

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

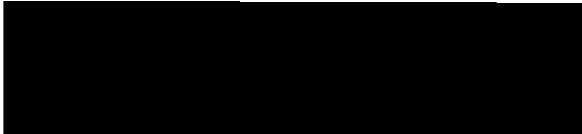
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



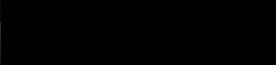
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B2



FILE:



Office: TEXAS SERVICE CENTER

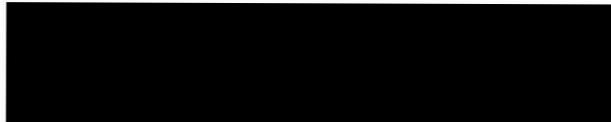
Date:

OCT 28 2008

SRC 07 047 50739

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.

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

This petition, filed on December 8, 2006, seeks to classify the petitioner as an alien with extraordinary ability as director of television programming. In a December 6, 2006 letter accompanying the petition, counsel states: "[The petitioner] is an individual of proven extraordinary ability who possesses the high level of unique expertise required to work for Religious Institutions, directing audio and video aspects of Christian Television programs."

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.<sup>1</sup>

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

In response to the director's request for evidence, the petitioner submitted a March 22, 2007 letter from [REDACTED], Personnel Director, RCN Television, Bogota, Colombia, stating that the petitioner was the "editor" for television programs entitled "[REDACTED]" and "[REDACTED]". The petitioner also submitted information printed from the internet site of the International Festival of Movies and Television of Cartagena indicating that "[REDACTED]" was a nominee in the "Best Comedy or Humor Program" category in the Colombian television competition. The petitioner's response also included an article printed from [www.astrolabio.net](http://www.astrolabio.net) identifying "[REDACTED]" as a finalist for "Talk Show of the Year" at the INTE (Spanish Television Industry) Awards 2003. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The English language translations accompanying the preceding documents were not certified by the translator as required by the regulation. Further, there is no evidence showing that the petitioner's television programs received a prize or award in their competitive category. While earning a nomination and being named a finalist are certainly honorable achievements, the plain language of this regulatory criterion requires the petitioner's receipt of nationally or internationally recognized *prizes* or *awards*. Finally, there is no evidence showing that the preceding honors were primarily attributable to the petitioner's editorial work.

The petitioner also submitted a letter from [REDACTED] Executive Director for Northern South America, *TVyNovelas*, an entertainment magazine, stating that "[REDACTED]" won the magazine's award for "Best Magazine or Journalism" in 1999, 2000, 2001, and 2002 and that "[REDACTED]" won the award for "Best Humorous Program" in 2004. The English language translation accompanying [REDACTED] letter was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that the preceding awards were presented to the petitioner or that they were primarily attributable to his editorial work. We cannot ignore the plain language of this regulatory criterion requiring

---

<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

evidence of the “alien’s receipt” of prizes or awards. Finally, the petitioner has not established that *TVyNovelas* awards constitute nationally or internationally recognized awards for excellence in his 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 or international 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.<sup>2</sup>

The petitioner submitted digital video footage showing television programs directed by him for the Enlace Christian channel. On appeal, counsel argues that the director failed to consider this evidence. As the plain language of this regulatory criterion requires “published material about the alien,” we cannot conclude that the petitioner’s evidence meets this criterion. None of the digital video footage was about the petitioner. Further, the video footage was unaccompanied by a certified English language translation as required by this regulatory criterion and the regulation at 8 C.F.R. § 103.2(b)(3). Nor is there evidence showing that the preceding video footage was broadcast by major media outlets, that the footage aired nationally or internationally, or that it was otherwise distributed in a manner consistent with sustained national or international acclaim. Further, the date that the video footage was broadcast was not provided as required by this regulatory criterion.

In response to the director’s request for evidence, the petitioner submitted internet and magazine articles, but none of these materials mention the petitioner. The plain language of this regulatory criterion requires that the published material be “about the alien.” Further, the English language translations accompanying the preceding articles were not complete or certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Finally, there is no evidence showing that the preceding articles were in professional or major trade publications or some other form of major media.

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

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

On appeal, counsel argues that the digital video footage of television programs directed by the petitioner for the Enlace Christian channel meets this regulatory criterion. The plain language of this regulatory criterion

---

<sup>2</sup> 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.

indicates that it is most applicable to the visual arts (such as sculpting and painting) rather than the petitioner's occupation. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. With regard to visual artists, the significance of the exhibition or showcase is indicative of their acclaim. In the television industry, national or international acclaim is generally not established by directing a television program, but rather by directing programming that attracts a substantial national or international audience or receives widespread praise from critics. In this case, there is no evidence showing that the programming directed by the petitioner elevated him to the very top of his field or was indicative of 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 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.

As discussed, the petitioner submitted a March 22, 2007 letter from [REDACTED] stating that the petitioner edited several programs for RCN Television from 1999 to 2004, but there is no evidence showing that his role for the company was leading or critical. For example, there is no evidence demonstrating how the petitioner's role differentiated him his coworkers at RCN Television and its senior management.

On appeal, counsel argues that the petitioner performed in a leading or critical role for Enlace Christian channel. The record, however, includes no letter of support from this organization or evidence showing that it has a distinguished reputation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In this case, there is no evidence showing that the petitioner was responsible for the preceding organizations' 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.

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.*

The petitioner submitted digital video footage showing television programs he directed, but the director concluded that there was no evidence showing that these programs were commercial successes. Counsel does not challenge this conclusion on appeal and we concur with the director that the petitioner has not established that he meets this criterion.

In this case, we concur with the director's determination that the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory 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.