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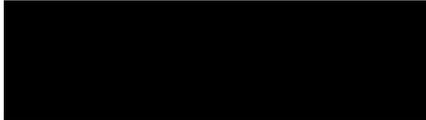
IN RE:

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:



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.

*Maie Johnson*

2 Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. 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 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. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. The AAO concurred, finding that the petitioner met none of the applicable regulatory criteria and that the evidence regarding the petitioner's purported receipt of a Daytime Emmy Award did not establish his eligibility under the one-time achievement criterion.

Section 203(b) of the Act states, in pertinent part:

(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.

The applicable regulation defines the statutory term "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, internationally recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a sound recording engineer. Counsel claims that the petitioner's involvement with the children's television program "Arthur" which received a Daytime Emmy Award for Outstanding Children's Animated Program proves his eligibility by virtue of a one-time achievement (major, internationally recognized award) under 8 C.F.R. § 204.5(h)(3). The record contains a certificate from The National Academy of Television Arts & Sciences and The Academy of Television Arts & Sciences that honors the petitioner "for contributing to the Emmy Award-

winning program ARTHUR, PBS” and a letter from [REDACTED] the Daytime Emmy Awards Manager stating that the petitioner’s “contribution as a re-recording sound mixer was crucial to winning the award. This award confirms that he is clearly at the very top of the sound mixing field.” In the previous decision, the AAO noted that the letter did not state – nor did any other evidence establish – that the petitioner was one of the named recipients of the Daytime Emmy Award. In addition, the AAO determined that even if the petitioner had been a named recipient of the award, it would not meet this criterion because the Emmy Awards are not internationally recognized. On motion, counsel contends that the AAO’s determination was erroneous because the Emmy Awards are “awarded internationally ... [and] foreigners win U.S. Emmy’s [sic] if their shows appear on U.S. television...winning an Emmy signals to the television industry worldwide that such an extraordinary event puts the winner at the top of his peer group.” Counsel’s claim is unsupported by the record. On motion, counsel submits a printout from the website of The Academy of Television Arts & Sciences. The printout states that the Emmy Awards are administered by “three sister organizations; the Academy of Television Arts & Sciences, the National Academy of Television Arts & Sciences, and the International Academy of Television Arts & Sciences.” Counsel has apparently underlined “International” in the title of the last organization. Yet the printout clearly states that the “Daytime Emmy Awards are under the jurisdiction of the National Academy of Television Arts & Sciences.” Even if the printout supported counsel’s position, it could not be considered because a motion to reconsider must “establish that the decision was incorrect based on the evidence of record at the time of the initial decision.” 8 C.F.R. § 103.5(a)(3).

The remaining evidence submitted, counsel’s contentions and the AAO’s previous decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner’s case.

*(i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

In addition to the evidence regarding the Daytime Emmy Award to "Arthur" as an outstanding children's program, the petitioner submitted a certificate and a letter showing his individual nomination for a 1997-1998 Daytime Emmy Award in the category of "Sound Mixing – Special Class" for his work on "Arthur." As noted by both the service center director and the AAO, the record contains no evidence that the petitioner actually won this award. The AAO nevertheless considered this evidence, but found that because the petitioner was nominated in 1997, six years prior to the date his petition was filed, his nomination did not reflect the sustained acclaim requisite to classification as an alien with extraordinary ability. On motion, counsel contends that this determination “is inconsistent with AAO’s earlier positions on this subject” and submits an excerpt from an unidentified source that appears to be an immigration law treatise. The document states that the “AAO held that an alien qualified for EB-1 status despite the fact that the documentation submitted showed the alien’s standing in his or her profession several years earlier, but had not shown the alien’s present standing in his sport,” but provides no citation for the case referenced. Pursuant to 8 C.F.R. § 103.4(c), designated and published decisions of the AAO are binding precedent on all Service employees in the administration of the Act. In contrast, unpublished decisions have no such precedential value. Here, counsel cites an unidentified source citing an unidentified case. We cannot give credence to such an unsubstantiated claim.

The petitioner also submitted evidence that the “Arthur” program, a collaboration between Cinar Films and WGBH Boston, won Best Sound Overall at the Canadian Cinema and Television Academy’s Seventh Gemini Awards and a letter from Cinar confirming that the petitioner worked with the company on “Arthur.” Both the director and the AAO determined that the record contained no evidence that the petitioner was a named recipient of the Gemini award. On motion, counsel repeats his contention that the award is attributable to the

petitioner and submits a printout from the Academy of Canadian Cinema and Television that lists awards granted to various productions that the petitioner has purportedly worked on. The printout lists “Arthur” as having received an award in 1998 (apparently for sound, although the category is listed in French and is not accompanied by a certified translation as required by 8 C.F.R. § 103.2(b)(3)) and “The Sleep Room” as having received an award for Best Sound in a Dramatic Program or Series in 1998. The first award names five individuals and the second names eight. The petitioner is not included in the listing for either award. Even if his name was listed, we could not consider the printout because it was not submitted with the petition or on appeal. 8 C.F.R. § 103.5(a)(3). For the same reason, we cannot consider evidence submitted on motion that the petitioner is listed on the poster for the film “The Discovery of Love” which purportedly won an award at the World Film Festival in Montreal. *Id.*

*(ii) 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.*

The petitioner submitted evidence of his active membership in the Cinema Audio Society (CAS) and the Motion Pictures Editors Guild. The director and the AAO both determined that the evidence was insufficient to establish that outstanding achievements are a prerequisite to membership in either of these associations. Counsel does not contest that determination on motion.

