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U.S. Citizenship
and Immigration
Services

B2



FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: OCT 29 2008
EAC 06 014 51762

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:



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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The director reopened the matter on the petitioner's motion, and denied the petition again. The matter 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.¹ The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, 60898-99 (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 she has sustained national or international acclaim at the very top level.

¹ The petitioner was initially represented by attorney Binod Roka. In this decision, the term "previous counsel" shall refer to Binod Roka.

This petition, filed on October 4, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a lyricist, writer, and singer. 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, 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to the following criteria.²

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 a March 5, 2007 letter from the president of the Nepal Jaycees stating that she received a "Bal Guru Shadanan" award at the 2002 National Convention of the Nepal Jaycees "for her contribution and dedication in the field of literature, music, art and culture." The petitioner also submitted a "Nepal Jaycees: Vision 2000 'Youth: Leaders for Coming Millennium' National President's Certificate of Appreciation" saluting her for being one of the "Jaycees of the Month December 1999." The preceding awards reflect institutional recognition rather than national or international recognition.

The petitioner submitted "Certificate of Appreciation" and a March 2, 2007 letter from the president of the Alliance for Democracy and Human Rights in Nepal, New York (ADHRN) stating that the petitioner received a first prize in the song competition at the "Bhanu Jayanti and Summer Picnic 2005" organized by ADHRN on August 07, 2005. The letter states: "As one of the ADHRN tradition, every year it celebrates the birth anniversary of the great Nepali poet Bhanu Bhakta Acharya with the various activities including poem, song and volleyball competition among the Nepali living in or around New York area." This award reflects local recognition rather than national or international recognition.

The petitioner submitted a "Certificate of Appreciation" from the Sangeet Sheela Academy stating: "This Academy is very proud to have [the petitioner] as one of the distinguished sponsors and promoters [sic] from the USA. This certificate of appreciation [sic] was awarded [sic] to her on April 16, 2004." The petitioner also submitted a July 21, 2005 "Letter of Appreciation" from the president of the Sarvada Vangmaya Academy. These awards reflect institutional recognition rather than national or international recognition.

In addition to the preceding honors, the petitioner submitted a September 2003 Letter of Appreciation from the Itahari Branch of the Reukai Nepal, a February 1996 Appreciation Letter from the Nepal Teacher's Union of which the petitioner was a member, a certificate from the Agricultural Development Branch of Morang

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

stating that the petitioner placed first in a February 1988 competitive sewing and knitting exhibition, certificates of participation from the Nepal Jaycees for the petitioner's attendance at training sessions and meetings, and various other training certifications. There is no evidence showing that these documents constitute nationally or internationally recognized prizes or awards for excellence in the petitioner's field.

On motion, the petitioner submitted a "Certificate of Appreciation" from the International Nepali Literary Society (INLS), Washington, D.C. awarded to her on October 21, 2006 and a "Certificate of Participation" from the New York Chapter of the INLS presented to her on October 29, 2005. The petitioner received these two certificates subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider these certificates in this proceeding. Nevertheless, there is no evidence showing that the certificates constitute nationally or internationally recognized prizes or awards for excellence in the field rather than simply acknowledgments of the petitioner's participation in INLS events.

With regard to the preceding honors and awards, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* and it is her burden to establish every element of this criterion. In this case, the petitioner has not shown that her honors and awards commanded a significant level of recognition beyond the presenting organizations consistent with sustained national or international acclaim. For example, there is no evidence such as national press coverage announcing recipients of the preceding awards or other evidence showing that they have a substantial level of recognition in her field.

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

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of her membership in the Nepal Teacher's Union, Nepal Jaycees, Women's Development Union, Sukuna Charpate Club, Vaani Publication Cooperative Limited, Achchha Rai Rasik Literary Academy, Nepal Red Cross Society, and Sahityasanchar Samuha literary circle. In response to the director's request for evidence, the petitioner submitted a Certificate of Life Membership awarded to her by the INLS on October 21, 2006. This certificate was issued to the petitioner subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this certificate in this proceeding. Nevertheless, there is no evidence (such as membership bylaws or official admission

requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one.

