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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

FEB 19 2008

SRC 06 197 53495

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.

A handwritten signature in black ink that reads "Maui Plerson".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, 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 sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a personal statement asserting that the director did not consider the evidence or explain why it was insufficient to meet the regulatory criteria for the classification sought. While the petitioner is correct that the director’s decision did not explicitly explain why the evidence was insufficient to meet the regulatory criteria for which it was submitted, the most expedient remedy for that failure is to provide that analysis on appeal. For the reasons discussed below, we find that the petitioner has not established that he meets at least three of the regulatory criteria. Thus, based on this specific finding under the pertinent regulation, we uphold the director’s general conclusion that the petitioner would not substantially benefit the United States.

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 into 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 (Nov. 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 musician. 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 that, he claims, meets the following criteria.¹

Published material 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 the following articles:

1. A June 2005 article reporting the selection of the documentary "In Search of a Song" (which follows the petitioner and two others on their search for the origin of a folk song) to be screened at the 9th RAI International Festival of Ethnographic Films 2005 at Oxford. The article was posted on www.katipuronline.com.
2. A July 2005 article posted on www.uefagames.com, "Europe's Football Website," mentioning the petitioner's participation in a Nepalese soccer game between the country's models and singers.
3. A February 2005 article on a music charity event in Nepal where Exit, the petitioner's band, performed. This last article was posted on *Wave* magazine's website.
4. A June 2005 article posted on www.kantipuronline.com reporting on the Inter-college Musical Contest in which 16 bands from all over Nepal competed. The petitioner is named as one of the judges.
5. An article from 2005 about the petitioner in *WOW Music*.
6. A brief news note about the band Revival in the February 2005 issue of *Wave*.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

7. Articles about the band X-IT in the June 2005 issue of *Wave* and the December-January 2006 issue of *Nepali Aawaz*, a Nepali publication based in New York.
8. A photo of the petitioner as one of the “Pioneers of Nepali Pop n Band Music” in the August 2005 edition of *The Himalayan*; and
9. Several reviews of the petitioner’s bands, review of the documentary in which he appeared and an article about a charity event he organized.

In response to the director’s request for additional evidence, the petitioner submitted evidence that the *Kantipur National Daily* is Nepal’s largest newspaper. In addition, Kashish Das Shrestha, Editor of *Wave*, asserts that the magazine has a distribution of 100,000 per month and an online readership of an additional 25,000 per month. Mr. Shrestha further asserts that the magazine is distributed internationally in India, Hong Kong, Australia, the United Kingdom and the United States.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about” the petitioner. The only article that can be considered to be about the petitioner is the 2005 article in *WOW Music*. Initially, the petitioner described this publication as “a very popular music magazine.” Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The petitioner did not submit any evidence of the distribution of *WOW Music* or other evidence indicative of the magazine’s major media status.

Finally, we acknowledge that the petitioner appeared in a documentary, which could be considered comparable to published material. The published material, however, must not only be about the alien, but also relate to the alien’s area of expertise. 8 C.F.R. § 204.5(h)(3)(i). The documentary, however, was about the search of a journalist, a singer and the petitioner for the origins of a Nepali folk song. It is not a documentary about the petitioner’s music career. Thus, this documentary cannot be considered about the petitioner relating to his work as a musician.

In light of the above, the petitioner has not established that he meets this criterion.

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.

As stated above, the petitioner is named as a judge in the article posted on www.kantipuronline.com reporting on the Inter-college Musical Contest in which 16 bands from all over Nepal competed. The petitioner also submitted a letter from Bishnu Raj Adhikari, Principal of Kathmandu College of Management, confirming the petitioner’s participation as a judge at this event. In addition, the petitioner submitted several certificates verifying his services as a judge at several music events.

Finally, the petitioner submitted a letter from General Manager of Times FM 90.6, asserting that the petitioner judged the Vibrations-All Nepal Band Competition in December 2005.

While the petitioner did not establish the significance of all of the events at which he participated as a judge, we are persuaded that the evidence in the aggregate is sufficiently extensive such that we can conclude that the petitioner meets this criterion.

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

In evaluating this criterion, we emphasize that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that an alien's contributions be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning.

The petitioner relies on his compact discs and reference letters to meet this criterion. We note that the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of commercial success through evidence of compact disc sales. The petitioner does not claim to meet that criterion and submits no evidence of the sales figures for his compact discs other than the unsupported assertion of Sagar Krishna Adhikari, Executive Director of Santana Records in Nepal, asserting that the petitioner's compact discs have sold "thousands of copies." We are not persuaded that evidence relating to the regulation at 8 C.F.R. § 204.5(h)(3)(x) but insufficient to meet that criterion, evidence of compact discs without evidence of commercial success, is presumptive evidence that the artist meets the contributions of major significance criterion set forth at 8 C.F.R. § 204.5(h)(3)(v).

We will consider the reference letters below. The opinions of experts in the field, however, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Most of the letters provide mere assertions of talent and notoriety. Such letters are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. Sanjeep Pradhan, a singer, asserts that the petitioner has "always been an inspiration to the upcoming young musicians." Subarna Limbu, a music composer, arranger and producer, asserts that the petitioner "brought [a] revolution in song writing" by

including social issues in his songs. The record, however, lacks evidence that younger musicians are emulating the petitioner's style, such as reviews of other artists noting the petitioner's influence on those artists.

Nagendra Kr. Pradhan, Chairman of the Christian Arts Association of Nepal, asserts that the petitioner's songs "are in the widely used Nepali hymn books and sung nation wide [sic] and across the borders in churches and youth fellowships." The record does not include examples of hymnbooks containing the petitioner's songs or letters from a sample of church officials around Nepal and elsewhere confirming their use of the petitioner's songs.

Without additional evidence of the petitioner's influence on music in Nepal, we cannot conclude that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record includes articles by the petitioner about his life experiences. The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of authorship of "scholarly" articles. We distinguish "scholarly" from "popular." The petitioner's articles are not scholarly analyses of music and, thus, cannot serve to meet this criterion.

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

We find that this criterion applies to visual artists, not performing artists. We note that performing is inherent to the field of performing arts and, thus, does not set the performer apart from other performing artists. The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that criterion is to have any meaning. We are not persuaded that the petitioner's live music performances can serve to meet this criterion. The documentary was not a display of the petitioner's work as a musician. Rather, it chronicled his search, with two others, to discover the origins of a Nepali folk song.

In light of the above, the petitioner has not established that he meets this criterion.

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 musician 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 and some national exposure as a musician, 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.