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U.S. Citizenship and Immigration Services

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JUN 01 2004

[redacted]

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

IN RE: Petitioner: [redacted]
Beneficiary:

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 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.

Elizabeth O'Brie
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 Citizenship and Immigration Services (CIS) 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 sound re-recording engineer. 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). Counsel asserts that the petitioner won a Daytime Emmy Award and that this award is a one-time achievement. As will be discussed below, the petitioner was only nominated in his category, although the show on which he worked did win an Emmy in another category. Regardless, the Emmy Awards recognize excellence in U.S. television only. Thus, an Emmy Award is not an internationally 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.*

The petitioner was nominated for a 1997-1998 Daytime Emmy in Sound Mixing – Special Class for his work on the animated PBS series Arthur. As noted by the director, the record contains no evidence that the petitioner won this award. Rather, the petitioner received a certificate from the National Academy of Television Arts and Sciences that "honors" the petitioner for "contributing to the Emmy Award-winning program Arthur." On appeal, the petitioner submits a letter from Daytime Emmy Awards Manager, asserting that won "Outstanding Children's Animated Program" in 1997, and that the petitioner's contribution as re-recording sound mixer "was crucial to winning the award." Mr does not indicate that the petitioner was one of the named winners of the award. Thus, while every technician contributes to an award-winning show, we cannot conclude that every technician is a recipient of the award even when not named as a winner. We conclude that the record contains no evidence that the petitioner was a named recipient of a Daytime Emmy Award in any category. That said, we acknowledge that the petitioner was nominated in the Sound Mixing – Special Class category. Clearly, a nomination does not carry the same weight as actually winning the award. Nevertheless, given the national prestige of the award and the limited pool of nominees, we find that the nomination deserves some consideration.

The petitioner also submitted an incomplete and uncertified translation of an article in the October 7, 1998 issue of *CINETvideo* indicating that Arthur, a collaboration between Cinar Films and WGBH Boston, won Best Sound Overall at the Canadian Cinema and Television Academy's 7th Gemini Awards. The director concluded that this news article was insufficient to establish that the petitioner personally won this award. The director also noted the lack of evidence regarding the significance of this award. On appeal, counsel asserts that the Canadian Cinema and Television Academy does not name individuals for awards. Counsel references a memo from a music supervisor at Cinar, as evidence that the petitioner received the Gemini Award. Mr does not confirm that he accepted the award, as claimed by counsel, or even mention the Gemini Awards at all. Rather, Mr confirms that the petitioner worked with him on Arthur and "excels in all facets of the job." This criterion requires *the alien's receipt* of an award or prize. We concur with the director that the record remains absent evidence that the petitioner personally received this award.

Even if we found that the petitioner meets this criterion, it is only one criterion. For the reasons discussed below, the petitioner fall far short of meeting any other criterion. Moreover, the petitioner was nominated in 1997, six years prior to the date the petition was filed. Thus, the petitioner would need to demonstrate evidence of acclaim more proximate to the date of filing in order to establish sustained national or international acclaim.

*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 petitioner submitted evidence of his membership in the Cinema Audio Society (C.A.S.) and the bylaws of the society. Those bylaws provide, in pertinent part, the following admission requirements:

A. As a minimum to qualify for active membership, an applicant must have had no less than five (5) years experience as a professional sound mixer in motion pictures or television. Also, the applicant must produce proof of said period of time, in the form of a list of Screen Credits. The list shall be verified by the Board of Directors of the Cinema Audio Society. Upon their findings, the applicant shall pass or fail this requirement.

B. An applicant must be sponsored by two (2) active members in good standing.

The applicant must then appear before the Board and be voted in by a two-thirds majority without written objection. According Vice President of the Society, the society has 498 members and 40 percent of applicants are typically denied full membership. The director acknowledged this information and concluded that the evidence did not establish that the society requires outstanding achievements of its members. On appeal, counsel asserts that screen credits constitute "a notable accomplishment." We cannot conclude that five years of experience in one's field and the recommendation of two current members are outstanding achievements. Counsel does not explain why screen credits, evidence merely that the petitioner has been able to work in his field, are "notable." Moreover, even if it is "notable" to work in one's field at the level that one receives screen credit, we are not convinced that "notable" equates to "outstanding."

As noted by counsel, the petitioner is also a member of the Motion Pictures Editors Guild, a local of IATSE, a large union with 6,000 members. The record does not establish that IATSE requires outstanding achievements of its members. Rather, its own statement that it is a large labor union and boasts 6,000 members suggests that it is not exclusive.

*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.*

The director accurately concluded that the petitioner did not initially claim to meet this criterion or submit any evidence relating to it. On appeal, counsel now claims that the petitioner meets this criterion as a voting member of the Academy of Television Arts and Sciences and as a member of C.A.S. The petitioner submits a February 17, 2004 letter certifying that the petitioner is a voting member of the Academy of Television Arts and Sciences allowing him to vote for Primetime and Daytime Emmy competitions and his ballot for the C.A.S. sound mixing awards listing the nominees.

