

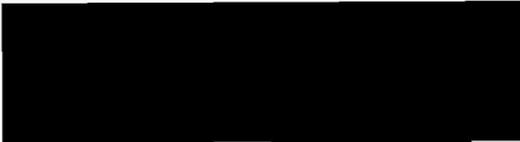
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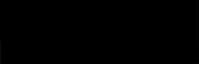
U.S. Citizenship
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Office: TEXAS SERVICE CENTER Date: **APR 22 2008**

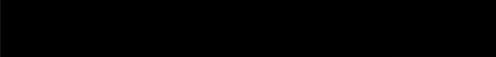
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IN RE:

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:

SELF-REPRESENTED

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, Texas Service Center, and 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 sciences. 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 argues that he has risen to the top of his field and qualifies as an alien of extraordinary ability.

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 he has sustained national or international acclaim at the very top level.

This petition, filed on June 25, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a writer and researcher "in aesthetics and science." The petitioner earned a Bachelor of Science degree in Electrical Engineering from Jamia Millia Islamia (National Islamic University) in New Delhi, India in 1996 and a Bachelor of Science in Exercise and Sport Sciences from the University of Florida in 2002. In the fall

of 2002, the petitioner enrolled in a master's program in Exercise Physiology at Arizona State University but withdrew from the program in 2003.

In a document accompanying the petition entitled "The Nature of Homosexuality and its Significance," the petitioner describes his "work on the nature of homosexuality" during the years preceding the petition's filing date.

This work is in the form of a website and a book, copies of which are included in the accompanying compact disc.

* * *

My work on the nature of homosexuality occupies a niche that has been heretofore unfilled, namely documenting information on homosexuality from multiple sources and synthesizing the literature. . . .

* * *

The public debate on the merits of the demands of homosexual activists is a hot topic at present and has been for a while, but this debate is too often based on ideology and should be informed by empirical evidence, instead. My website and book extensively document the relevant empirical evidence in a coherent manner.

A second document submitted with the petition, entitled "Feminine Beauty and its Significance," discusses the petitioner's recent "work on feminine beauty."

This section describes my work on feminine beauty. It is in the form of a website, a copy of which is included in the accompanying compact disc. This website has search functionality and some dynamic content

* * *

Feminine beauty is underappreciated in contemporary Western culture. This is easily observed in the looks of high-fashion models, i.e., women having the highest status among female models. High-fashion models tend to possess multiple masculinized features and are typically skinny, thereby often approximating the looks of adolescent boys, and this negatively influences a number of women. Thus, I have set up a website to promote feminine beauty and explain its significance, explain the reasons behind the typical looks of high-fashion models, help counter some of the negative health behaviors indulged in by girls and young women influenced by fashion imagery, and also offer some advice on how women can make themselves more attractive.

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.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In a letter responding to the director’s request for evidence, the petitioner states: “The most high-profile prize/award that I have received in recent years was a University Scholar award of \$2,500 when I was a University of Florida student-scholar during the 2000-2001 year, for research under a professor-mentor.” The record, however, includes no evidence from the University of Florida establishing that the petitioner received this award. 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nevertheless, university study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner’s receipt of an award limited to university students is not an indication that he “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). Further, the petitioner’s receipt of an award from his university reflects local or institutional recognition rather than national or international recognition for excellence in the field.

In light of the above, the petitioner has not established that he 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. 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.¹

In his letter responding to the director’s request for evidence, the petitioner states:

¹ 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.

I have had limited experiences with the media concerning my work on the nature of homosexuality. Whereas my feminine beauty site has not yet been covered in the major mainstream media, since media coverage gets people talking, I provide equivalent evidence in the form of my feminine beauty site being seen by many people . . . and generating plenty of discussion at various forums on the internet as well as the blog at my site.

The petitioner acknowledges that his “feminine beauty site has not yet been covered in the major mainstream media.” Aside from the preceding deficiency, the plain language of this regulatory criterion requires that the published material be “about the alien.” The content of petitioner’s feminine beauty internet site reflects material prepared by him rather than published material about him. Further, an online posting of readers’ comments discussing the content of petitioner’s internet site and expressing their own opinions on a particular issue is not published material about him. Thus, the record includes no evidence of published material about the petitioner in professional or major trade publications or other form of major media.

