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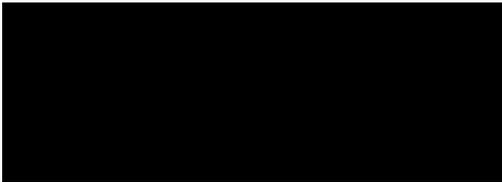
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FILE: EAC 03 135 52890 Office: VERMONT SERVICE CENTER Date: **SEP 07 2005**

IN RE: Petitioner: 
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:



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.

Maiphuson

RP Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 in the arts. 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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on March 27, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an artist and a writer. The statute and regulations require the petitioner's acclaim to be *sustained*. The record reflects that the petitioner has been residing in the United States since November 1999. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation in this country.

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 pertaining to 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 submitted only the English language translations of three awards presented to him by the Sitaram Academy (1996), the Youth Society Reform Services Center (undated), and the Nepal Society of Humorists and Cartoonists (1998). In addition, the petitioner submitted letters of support and newspaper articles referencing the preceding awards and other awards, but there is no first-hand evidence of the actual awards themselves (such as the original award certificates in Nepalese). Furthermore, the record contains no evidence showing that the petitioner has won any nationally recognized awards subsequent to his arrival in the United States in 1999. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned in Nepal.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted several brief articles published in Nepal in the late 1990's. In several instances, the petitioner was clearly not the primary subject of the published material. If an article only briefly mentions the petitioner, then it fails to demonstrate his individual acclaim. Many of the articles were not accompanied by complete English language translations. Pursuant to 8 C.F.R. § 103.2(b)(3), however, any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that 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.

One of the articles published in Nepal, dated "05-11-99" and entitled "Solo Art Exhibition of Moti Pearl," states: "[The petitioner's] work based on Nepali culture, life style and nature is brilliant but is yet to receive recognition from all quarters. I am pretty optimistic that in the long run he will accomplish something not every artist has been able to do." This observation that the petitioner has a promising future does not establish eligibility, for the regulations clearly call for evidence that the petitioner already enjoys major success and widespread

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

acclaim. The petitioner in this case seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

In 2002, brief articles about the display of the petitioner's work at the Artists' Museum in Washington, D.C. appeared in *The Himalayan Times*, the *Nepali Post*, *Yugasambad Weekly* and the *Nepal Post Overseas*. It has not been shown that any of these publications have a substantial national readership in Nepal or the United States (there is no quantitative evidence regarding their volume of distribution).

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

The petitioner submitted brief letters of support from two of his personal acquaintances who hold banking and accounting positions, two officials at the Royal Nepalese Embassy, and a Former Chancellor of the Royal Nepal Academy.

██████████ Third Secretary, Royal Nepalese Embassy, states: "[The petitioner's] accomplishments to date have been very promising and we can expect a lot from him in the future."

The letters of support describe the petitioner as an accomplished painter and cartoonist, but they offer no information as to how the petitioner's individual contributions have significantly influenced the greater artistic community. For example, the petitioner's artwork has not been shown to have greatly influenced other successful Nepali or American painters. The issue here is not the skill level, experience, or quality of the petitioner's artwork, but, rather, whether his past endeavors would qualify as a contribution of major significance in the arts. In this case, there is no evidence showing the extent of the petitioner's influence on others in his field.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential or acclaimed at the national or international level, we cannot conclude that he meets this criterion.

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

The petitioner submitted evidence showing that he exhibited his artwork at the Artists' Museum in Washington, D.C, and in Kathmandu at the Nepal Art Council Gallery and NAFA Hall. It must be stressed, however, that an artist does not satisfy this criterion simply by arranging for his work to be displayed; otherwise most, if not all, visual artists would satisfy this criterion, rendering it meaningless. In this case, the petitioner has not submitted evidence showing that his works have been displayed outside of Kathmandu or Washington, D.C. Nor is there any indication that the petitioner's works have been featured along side those of artists who enjoy national or international reputations. Furthermore, the petitioner has not demonstrated his regular participation in shows or exhibitions at major venues devoted to the display of his work alone. The evidence presented by the petitioner is not sufficient to show that the petitioner's exhibitions enjoy a

national reputation or that participation in his exhibitions was a privilege extended to only top national or international artists.

Review of the record does not establish that the petitioner has distinguished himself as an artist or writer 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 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.