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FILE: LIN 07 051 54227 Office: NEBRASKA SERVICE CENTER Date: APR 22 2008

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, 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 arts. 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, the petitioner argues that he meets the statutory and regulatory requirements for classification 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 December 11, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a film director. 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). The petitioner submitted evidence showing that his film *About Sara* won the Grand Prix Golden St. George award for best film at the 28<sup>th</sup> Moscow International Film Festival. On appeal, the

petitioner argues that “the Moscow International Film Festival (MIFF) is indeed a major[,] internationally recognized film festival and that winning the Grand Prix for Best Film at [the] MIFF does indeed constitute a ‘one-time achievement’ as discussed in 8 C.F.R. § 204.5(h)(3).”

Congress’ example of a one-time achievement is a Nobel Prize. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at \*6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien’s field as one of the top awards in that field.

The petitioner submitted copies of media reports showing that his award was announced in *Svenska Dagbladet*,<sup>1</sup> *Helsingborgs Dagblad*,<sup>2</sup> the Italian Online Movie Awards internet site, *Saigon News* (Vietnam), the News 24 (South Africa) internet site, the *Moscow Times*, the Cineuropa internet site, *The Hollywood Reporter*, *Variety*, and *Kommersant* (Russia). Aside from *Svenska Dagbladet* and *Helsingborgs Dagblad*, there is no evidence showing the circulation or distribution of the remaining media sources.

The July 4, 2006 article in the *Moscow Times* refers to the 28<sup>th</sup> MIFF as “an event that had been criticized for its lack of international stars.” The July 2006 article in *Variety* states:

Overall, results had critics repeating that the event . . . had again failed to find a convincing image for itself, despite the change in festival selectors.

Many competitish pics had been released in other countries long before their Moscow screenings.

The lack of Russian product in main programs – despite a boom year for local production in both commercial and art-house strands – looked gaping, making it clear the territory’s helmers are aiming toward other international fests rather than allying themselves with Moscow.

Many top Russian directors and producers didn’t bother to attend . . . .

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<sup>1</sup> The petitioner’s appellate submission includes “circulation figures for major Swedish newspapers” from the Swedish Newspaper Publishers’ Association. According to these statistics, *Svenska Dagbladet* had a weekday circulation of 187,100 in 2005, ranking it fifth in circulation among morning and evening newspapers in the petitioner’s country of nationality.

<sup>2</sup> According to the circulation figures from Swedish Newspaper Publishers’ Association, *Helsingborgs Dagblad* had a weekday circulation of 84,000 in 2005, ranking it eighth in circulation in the country.

With Russia one of the world's fastest growing exhib markets, lack of big players at the fest and the lack of a market are shortcomings the fest must overcome.

In response to the director's request for evidence, the petitioner submitted information regarding the MIFF from the Internet Movie Database website, *Wikipedia* (an online encyclopedia), and the MIFF's official internet site. With regard to the information posted on *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>3</sup> As such, we will not give significant weight to claims for which *Wikipedia* is the only cited source. While the documentation from the Internet Movie Database website, *Wikipedia*, and the MIFF's official internet site provides general information about the MIFF and its regulations, this documentation does not establish that the petitioner's Grand Prix Golden St. George award qualifies as a major, internationally recognized award.

On appeal, the petitioner states:

The Moscow International Film Festival is one out of only twelve (12) competitive festivals in the world accredited by the International Federation of Film Producers Associations (FIAPF), along with the likes of the Cannes Film Festival, Venice Film Festival and the Berlin Film Festival. All of which are leading festivals in the world of international film.

In support of his statement, the petitioner submits a February 20, 2007 letter from the Director General of the FIAPF stating:

This letter is to certify that the Moscow International Film Festival is one of the twelve international competitive film festivals accredited by FIAPF.

FIAPF is a regulator of international film festivals. FIAPF's Regulations for International Film Festivals are a trust contract between the film business and the festivals that depend on their cooperation for their prestige and economic impact.

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<sup>3</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

*Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See <http://en.wikipedia.org/wiki/Wikipedia:Disclaimers>, accessed on April 15, 2008.

The accreditation delivered by FIAPF gives the producers, distributors and sales agents the guarantee that they will commit to festivals with a true international dimension, endowed with a strong and structured organization, involving industry professionals.

While the MIFF is accredited by the FIAPF, there is no evidence distinguishing the MIFF from among the eleven other film festivals accredited by the FIAPF or non-accredited international film festivals such as the Sundance Film Festival in Utah. For example, there is no comparative evidence showing differences in attendance figures, the level of international media coverage, the number of films submitted for consideration, the number of countries represented, or the extent of participation by internationally renowned industry professionals.

The petitioner also submits information about the Cannes Film Festival printed from *Wikipedia* stating: “The Cannes Film Festival, founded in 1939, is considered one of the world’s most prestigious film festivals. In May 2006, *Hollywood Reporter* acknowledged that Cannes is the “granddaddy of all film festivals” (although the oldest film festival in the World, beginning in 1932, is the Venice Film Festival).” The record includes no information from another source to verify the reliability of the *Wikipedia* information about the Cannes Film Festival.