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

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.

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 level from a local publication or from a publication not published in a country's predominant language. 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.³

The petitioner submitted a September 27, 2005 article in *Kantipur Daily* discussing a gathering at the Satyanarayan Mandir Temple in Jackson Heights, New York to promote the release of a compact disc featuring songs she wrote and produced. On motion, the petitioner submits information from <http://www.kantipuronline.com> stating that *Kantipur Daily* is the "[m]ost widely circulated Nepali Daily Broadsheet with largest readership in Nepal. Daily Circulation Figure: 210,000 copies." The information also states that the publication has "satellite printing stations." With regard to the petitioner's article, she has not established that it was placed in an issue or section of *Kantipur Daily* that had significant national or international distribution. Even if we were to conclude that the petitioner's article was nationally or internationally circulated, her submission of only one such article cannot satisfy the plain language of this regulatory criterion and is not indicative of sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

In response to the director's request for evidence, the petitioner submitted a two-sentence promotional piece in the October 26 – November 8, 2005 issue of *Nepali Aawaz* entitled "On Shelves Now: [the petitioner]," a September 2006 article in *New York Nepali Times* entitled "Nepali Newyorkers [sic] took part in ANMA-NASEA Convention," a September 2006 article in *New York Nepali Times* entitled "Sapana Shree became 'Swar Ki Rani,'" a photograph of the petitioner in the June 7, 2006 issue of *Nepali Aawaz*, and an August 2006 article in *Vishwa Sandesh* entitled "INSL [sic] celebrated Bhanu Jayanti in Washington, DC." On motion, the petitioner submitted a September 2006 article in *New Nepal Khabar* entitled "N & J Entertainment Annual Ceremony kicked off." The preceding material was published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this material in this proceeding. Nevertheless, there is no evidence showing that the preceding publications qualify as a form of major media. Further, the articles in *Vishwa Sandesh* and *New York Nepali Times* were

³ 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, for instance, cannot serve to spread an individual's reputation outside of that county.

not primarily about the petitioner. The plain language of this regulatory criterion, however, requires that the published material be “about the alien.”

In light of the above, the petitioner has not established that she 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.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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). For example, judging a national competition of experienced professionals is of far greater probative value than judging a local competition for students or amateurs.

In response to the director’s request for evidence, the petitioner submitted an April 6, 2002 letter from the Producer/Director of *Brighter Your Music and My Song*, a televised musical serial competition of new artists, inviting the petitioner to judge an upcoming program. The plain language of this regulatory criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others in the same or an allied field of specification.” An invitation is not tantamount to “participation.” Further, even if the petitioner were to establish that she actually participated as a judge in this competition for aspiring youth singers, we cannot conclude that evaluating those who have not yet begun working in the field meets the plain language of this criterion. The petitioner also submitted a letter from the 2004 president of the Nepal Jaycees stating that the petitioner “was the Chief Judge of Regional Oratory Contest during the Nepal Jaycees Area-A Conference held in Inaruwa, Nepal.” There is no evidence showing the level of acclaim associated with serving as a judge at the preceding events or the means by which the petitioner was selected to participate. Nor is there evidence showing the specific work judged by the petitioner, the names of those she evaluated, or documentation of her assessments. In this instance, the petitioner has not established that her participation in these contests was consistent with sustained national or international acclaim at the very top of her field.

On motion, the petitioner submitted a March 5, 2007 letter from the Chair of the Board of Trustees of the INLS stating that the petitioner was one of the judges for an international poetry contest organized by INLS, Nepalese American Council, and Association of Nepalese in Midwest America in September 2006. The petitioner’s participation in this event occurred subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding.

In this case, there is no evidence showing that the petitioner has judged the work of other professionals in her field in a manner consistent with sustained national or international acclaim at the very top of the field. As such, the petitioner has not established that she meets this criterion.

