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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 12 2007

WAC 04 102 52383

IN RE: Petitioner:
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 Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO), dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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, counsel submitted a brief and additional evidence. The AAO concluded that the petitioner submitted evidence sufficient to meet two of the regulatory criteria, of which an alien must meet at least three, but emphasized that even that evidence was too old to be indicative of *sustained* acclaim when the petition was filed.

On motion, counsel continues to assert that the petitioner has a one-time achievement and meets the awards criterion. The petitioner submits no new evidence. The petitioner has not overcome the AAO's concerns.

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 television producer. 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).

In our appellate decision, we stated:

> Throughout the proceedings, counsel has asserted that the Asian Television Awards are major internationally recognized awards. The petitioner submitted a certificate confirming that "Love for China All Over the World" won the 1997 Asian Television Award for "Best Light Entertainment or Variety Program." In a letter dated July 1, 2003, [redacted], a judge for the awards, confirms that the petitioner "was one of the Executive Producers of the program." [redacted] further explains that the award program is sponsored by Bloomberg Television, Leitch, Kodak, Sony and Pearson Television and judges over 1,200 television programs from approximately 24 countries throughout Asia. In response to the director's request for additional evidence and again on appeal, the petitioner submits evidence relating to the prestige of these awards. The statute requires extensive evidence for this classification. In order to accept evidence of a single "one-time achievement" as evidence of the petitioner's sustained national or international acclaim, the award must not only be a major internationally recognized prize, but also unequivocally associated with the alien. Winners of Academy Awards, Nobel Prizes and Olympic medals receive such recognition because their names are announced. The statutory requirement of "extensive documentation" is presumed for such awardees because the receipt of such awards garners such significant recognition for the alien in the form of, for example, press coverage.
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> The petitioner was "one of" an unknown number of executive producers of "Love for China All Over the World." The record contains no evidence that the petitioner personally received the show's Asian Television Award. Without such evidence, we cannot accept this award as a one-time achievement equivalent to the type of "extensive documentation" of achievements mandated by the statute.

On motion, counsel asserts that the producer is not named when the best picture is awarded at the Academy Awards and notes that two producers shared the best picture award for "Crash." The petitioner submits no evidence that the Academy Award statues for Best Picture do not list the names

of the producers who receive the award.[1] The programs for the Asian Television Awards submitted reveal that the nominees are listed with their production company, not the producer. As the producers for these shows are not listed with the nominees, it would appear that the awards are issued to the production company as a whole, not the individual producers. Moreover, while we do recognize team awards, the team members must still be the named recipients of the awards. As the petitioner is not a named recipient, the number of executive producers is relevant. The petitioner provides no new evidence regarding the number of executive producers.

Regardless, we construe the one-time achievement very strictly as it is an alternative to submitting extensive documentation sufficient to meet three criteria. While not stated in our previous decision, we must emphasize that a one-time achievement is defined as a "*major* international recognized award." (Emphasis added.) *Lesser* internationally recognized awards fall under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Thus, not every award that is international qualifies as a one-time achievement. The congressional example of a one-time achievement is a Nobel Prize,[2] which is global rather than regional. Thus, we interpret "major" to be global, such as the Nobel Prize and the Olympic medals. While we acknowledge that the Asian Television Awards include 24 countries, they are not global.

For all of the above reasons, we uphold our previous finding that the petitioner does not have a one-time achievement as contemplated by Congress.

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. In our previous decision, we held that the petitioner submitted evidence ordinarily sufficient to meet two criteria but emphasized that the evidence relating to these criterion dates back years before the petition was filed. Thus, we concluded that this evidence was not indicative of *sustained* acclaim as of the date of filing.

On motion, counsel's only challenge to our discussion of the ten regulatory criteria is our finding that the petitioner did not meet the lesser national or international awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i). Counsel asserts that even if the petitioner's 1997 Asian Television Award is insufficient to qualify as a one-time achievement, it is sufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(i). Counsel does not explain how a single award, dating back to 1997, is evidence of the beneficiary's sustained acclaim in 2004, when the petition was filed. We note that the petitioner initially entered the United States in 2002 as an MBA student at the University of California, Los Angeles and his Fox TV identification contained in the record lists his position as "intern," which is inconsistent with a film producer enjoying sustained acclaim.

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[1] A review of the Best Motion Picture category on the Academy's website, www.Oscars.org, reveals that the nominees are listed followed by the production company and the names of the individual producers.
[2] H.R. Rep. No. 101-723, 59 (September 19, 1990).

Review of the record does not establish that the petitioner has distinguished himself as a film producer 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 past success as a film producer, 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of February 10, 2006 is affirmed. The petition is denied.