With regard to the petitioner’s Grand Prix Golden St. George award from the 28<sup>th</sup> MIFF, the evidence of record is not sufficient to demonstrate that it qualifies as a major, internationally recognized award. We cannot ignore that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) qualifies the phrase “international recognized award” with the limitation “major.” Without evidence distinguishing the level of acclaim associated with earning a Grand Prix Golden St. George award at the MIFF from that of top prizes at other international film competitions, we cannot conclude the petitioner satisfies the regulation. For example, there is no evidence showing that the petitioner’s award commands a level of recognition comparable to an Academy Award in a film category or a grand prize at the Cannes Film Festival. While we accept that the petitioner’s receipt of a Grand Prix Golden St. George award from the 28<sup>th</sup> MIFF is evidence of lesser international recognition in filmmaking, the petitioner has not established that his award is evidence of “major, international” recognition as required by the regulation at 8 C.F.R. § 204.5(h)(3).

Barring the alien’s receipt of a major, internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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.*

As discussed previously, the petitioner submitted evidence showing that he won the Grand Prix Golden St. George award for best film at the 28<sup>th</sup> MIFF. The petitioner also submitted evidence (such as media coverage) showing the award's international scope and recognition. The director did not accord proper weight to this evidence, which is sufficient to meet 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.*

The petitioner submitted articles about him in Swedish newspapers such as *Svenska Dagbladet*, *Helsingborgs Dagblad*, *Sydsvenskan*, *Goteborgs Posten*, and *Dagens Nyheter*. On appeal, the petitioner submits full English language translations of these articles and circulation statistics from the Swedish Newspaper Publishers' Association showing that these newspapers are major publications. In light of the evidence submitted on appeal, the petitioner has established that he 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 he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted his curriculum vitae indicating that he has worked for production companies such as Sveriges Television, New Horizons Film & TV, One Tired Brother Productions, Sweetwater Junior, and Sonet. The petitioner also submitted five letters of support.

██████████, Certified Public Accountant, SET Auktoriserade Revisorer, Sweden, states: "I hereby certify that [the petitioner] . . . is active in Sweden as Film Director producing movies and film for the cinemas, Swedish Broadcasting Company, SVT and other channels. **The work has been done in two companies fully owned by his wife and himself.**" The record, however, includes no evidence showing that the companies owned by the petitioner and his wife have distinguished reputations in the filmmaking industry.

██████████, Film Producer and Chief Executive Officer, Moviola Film & Television, Sweden, states:

I met [the petitioner] in 2001 when he was commissioned to write a screenplay for this company. I have since kept in touch with [the petitioner] and have followed his career as a filmmaker closely. [The petitioner] is a director of good reputation, extraordinary achievement, well known for his films and respected by his peers.

██████████, Head of Drama and Film, Sveriges Television AB, Sweden, states:

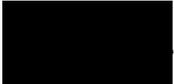
I first met [the petitioner] in 2003 when Sveriges Television AB co-financed the feature film *About Sara* which, upon completion, won the grand prize for best picture at the Moscow International Film

Festival 2006. I can easily say that [the petitioner] is one of the Swedish director's who has reached the top of his field, and I'm confident that he has a bright and productive future ahead of him.

The petitioner's Grand Prix Golden St. George award from the 28<sup>th</sup> MIFF has already been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and a leading or critical role, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three regulatory criteria would be meaningless.

Producer and Chief Executive Officer, Greta Film AB, Sweden, states:

I met [the petitioner] in 1995 when he was just getting started in the film business and I have followed his career as a filmmaker since then. I can therefore say that [the petitioner] is a well respected and accomplished filmmaker, who is both domestically as well as internationally recognized as one of Sweden[']s top directors.

 Commissioning Editor, Documentary Department, Sveriges Television AB, Sweden, states:

In 1999 [the petitioner] was commissioned by the Documentary Department at SVT to produce the documentary *The Promised Land* which turned out to be very successful and upon completion the film was selected as one of Sweden's contributions to the highly prestigious European competition Prix Europa in 2001. Since then [the petitioner] has had a very productive and positive collaboration with Sveriges Television both as a documentarian as well as a TV host and presenter.

With regard to the production companies for which the petitioner worked but did not own, the record includes no evidence showing that these companies have distinguished reputations in filmmaking. Nor is there evidence demonstrating how the petitioner's temporary production roles for these companies differentiated him from their permanent employees and more senior management. While the petitioner's curriculum vitae indicates that he has produced or directed at least nine films and documentaries for various production companies, the record does not establish that he was responsible for those companies' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim at the very top of his field.

Regarding the letters of support from the petitioner's professional contacts, 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. Thus, the content of the experts' 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 achievements and recognition that one would expect of a film director who has sustained national or international acclaim. While the letters of support provide information about

the petitioner's activities and experience, they are not adequate to demonstrate that he is one of that small percentage who have risen to the very top of the field.

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

On appeal, the petitioner states: "I have . . . directed the critically acclaimed feature film *About Sara* and produced the 2 successful feature films *Four Women* and *Fragments of an Unfinished Journey* . . ." The record, however, includes no evidence of box office receipts or digital video disc sales showing that the petitioner's films were commercial successes. 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)). The plain language of this regulatory criterion requires evidence of commercial successes in the form of "sales" or "receipts"; simply submitting evidence indicating that the petitioner directed or produced various films cannot meet the plain language of this regulatory criterion. The record includes no evidence of documented sales, receipts, or other similar evidence showing, for example, that the petitioner's films grossed significant national or international revenue in theaters or through DVD sales and rentals, or that he otherwise achieved commercial success in a manner consistent with sustained national or international acclaim. Thus, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he 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 himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the 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.