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Washington, DC 20536

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U.S. Citizenship and Immigration Services

[redacted]

**PUBLIC COPY**

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary

JAN 22 2004

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]

**Identifying data deleted to prevent unwarranted invasion of personal privacy**

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was originally approved by the Director, Vermont Service Center. On the basis of subsequent information, the director advised the petitioner of the director's intent to revoke the approval. The director subsequently revoked the approval of the petition. The petitioner appealed this decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the director, with instructions to certify the decision if adverse to the petitioner. The director has again revoked the approval of the petition, and certified the decision to the AAO for review. The decision will be affirmed.

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 petitioner entered the United States on June 29, 1997, and filed the petition on his own behalf on May 27, 1998. The director approved the petition on November 3, 1998, but revoked that approval on September 28, 2001, on the basis of evidence that the petitioner was no longer earning a living in the field of endeavor (acting and announcing) in which he claimed extraordinary ability. Section 203(b)(1)(A)(ii) requires "the alien seeks to enter the United States to continue work in the area of extraordinary ability," a requirement reflected in the regulations at 8 C.F.R. § 204.5(h)(4).

The AAO remanded the matter on September 17, 2002, because the director had failed to take into account materials that the petitioner had submitted in response to the director's July 16, 2001 notice of intent to revoke. On November 13, 2002, the director issued a new notice of intent to revoke. The petitioner responded with a submission containing 109 exhibits. The director again revoked the approval of the petition on June 19, 2003, and certified the decision to the AAO. The director allowed the petitioner 30 days to supplement the record in response to this latest decision, but the record contains no further submission from the petitioner. The AAO therefore considers the record to be complete and shall render a decision based on the materials now in the record of proceeding.

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.

Regulations at 8 C.F.R. § 204.5(h)(3) implement and expand upon the above statutory language.

The statutory and regulatory standard for eligibility is *sustained* national or international acclaim. As noted above, the statute and regulations both demonstrate that eligibility is contingent on continued work in the field of endeavor. During the adjudication of the petitioner's application to adjust status, the director discovered

that the petitioner had been working part-time "as a bus boy and waiter." The director asserted that the petitioner's adjustment application included "no evidence of any activity" as an actor subsequent to the petitioner's 1997 arrival in the United States. The petitioner's tax documents, submitted with the adjustment application, showed no income from non-restaurant sources.

Of the 109 exhibits included with the petitioner's most recent submission, 81 concern the petitioner's earlier work in Nepal. Because the issue in contention regards the petitioner's work in the United States since 1997, we need not discuss materials pertaining to the petitioner's work in Nepal prior to that time. The director, in the latest decision, stated "[a]t the time of his departure from Nepal in 1997, the beneficiary was a popular, well-known, and respected actor in films. And at that time, 7 [sic] years ago, he appears to have been an actor with extraordinary ability in the arts. . . . The problem area continues to be the beneficiary's activities and work history from June 1997 to present, since his arrival in the United States."

The petitioner's most recent submission includes a resume of the petitioner's acting and announcing work in the United States. These activities include:

- Actor in a Nepali film, *Pardesh*, produced in New York in 2001, and two plays produced in 2003;
- Organizer/participant in *Deusi*, a "cultural program in Virginia and Maryland";
- Guest anchor for Sagarmatha TV, Washington, D.C., and Nepal Vision, New York;
- Master of ceremonies for various Nepali cultural programs;
- Judge at talent shows and poetry competitions, and so on.

The petitioner is also a founder, columnist and guest editor of *America Darpan*, a bilingual magazine published in the United States. The petitioner has not explained how his work in publishing demonstrates continued work as an actor/announcer. The same can be said of evidence that the petitioner served for a number of years as cultural director for the Association of Nepalis in the Americas.

The evidence from 1997 onwards shows that the petitioner continues to enjoy some degree of recognition within Nepali expatriate communities in the United States and elsewhere (such as in Australia), but much of this evidence concerns one-time occurrences such as acting as master of ceremonies at cultural events.

The petitioner seeks an employment-based immigration benefit that requires his continued work in the area of extraordinary ability. Occasional paid employment in acting, when the petitioner's main source of income is in food service, cannot meet this standard. Several exhibits say nothing about payment. The petitioner received $500 for participating in "Friendship Night" in 2001, and he was "financially rewarded" with an unspecified amount for his work with the Association of Nepalis in the Americas. A 2001 contract indicates that the petitioner was to receive $31,000 for his role in the film *Pardesh*.

An undated letter inquires whether the petitioner would be available for 16 days of filming in Nepal. There is no indication as to whether the filming took place. Furthermore, the statute requires that "the alien seeks to enter the United States to continue work in the area," demonstrating that the work should, for the most part, take place in the United States. Nearly all of the petitioner's documented acting work in the United States took place after the director initially expressed concern regarding the apparent lack of such work. The timing of this work is consistent with such work being undertaken primarily to alleviate the director's concerns. Other letters refer to the petitioner's invited presence at screenings of his earlier films, but screenings of existing movies do not constitute continued work in the field.

Tsewang N. Sherpalama, president of the United Sherpa Association, states that the organization "is looking forward to hav[ing the petitioner] work for this organization in the near future as a permanent employee," engaged "to direct and manage a Nepalese cultural program to honor Sir Edmund Hilary, who has been so kind to the Sherpa people." Rajendra Oli, president of the America-Nepal Society, states that the petitioner's "acting talent is an asset to the Nepali community residing here in the United States," and that he "will be in much demand in the growing Nepali community in the United States." Ram Kharel, CEO and producer of Sagarmatha Television states that several upcoming projects "may require someone of [the petitioner's] abilities." Pamela Scott states that the petitioner "is an active member of the Aching Dogs Theatre Company." These and other letters demonstrate that the petitioner has, in recent years, been more active in his acting/announcing career, but the record contains few documents showing how the petitioner has actually earned his living since 1998. The petitioner's only significant documented compensation during his six years in the United States is $31,000 for appearing in a "feature film," a sum that is not readily consistent with sustained national acclaim among film actors in the United States. Despite the significant length of time that the petitioner has resided in the United States, his reputation continues to be largely confined to the Nepali expatriate community. Recent published materials appear in the record in translated form; there is no evidence that the petitioner has attracted significant English-language media coverage in his several years in the United States. The petitioner has been active in cultural organizations, as well as organizations seeking to promote democracy and human rights in his native Nepal. These organizations have worthy goals, but they do not address the grounds that the director cited for revoking the approval of the petition.

In the latest decision, the director stated that the petitioner's acting work in the United States has been "only occasional" and largely "voluntary work, or recreational work, or something other than the means by which the beneficiary is earning his living in the United States." The director found that the materials in the record "do not appear to show that [the petitioner is] working primarily as an actor or announcer." The petitioner has not rebutted or responded to these most recent findings.

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 that the alien will continue to work in the field. Occasional employment and volunteer/amateur activities cannot suffice, because if the alien is primarily supporting himself through completely unrelated employment, then it cannot be said that the alien has entered the United States to continue work in the area of extraordinary ability. The available evidence shows that the petitioner's primary livelihood in the United States has been outside of acting and announcing, notwithstanding abrupt, repeated increases in the petitioner's acting work immediately after the director has contacted the petitioner regarding this situation. 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 director's decision will be affirmed.

**ORDER:** The director's decision is affirmed. The approval of the petition is revoked.