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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 30 2006

WAC 04 014 52369

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability” pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the beneficiary’s requisite national or international acclaim.

On appeal, counsel asserts that the director wrongly narrowed the beneficiary’s field to his current occupation and ignored large amounts of evidence. While not all of counsel’s assertions are persuasive, we find that the petitioner has established the beneficiary’s eligibility for the classification sought.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in regulations at 8 C.F.R. § 204.5(h)(3). The relevant

criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

According to Part 6 of the petition, this petition seeks to classify the beneficiary as an alien with extraordinary ability as an executive director for a nonprofit organization that produces a film festival in several major U.S. cities. On appeal, counsel asserts that the director erred in considering this occupation as the beneficiary's only field and, thus, not considering the beneficiary's past history as a musician. We concur with the director that the beneficiary's past accomplishments as a musician are not relevant to these proceedings. The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The beneficiary does not seek to continue working as a musician. Rather, he seeks to work as an executive director of his foundation. A musician and an executive director of a nonprofit foundation, even one involved in promoting the arts, rely on very different sets of basic skills. Thus, we will only consider the beneficiary's accomplishments as a film festival producer.

The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary 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 initially submitted the beneficiary's 2002 Golden Satellite "Special Award" from the International Press Academy. In response to the director's request for additional evidence, the petitioner submitted a 1997 Third Place Key Art Award. The award was issued to the advertising firm that designed posters for the beneficiary's film festival. The petitioner also submitted an Israeli award that postdates the filing of the petition.

The director concluded that the petitioner had not demonstrated the significance of these awards or that the beneficiary received them. The director then addressed major internationally recognized awards although the petitioner never claimed that the beneficiary had such an award. Finally, the director concluded that the beneficiary's awards were local.

On appeal, counsel asserts that the beneficiary is so identified with the petitioner that any awards won by the petitioner should be considered as the beneficiary's awards. Counsel further asserts that local awards from a major source of films, Hollywood, should not be considered local in scope.

We concur with the director that the beneficiary cannot be credited with the marketing award issued to the firm that produced the posters for his film festival. Moreover, the Israeli award was issued after the date of filing and, thus, cannot be considered evidence of the beneficiary's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The director's other concerns, however, do not appear to relate to all of the awards in the record. Specifically, the Golden Satellite Award was issued to the beneficiary, not the petitioner. As such, the beneficiary is clearly the recipient of this award. As this award was issued by the International Press Academy, there is no obvious indication that the award is "local" such that competition is less than nationwide. Nevertheless, the petitioner failed to submit evidence that the award is nationally *recognized*. Specifically, the record lacks evidence that the announcement of the nominations and final awardees garner the type of media attention that nationally recognized entertainment awards such as the Emmy's or Golden Globes receive.

While the petitioner has not established that the beneficiary meets this criterion, the Golden Satellite Award is notable and compliments the remaining evidence of the beneficiary's eligibility.

*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 copious evidence of press coverage, much of which features the beneficiary's film festival. That said, the record contains articles that do primarily feature the beneficiary in *JUF News*, *Forward*, the *Los Angeles Times*, *The New York Times*, *The Chicago Jewish News*, *The Jewish Journal of Greater Los Angeles*, *Newsday* and *The Jerusalem Post*.

The director acknowledged this evidence and stated:

An alien cannot satisfy the criterion by establishing that his or her name has appeared in print. Citation of the work of others is expected and routine in the fields of sciences, arts, education, business or athletics. The petitioner does not establish national or international acclaim just by demonstrating that the beneficiary's work has been cited in print.

Counsel does not directly address this criterion on appeal. The director's analysis, however, is not persuasive. The published materials submitted are not mere citations of the beneficiary. In fact, the **beneficiary has not authored any articles that others might cite**. Rather, the petitioner submitted independent journalistic coverage of the beneficiary individually. While not all of these articles appear in newspapers demonstrated to be major media, we do not question that the *Los Angeles Times* and *The New York Times* are major media. Moreover, several of the articles that are about the beneficiary's film festival feature large sections about the beneficiary himself. We do not agree with the director that this type of media coverage is "expected and routine" in the beneficiary's field.

In light of the above, the petitioner has established that the beneficiary meets this criterion.

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

The director stated merely that the “evidence submitted is insufficient to meet this criterion.” We find more discussion of this criterion is warranted. The beneficiary is the founder and executive director of a series of film festivals that has expanded significantly during its 19 years prior to the date of filing. The festivals garner significant media attention. The former Prime Minister of Israel, Shimon Peres, not only issued letters of welcome for the festivals, but attended at least two of them. The festival co-chairs include David Geffen, Michael Ovitz and Ted Turner. Steven Spielberg’s company, Amblin Entertainment, is one of the sponsors. While the petitioner did not submit sufficient evidence to establish the full significance of his Golden Satellite Award, it was issued for “Outstanding Devotion and Commitment in Promoting the Best of Israeli Films through the Israel Film Festival in the United States.” Thus, the award is another factor to consider under this criterion.

Given the long-term success and growth of the film festival founded by the petitioner and the media attention the festival achieves, we are satisfied that he meets this criterion.

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

The beneficiary is the founder and executive director of the petitioning nonprofit organization. The petitioner sponsors the Israeli Film Festival, in its 19<sup>th</sup> year when the petition was filed. At that time, the festival garnered significant media coverage in the major media and took place in Los Angeles, Chicago, Miami and New York.

The director concluded that the reference letters submitted did not establish the beneficiary’s extraordinary ability in his occupation. On appeal, counsel asserts that the evidence most strongly supports this criterion and that the director erred in dismissing such evidence.

We find that the director’s analysis does not relate to this criterion. At issue for this criterion are the role the beneficiary plays for an organization and the reputation enjoyed by that organization. The director did not discuss either factor. Clearly the founder and executive director for a nonprofit organization plays a leading or critical role for that organization. Moreover, the significant media coverage garnered by the film festivals adequately establishes the distinguished reputation enjoyed by the petitioner nationally. As such, the petitioner has established that the beneficiary meets this criterion.

In review, while not all of the petitioner’s evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the

United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.