



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] LIN 06 152 51742

Office: NEBRASKA SERVICE CENTER

Date: MAY 18

IN RE: Petitioner: [Redacted]
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]

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.

Maura Deedrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 classification 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), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the requisite national or international acclaim.

On appeal, counsel submits a brief and additional evidence. As will be discussed below, at issue is whether the petitioner meets at least three of ten regulatory criteria. On appeal, counsel is responsive to the director’s concerns regarding the significance of the petitioner’s awards. Counsel’s response to the director’s concerns regarding the significance of the petitioner’s memberships and the circulation of the published material that is primarily *about the petitioner*, however, is insufficient. Despite this failure, we are satisfied that the evidence serves to meet two additional criteria not claimed by prior counsel or counsel or discussed by the director.

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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 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 screenwriter and film director. 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.

As acknowledged by the director, the petitioner is the personal recipient of numerous directing and screenwriting awards, including the Asian Film Award at the Tokyo International Film Festival, the Best Screenplay prize at the Torino International Film Festival and the National Geographic Best Indigenous Film at the Santa Fe Film Festival. The record also includes film awards from entities in Kazakhstan. In response to the director's request for additional evidence, the petitioner submitted uncorroborated statements about the significance of each award. On appeal, the petitioner submits evidence that the Tokyo International Film Festival is one of the twelve largest film festivals in the world. Given the evidence in the aggregate, we are satisfied that the petitioner meets this criterion.

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

While the petitioner has never claimed to meet this criterion and the director did not address it, the record contains evidence that the petitioner's films have been screened at major film festivals on several continents, including the festivals mentioned above and the Palm Springs International Film Festival founded by [REDACTED] and at the Museum of Modern Art in New York. We are satisfied that the number and quality of these screenings serve to meet this criterion.

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

Similarly, the petitioner did not claim to meet this criterion and the director did not address it. Nevertheless, the petitioner has produced, authored the screenplay of and directed several movies, some of which have been screened and recognized at major film festivals on several continents. The petitioner was commissioned to direct his screenplay "Hunter" in Kazakhstan by the Japanese company [REDACTED]. This film won awards at major film festivals. We are satisfied that the petitioner meets this criterion.

Finally, our finding that the petitioner is eligible based on meeting three criteria is consistent with a review of the evidence in the aggregate. Beyond the evidence discussed above, the petitioner is an

academician of “NIKA,” the Russian Academy of Cinema Arts, although we note that NIKA includes at least 500 academicians and counsel’s statements regarding the requirements for membership are not corroborated in the record. The petitioner was interviewed in [REDACTED] and is the subject of additional articles in papers such as [REDACTED]. We note this evidence despite the fact that it cannot be considered under 8 C.F.R. § 204.5(h)(3)(iii) because not all of the translations are certified pursuant to 8 C.F.R. § 103.2(b)(3) and because the record lacks evidence that these publications constitute major media. Nevertheless, the fact that the petitioner has been covered, beyond simple reviews of his films, in several publications is consistent with our finding of eligibility. While film reviews are not primarily about the director, we acknowledge that the petitioner’s films have been reviewed in such prestigious publications as the [REDACTED]. In addition, we acknowledge the submission of letters of support from the Curator of the Department of Film and Media at the Museum of Modern Art, Vice President for Media Programs at the National Geographic Society, an author of five books on Russian cinematography and the Director of the [REDACTED] International Film Festival.

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.