*(iv) 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 petitioner initially submitted no evidence relevant to this criterion. On appeal, he claimed eligibility under this criterion by virtue of being a voting member of CAS and the Academy of Television Arts and Sciences and submitted a January 26, 2004 letter containing his ballot for the CAS sound mixing awards and a February 17, 2004 letter stating that he is a voting member of the Academy of Television Arts and Sciences allowing him to vote for Primetime and Daytime Emmy competitions. The AAO determined that the record contained no evidence that the petitioner had participated in judging Emmy or CAS awards prior to the date of filing. On motion, counsel contends that AAO has made an “ERROR OF FACT” and refers to the previously submitted evidence. Counsel is either unaware of or disregards the requirement that evidence of eligibility must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The documents submitted were dated six and seven months after the petition was filed and do not demonstrate that the petitioner had judged the work of others at the time of filing.

In the previous decision, the AAO noted that for the Emmy Awards “it appears that the petitioner is eligible only to take part in the balloting after the nominees are already selected. This eligibility is conferred on all members. More persuasive would be participation in the elite group that selects the nominees.” On motion, counsel contends that this statement is also an “ERROR OF FACT” because there is “no Emmy nomination committee at the Academy.” Counsel asserts that television broadcasters themselves mail nominations to the Academy which then presents all the nominees to Academy members to vote on. On motion, counsel submits a copy of the 2004 Primetime Emmy Awards ballot mailed to the petitioner. This ballot says nothing about the nomination process. In addition, the ballot cannot be considered both because it was not in the record at the time the previous AAO decision was made, 8 C.F.R. § 103.5(a)(3), and because it is dated one year after the petition was filed. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

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

The petitioner submitted numerous letters from colleagues, supervisors, clients and other individuals who have worked with him on various projects. In the previous decision, the AAO affirmed the director's decision that the letters were insufficient to meet this criterion. The AAO noted that the letters praised the petitioner's talents, skills and qualifications, but provided "little discussion of substantive and identifiable contributions to the field." The AAO acknowledged that one letter credited the petitioner with "creating a new form of music" for the film *Le regard the Delphine*, but that the record contained no evidence that this "new form of music" had made an impact in the petitioner's field. On motion, counsel contends that the AAO "gave a cursory look at these letters" and singles out the letter of [REDACTED] (previously discussed above under the first criterion). The letter states that the petitioner's contribution as a re-recording sound mixer was crucial to the Daytime Emmy Award to "Arthur" as Outstanding Children's Animated Program in 1997 and that "[t]his award confirms that he is clearly at the very top of the sound mixing field." The significance of the Daytime Emmy Award granted to "Arthur" was discussed above under the first criterion. The letter itself does not mention any specific, original contribution that the petitioner has made to his field.

Counsel's motion quotes eight other letters that praise the petitioner's talents, skills and accomplishments, but identifies only one purportedly original contribution of the petitioner to his field: "his musical ears." Two of the petitioner's recommendation letters specifically praise the petitioner's musical abilities and one letter references his training in classical music. Yet the record contains no evidence that the petitioner is one of only a few sound re-recording engineers with musical aptitude and training or that the petitioner's "musical ears" have had a significant impact on his field outside of the limited number of individuals with whom he has worked directly.

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

The petitioner did not originally claim eligibility under this criterion. On appeal, counsel claimed that the petitioner met this criterion through his work on various television programs and films. In the previous decision, the AAO noted that this criterion applies to visual artists and even if found applicable to the petitioner's field, the mere broadcast of television programs or films would be insufficient. The AAO acknowledged a letter from Producer and Director [REDACTED] regarding the petitioner's work on the film "Discovery of Love," but found no evidence in the record to support counsel's claim that the film was shown and nominated for an award at the World Film Festival in Montreal in 2000. On motion, counsel submits a printout from the film festival's website, but we cannot consider this evidence because it was not before the AAO at the time of the previous decision. See 8 C.F.R. § 103.5(a)(3).

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

The petitioner did not originally claim eligibility under this criterion. On appeal, counsel claimed that the petitioner met this criterion by virtue of his work as described in the recommendation letters. In the previous decision, the AAO found that the letters praised the petitioner's skills, talents and contributions to various projects, but did not demonstrate that he had played a leading or critical role for any organization or establishment with a distinguished reputation. On motion, counsel merely refers to two letters discussing the petitioner's current employment for Ascent Media Creative Sound Services (ToddAO). These letters attest to

the petitioner's skills and qualifications and indicate that he is a valued employee. The letters do not describe the nature of the petitioner's exact role within the company or how his position distinguishes him from other sound re-recording engineers employed by the company. In addition, the record contains no independent evidence that Ascent Media has a distinguished reputation.

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

The petitioner did not originally claim eligibility under this criterion. On appeal, counsel claimed the petitioner met this criterion because a letter from the petitioner's employer confirms a job offer to the petitioner at a rate in conformation with the existing guild agreements for his guild job classification. The AAO determined that this letter merely indicated that the petitioner was offered a job at the standard wage and was insufficient evidence that the alien had actually earned a high salary or other significantly high remuneration for his services. Counsel does not contest this determination on motion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the petitioner is a talented sound re-recording engineer who is well respected and valued by his employer, colleagues and clients. However, the record does not establish that he is an alien of extraordinary ability in the arts. Accordingly, the previous decision of the AAO will be affirmed and the petition will be denied.

**ORDER:** The AAO's decision of June 1, 2004 is affirmed. The petition is denied.