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).

In his letter responding to the director’s request for evidence, the petitioner states: “My websites and book are full of critical reviews of the work of others.” While the petitioner’s internet sites and book contain his personal conclusions and critiques on various issues, there is no evidence that his writings are tantamount to his “participation, either individually or on a panel, as a judge of the work of others” in his field or an allied one. Nor is there evidence showing that the petitioner’s capacity as a reviewer of others’ work is consistent with sustained national or international acclaim at the very top of his field. As such, the petitioner has not established that he meets this criterion.

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

In his letter responding to the director’s request for evidence, the petitioner asserts that he has made “major contributions to the field.” The petitioner also states:

My work on the nature of homosexuality is a synthesis of the literature, and its originality is in the form of compiling a massive amount of evidence in favor of the thesis that homosexuals are born that way and that homosexuality is not part of human design. . . . On the other hand, my feminine beauty

site is unique and I am the only person in the world promoting feminine beauty within a scientific framework.

While the petitioner has submitted evidence of his writings, there is no evidence to demonstrate that they have had major significance in the field. As discussed previously, 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 at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190).

The petitioner further states: "Reviews of my book are pending in two important publications at the time of this writing, but you can gauge the significance of my work by asking the professional referees that I cited in my original application." None of the "references" identified in the petitioner's initial submission (Item C) have provided letters of recommendation in support of this petition, nor is there evidence indicating that these individuals have concluded that his work constitutes original scientific contributions of major significance in the field. With regard to the petitioner's assertion that reviews of his book were pending at the time of his response to the director's request for evidence (February 2007), we note that a petitioner 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 (Comm. 1971). Accordingly, the AAO will not consider these book reviews in this proceeding.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's 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. In this case, there is no evidence to demonstrate that the petitioner has made original contributions of major significance in his field. For example, the record does not indicate the extent of the petitioner's influence as a writer nationally or internationally, nor does it show that the scientific or scholarly fields have somehow changed as a result of his work. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed by the scholarly or scientific community, or has otherwise risen to the level of original contributions of major significance, 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 petitioner submitted evidence that he prepared material for his internet sites, but there is no evidence that the writings he posted were "scholarly articles" or that they were published "in professional or major trade publications or other major media."

The petitioner also submitted evidence of his authorship of a book entitled *The Nature of Homosexuality: Vindication for Homosexual Activists and the Religious Right*. The record, however, includes no evidence showing the number of copies of this book in print or that the book had substantial national or international readership.

In response to the director's request for evidence, the petitioner evidence of his co-authorship of an article published in the *International Journal of Sport Nutrition and Exercise Metabolism* in February 2005. We take administrative notice of the fact that that authoring scholarly articles is inherent to scientific research. For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's article when

determining the significance of a petitioner's published work to his or her field. For example, numerous independent citations would provide solid evidence that other scholars have been influenced by the petitioner's work and are familiar with it. On the other hand, few citations of an alien's work may indicate that his work has gone largely unnoticed by the scholarly community. In this case, there is no evidence showing that the petitioner's work is frequently cited, or that it has attracted the favorable attention of other scholars in a manner consistent with sustained national or international acclaim.

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

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

In his letter responding to the director's request for evidence, the petitioner states that his "remuneration comes from site advertisements and revenues from the affiliate programs that [he] signed up with" and that he has "been running Google ads on [his] feminine beauty site from June 2006." The petitioner's response included information printed from Google AdSense reflecting that in 2006 he earned \$5.13 in July, \$16.41 in August, \$40.28 in September, \$54.01 in October, \$65.67 in November, and \$79.98 in December. The petitioner earned this compensation 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 45, 49. Accordingly, the AAO will not consider the petitioner's July through December 2006 earnings in this proceeding. Nevertheless, the plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his earnings in the latter half of 2006 or any other prior year were significantly high in relation to others in his field.

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

On the Form I-290B, Notice of Appeal to the AAO, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 120 days. The petitioner's appeal was filed on March 19, 2007. As of this date, more than one year later, the AAO has received nothing further.

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the 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.