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

The petitioner submitted letters of recommendation discussing her activities in the field. We cite representative examples here.

[REDACTED], First Secretary, Permanent Mission of Nepal to the United Nations, New York, states:

I have the pleasure in introducing [the petitioner] a prominent Nepali lyricist now in New York, the United States. [The petitioner] is an active member of the International Nepali Literary Society. A life member of the Society, [the petitioner] also acts as a vice-chairperson of its New Jersey chapter in the United States. She is also the founding President of N & J Entertainment, Inc. established in New York with the objective of promoting Nepalese literature, culture, arts and journalism in the United States.

[The petitioner] has been contributing to the promotion of Nepalese literature by actively engaging herself in a variety of literary [sic] works. She has a numerous literary publications to her credit including the most recent book entitled "[REDACTED]" a collection of thirty-eight poems and songs written by her. The author of a full-fledged play called "[REDACTED]" she is also the producer and lyricist of Nepali music album called "[REDACTED]" and "[REDACTED]"

[REDACTED], Former Ambassador of Nepal to the United Nations, New York, states:

I know [the petitioner] very well in person and through her musical, poetical and literary activities, for the last several years.

She writes lyrics, composes music and sings songs. Over the last two years, she has released in New York two Nepali musical albums - "[REDACTED]" and "[REDACTED]". She has sung and given music to some of the songs in the albums herself. Other songs have been vocalized by several distinctive singers of Nepal. Her songs have found receptive audiences.

Apart from this, she has written several poems and lyrics published under the title, "[REDACTED]". Her play, "[REDACTED]" script for a video film, "[REDACTED]" (*Where is the Light*) have also been published. Her poems are quite popular in the Nepali diasporas in New York.

As a social activist, she has been involved, in different capacities, in raising funds for many social activities and organizations in Nepal and the United States. She is very active in the International Nepali Literary Society that has chapters in more than 40 countries and is currently Vice-President of

the New Jersey Chapter. She is also Founder President N& J Entertainment Inc. founded in New York in 2005.

The preceding letters of recommendation discuss the petitioner's work as a lyricist, singer, writer, and social activist, but there is no evidence showing that her achievements constitute original artistic contributions of major significance in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's artistic contributions must 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. With regard to the petitioner's work, there is no evidence showing the extent of the petitioner's influence on other writers and songwriters nationally or internationally. Nor is there evidence showing that the fields of music and literature have somehow changed as a result of her accomplishments.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinion 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a writer or lyricist who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she 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 petitioner did not specifically address this criterion. The petitioner submitted evidence of her songs, poetry, and other literary work, but there is no showing that such works constitute "scholarly articles in the field" or that they were published in professional or major trade publications or some other form of major media. As such, the petitioner has not established that she meets this criterion.

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

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted documentation indicating that she is the president and founder of N & J Entertainment, Inc., but there is no evidence showing that her company has a distinguished reputation. On

appeal, counsel argues that the petitioner performed in a leading or critical role for the Nepal Jaycees, ADHRN, INLS, Sangeet Sheela Academy, Sarvada Vangmaya Academy, and Reukai Nepal. While the petitioner submitted documentation of her involvement with these and other organizations, there is no supporting evidence showing that they have distinguished reputations. Further, there is no evidence showing that the petitioner's role for them was leading or critical. For example, the record lacks evidence demonstrating how the petitioner's role differentiated her from other individuals holding similar appointments, let alone more senior leaders in the organizations. There is no evidence demonstrating that the petitioner was responsible for her organizations' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner submitted evidence showing that she released two compact disc albums entitled "[REDACTED]" and "[REDACTED]". This regulatory criterion calls for commercial successes in the form of "sales" or "receipts"; simply submitting evidence of musical compilations that were written, sung, or produced by the petitioner cannot meet the plain language of this criterion. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of her field. For example, there is no evidence showing that the compact discs featuring the petitioner's music generated substantial national or international sales volume or that she received significant royalties for her work.

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

In this case, the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.