice of intent to revoke, counsel does not directly address any of the director’s specific findings with regard to the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Instead, counsel’s arguments on appeal focus primarily on the claim that the CSC director lacked jurisdiction to revoke the TSC director’s approval of the petition.

Counsel notes that the petition was approved by the TSC director and revoked by the CSC director after the petitioner had filed a Form I-485 adjustment application with the CSC. Counsel argues “[t]he purported revocation of the Petition by the California Service Center is void and of no force or effect as the **CSC lacked jurisdiction to revoke** the Petition; its jurisdictional authority was terminated as of the date of Petitioner’s withdrawal of his I-485 [adjustment application] in July, 2002.”

Counsel’s argument is without merit. The petition was originally filed under the jurisdiction of the TSC because the petitioner resided in Florida at the time of filing. Since that time, however, the petitioner has relocated to California, thus removing himself from the jurisdiction of the TSC and placing himself under the jurisdiction of the CSC. Alien files are routinely transferred when an alien moves between jurisdictions in this manner. The withdrawal of the petitioner’s adjustment application does not remove the CSC director’s jurisdiction over the petitioner because the petitioner continues to reside in California. Furthermore, 8 C.F.R. § 205.2(a) grants revocation authority to “[a]ny Service officer authorized to approve a petition under section 204 of the Act.” Because the CSC director has authority to approve I-140 employment-based petitions, the CSC director has the authority to revoke the approval of such petitions as well.

Counsel further argues:

The decision of the Texas Service Center was sound and barring fraud or some other extraordinary circumstance, was to be recognized by any other Service Center that might have a connection to this case. Certainly, under long settled legal principles of stare decisis and res judicata, the TSC’s decision deserves legal protection from collateral attack by the CSC.

Counsel offers no support for the claim that revocation is justified only in cases of “fraud or some other extraordinary circumstance.” 8 C.F.R. § 205.2(a) allows for revocation on notice “when the necessity for the revocation comes to the attention of this Service” (now the Bureau). The statute, at section 205 of the Act, requires only “good and sufficient cause” for revocation. Good and sufficient cause is not limited to “fraud or some other extraordinary circumstance.” There is “good and sufficient cause” within the meaning of section 205 of the Act to revoke approval of a visa petition if the evidence of record at the time of the decision, including any explanation or rebuttal submitted by the petitioner, warrants a denial based on the petitioner’s failure to meet his or her burden of proof. *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), indicates that good and sufficient cause for revocation exists if it is determined that the petition was approved in error, and that approval of a visa petition vests no rights in the beneficiary of the petition but is only a preliminary step in the visa or adjustment of status application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa or to adjustment of status.

The judicial principles of *res judicata* and *stare decisis* do not apply in this administrative proceeding. The TSC’s initial approval of the petition does not constitute a binding precedent on other Service Centers. The statute and regulations (cited above) clearly authorize the revocation of an approved petition, without limiting revocation authority to the Service Center that initially approved the petition.

Regarding the claimed Emmy Award discussed above, counsel states:

The granting of the EMMY to [the petitioner] individually confirmed the correctness of the Texas Service Center's approval of the petition. Petitioner . . . was qualified as "extraordinary" *in his* field when the Petition was filed – when the Academy awarded him its highest prize – the EMMY – it was the "icing on the cake."

When the petitioner first submitted the certificate in question, counsel discussed the certificate in terms of the regulation at 8 C.F.R. § 204.5(h)(3). Only later, on appeal, has counsel claimed that the certificate was intended not to establish eligibility, but to "confirm" a previous finding of eligibility. Counsel continues:

To quote from the award, it was given to [the petitioner] in recognition of his "**outstanding contribution**" to the field of animation. Certainly there are many people who contribute to the wildly successful show The Simpsons – and they are all quite good at what they do. But [the petitioner] got an EMMY in his own name – it was not an ensemble award – for **his** special, creative work on the show. . . . [T]he awarding of the EMMY was **confirmation** of his status and standing in his field, not – as the CSC would have it – to be viewed as a new isolated evidentiary factoid.

The director was correct in observing that the Emmy documentation dates from well after the filing of the petition, and therefore cannot retroactively establish prior eligibility. Aside from that, examination of the evidence of record fails to support, and at times flatly contradicts, counsel's statements above. The relevant certificate reads, in its entirety:

ACADEMY OF TELEVISION ARTS & SCIENCES
2000-2001 PRIMETIME EMMY AWARDS
Honors
[THE PETITIONER]
FOR CONTRIBUTIONS TO THE EMMY AWARD-WINNING PROGRAM
OUTSTANDING ANIMATED PROGRAM
(FOR PROGRAMMING LESS THAN ONE HOUR)
THE SIMPSONS
FOX

Counsel states "To quote from the award, it was given to [the petitioner] in recognition of his "**outstanding contribution**," but the certificate does not contain the phrase "outstanding contribution" or apply the adjective "outstanding" specifically to the petitioner or to his work. Rather, the certificate indicates that *The Simpsons* is an outstanding program, and that the petitioner made "contributions" to the show.

More importantly, the certificate does not state or imply that the petitioner actually won an Emmy Award. There are no markings of any kind on the certificate to indicate that the certificate itself is an Emmy Award, or a part thereof. The certificate does not specify the nature of the petitioner's "contribution" to the series, nor does it identify the category of the petitioner's claimed individual award. "Contributions to [an] Emmy-Award Winning Program" is not, itself, a category of Emmy

Award. The omission of this information is very significant, given that Emmy Awards are awarded by category. The only category specified on the certificate is "Outstanding Animated Program," which is very much an "ensemble award" despite counsel's claim to the contrary. Given this information, we cannot conclude that the petitioner won an Emmy Award, and counsel's repeated, emphatic claims to the contrary serve only to compromise the petitioner's overall credibility.³ Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho, supra*.

The petitioner has amply demonstrated that he has had a successful and productive career in television animation, and has participated in top shows, most notably *The Simpsons*. The petitioner has not, however, established that he as an individual has earned sustained national or international acclaim at the very top of his field. The petitioner's reputation is largely limited to his former professors and his current and former employers and co-workers. The acclaim accorded to a successful television series does not automatically demonstrate that every single individual who worked on that series enjoys a proportionate level of acclaim, and we cannot accept the implausible contention that *The Simpsons*, already an established series before the petitioner's involvement, owes its continued success to the petitioner's background art.

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 an animator 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 a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act. The petition should not have been approved and the director acted properly in revoking the erroneous approval.

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.

³ A searchable list of Emmy winners is available at the official web site of the Academy of Television Arts and Sciences at <http://www.emmys.tv/awards/>. A search for the petitioner's name returned no positive results. The site also shows detailed information regarding *The Simpsons'* 2001 Emmy Award for Outstanding Animated Program (for Programming Less Than One Hour). The award information lists producers and directors, 35 names in all, but the petitioner's name is not among those listed. The site indicates that Emmy Awards are available in categories such as Achievement in Animation, Achievement in Graphic Design, Individual Achievement in Animation and Individual Achievement in Art Direction, but the site's complete list of Emmy winners contains no record that the petitioner has ever won an Emmy in any category.