The record does not establish that the petitioner had already participated in judging Emmy or C.A.S. awards prior to the date of filing. Regardless, it appears that the petitioner is eligible only to take part in the balloting after the nominees are already selected. This eligibility is conferred on all members. More persuasive would be participation in the elite group that selects the nominees.

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

As stated by the director, the petitioner submitted several letters from colleagues attesting to his general abilities. The director concluded that these letters could not demonstrate that the petitioner's contributions to the field have been widely recognized in the field. On appeal, counsel references nine letters that are allegedly not from the petitioner's close colleagues. Counsel quotes these letters as describing the petitioner as creative, accomplished, collaborative, in possession of unique music and language skills, having an unusual blend of skills and talent, qualified, and a valuable asset. None of these attributes address the heart of this criterion, that the petitioner must have made a contribution of major significance to the field. Being skilled may be important in succeeding, but it is not a contribution to the field in general. Specifically, it does not change the field or set a goal to which others in the field aspire.

The letters themselves provide little discussion of substantive and identifiable contributions to the field, despite counsel's attempts to edit the letters. For example, counsel quotes as writing that the petitioner's work "exceeded expectations . . . his energy, and sound judgment . . . contributed substantively. . . ." (Ellipses in counsel's appellate brief.) Ms tually states that the petitioner's "energy, and sound judgement [sic] of priorities contributed substantively to an improved working climate." This statement does not refer to any alleged contributions to the field of sound mixing Senior Vice President at Ascent Media, praises the petitioner's work for its subsidiary, Todd-AO Studios, and concludes that the petitioner's "contributions to the US film industry will continue to benefited [sic] the cinematic and television community." He does not, however, identify a specific contribution to the industry made by the petitioner.

The only letter that implies that the petitioner has contributed anything new to the field is a letter from Jennifer Alleyn, Director of *Le regard the Delphine*. She states:

> The film, mainly set in a hospital, needed a particular treatment of the sound. I had imagined a soundtrack composed with different "beeps" and sounds of medical machinery. [The petitioner], who has studied Piano for over 11 years, immediately understood the idea and contributed his musical ear to the project by creating a new form of music for specific scenes. His sense of rhythm can now be felt all through the film and I was thrilled by his work.

The record, however, contains no confirmation that the soundtrack of this film has been influential in the field of sound mixing, inspiring this "new form of music" in other films or television productions as well.

It remains, the record is absent any documentation suggesting that the petitioner has made a contribution of major significance to the field, such as developing a new sound mixing technique that has been widely influential beyond those who have worked with him.

*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 through his work on several television shows and films. We find that this criterion is applicable to visual artists. Thus, it is not clear that this criterion applies to the petitioner's field. Even when considering evidence under this criterion for visual artists, we consistently evaluate the exhibitions as to whether they represent routine rentals of gallery space to sell one's work or more exclusive artistic showcases.

We cannot conclude that every film and television show is an artistic exhibition or showcase. While the petitioner submits a letter from Producer and Director Claude Demers asserting that the petitioner solved what were thought to be insurmountable problems with sound for "Discovery of Love," the record does not support counsel's assertion that this film was nominated for Best Film at the World Film Festival in Montreal in 2000. The record also lacks evidence that establishes the significance of this festival. Even so, the petitioner has not established that the film festival was specifically an exhibition of sound mixing or that the film was selected for presentation at the festival in order to display the petitioner's work.

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

Once again, on appeal, counsel claims for the first time that the petitioner meets this criterion. As stated above, the record includes several letters from producers, directors, and supervisors praising the petitioner's skills. When considering evidence submitted to meet this criterion, however, the issue is not how the petitioner served in the position, but the nature of the positions itself and the national reputation of the company for which he served in that position. The record contains little information about the organizational structure of the companies that have employed the petitioner. Thus, the petitioner has not established that every re-recording engineer at these companies plays a leading or critical role beyond the obvious fact that these companies needed to employ competent re-recording engineers to perform the sound services they provide to their clients.

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

As with many of the criteria, counsel claims for the first time on appeal that the petitioner meets this criterion. Counsel states:

> There is a letter from [redacted] former Senior Vice President, [redacted] confirming a job offer at $51.85 an hour which represents the minimum compensation. (Adding benefits, would take his salary to $64 an hour). There is also the letter from Mr. [redacted] the current Senior Vice President of Ascent Media's Creative Sound Services [redacted] confirming that he has continuing employment upon visa issuance.

The plain language of this criterion requires that the petitioner demonstrate a salary or other remuneration that is significantly high in relation to others in the field. As stated by counsel, the letter from M[redacted]icates only that the petitioner will be paid not less than the minimum compensation under existing guild agreements for his guild job classification. The letter does not indicate that he will receive benefits that will make his total remuneration package comparable with the highest wages earned by the most experienced experts in the field. There is simply no way to construe this letter as establishing that, at the time of filing, the petitioner had already earned a high salary or significantly high remuneration for his services. Moreover, merely continuing to offer the petitioner a job does not establish his past (or future) significantly high remuneration.

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 re-recording engineer 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 re-recording engineer, 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.