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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 0 5 2009
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IN RE: Petitioner: [redacted]
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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

U.S. Citizenship and Immigration Services (USCIS) 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 she has sustained national or international acclaim at the very top level.

This petition, filed on May 4, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a writer. 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 under 8 C.F.R. § 204.5(h)(3).[1]

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

The petitioner submitted a Presidential Citation (2003) from the Rotary Club of Las Piñas – Camino Real, District 3830, in recognition of her authorship of a comic book "for Philippine distribution to at-risk youth as part of the Rotary Club's Nationwide Anti-Drug Campaign." In response to the director's request for evidence, the petitioner submitted a notarized document from the Rotary Club of Las Piñas – Camino Real, District 3830, stating that the "Presidential Citation is awarded to those outstanding *members* who have exhibited excellence in their field of endeavor and have who have [sic] made a significant contribution in the community in alignment with Rotary's core values." [Emphasis added.] The director's decision stated that the record lacked "objective documentary evidence to establish the actual stature and prestige of the award." We concur with the director's finding that the petitioner has not established that her Presidential Citation is tantamount to a nationally or internationally recognized prize or award for excellence in the field. We cannot ignore that the issuing entity was local rather than national or international. For example, the citation bears the sub-heading "Rotary Club of Las Piñas – Camino Real, District 3830." Further, the information about the award indicates that its recipients are club members. Local or regional recognition does not meet the plain language of this regulatory criterion. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no evidence showing that petitioner's Rotary Club citation had a significant level of recognition beyond the presenting organization.

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

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[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

> *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.*

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of her membership in the Rotary Club of Las Piñas – Camino Real, District 3830. The petitioner also submitted evidence of her membership in the Poetry Society of America and the Asian American Writers' Workshop. In response to the director's request for evidence, the petitioner submitted general information about the latter organizations from their internet sites, but there is no evidence (such as membership bylaws) showing their admission requirements.

In this case, there is no evidence showing that the Rotary Club, Poetry Society of America, and the Asian American Writers' Workshop require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, we concur with the director's finding that the petitioner has not established that she 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. 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.[2]

The petitioner submitted articles about her in *Newstar Philippines*, *Philippine News*, *The Filipino Express*, and *Pinoy Chronicle Entertainment Plus*. In response to the director's request for evidence,

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[2] 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.

the petitioner submitted information from the internet site of *Philippine News* stating that it is "a niche publication" focused on the "Filipino American Community," but there is no information specifying the newspaper's actual circulation. The petitioner also submitted promotional material for *The Filipino Express* stating that its readership base "is primarily in the New York and New Jersey area" and that its "total circulation" in 2005 was 32,950. The petitioner's response also included a letter from the publisher of *Newstar Philippines* stating: "*Newstar Philippines* is a weekly newspaper which covers most of the East Coast and neighboring cities in the United States. With a distribution size of approximately 10,000 copies per week, *Newstar Philippines* aims to keep Filipino-Americans well-informed, enlightened, and entertained." The self-serving nature of the preceding material is not sufficient to demonstrate that the aforementioned newspapers qualify as forms of major media. The director's decision stated that the preceding newspapers had "limited circulation" and, therefore, were not "commensurate with major media." We concur with the director's findings. In this case, the record lacks evidence such as objective circulation information from an independent source showing the distribution of the publications relative to other national media to demonstrate that the submitted articles were published in major media. Accordingly, the petitioner has not established that she meets this criterion.

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

We acknowledge the petitioner's submission of several recommendation letters praising her talent as a writer and discussing her activities in the field. We cite representative examples here. Talent and employment in one's field, however, are not necessarily indicative of original artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original artistic or business-related contributions that have significantly influenced or impacted her field.

Creative Director, Ad Creator Marketing & Communications, Quezon City, Philippines, states:

> We have had the privilege to have [the petitioner] as our major freelance copywriter for the past six years.
>
> During her tenure at Ad Creator Marketing and Communications, [the petitioner] has shown a high degree of creativity and professionalism in her work. Her duties often call for the development of advertising copy for our clientele. Her writing outputs have proven time and again to exhibit a high degree of ingenuity and style and form. Her work exudes a creative artistic style that never fails to align with the client's marketing and communication philosophy.

Web Consultant, Web Focus Solutions, Inc., Pasig City, Philippines, states:

> This certifies that we have regularly employed the services of [the petitioner] as a writer for our websites. [The petitioner] has shown excellence and artistic creativity in her work, and manifests our corporate philosophy of "going the extra mile." She has done writing work for our distinguished clientele . . . .

Proprietor, 3rd Generation Video Production, Quezon City, Philippines, states:

> This certifies that we regularly employe [sic] the services of [the petitioner] as writer for our AVPs [Audio Visual Presentations] and related services.
>
> [The petitioner] has given us quality and excellence in her work. She has worked for us in several projects for the Internal AVPs of Philip Morris International Philippines.

, actress for ABC Daytime's *One Life to Live*, states:

> [The petitioner] brings a refreshing one-world sensibility to the American entertainment milieu. I value her creative approach to plot development and character study and her sophisticated sense of cutting edge theatre. We are currently working on several one act plays as starring vehicles for me at the Ensemble Studio Theatre, of which I am on the Board of Directors. We are also in the process of developing TV pilots for the international market.
>
> She is a creative wellspring with a unique perspective and a joyful collaborative team spirit. In short, I love working with her and feel she belongs where she can add her voice to the American entertainment world.

, Senior Creative Advisor, MTV Networks, states: "In my opinion, [the petitioner's] innovative and exuberant poetry, her unique vision as a Philippine woman who bravely explores the world inside and outside herself, has made and will continue to make a rare and valuable contribution to our nation's creative treasure."

President, Philippine Fiesta, Inc., New York, states:

> [The petitioner] is the editor and writer for Philippine Fiesta, Inc., producer of *The Philippine Fiesta in America*. [The petitioner] is accountable for writing, reviewing, editing, and approval of all communication material/ press releases . . . .
>
> * * *
>
> We consider [the petitioner] as exceptional in the field of writing. Her work has strongly contributed to success of Philippine Fiesta. She is truly an invaluable part of the Filipino community in the United States who has achieved excellence in the writing.

In addressing the petitioner's evidence for this criterion, the director's decision stated that the reference letters attested "to the petitioner's creativity, professionalism, and unique vision as well as her ingenuity and style of writing," but concluded that the record lacked "objective documentary evidence that the petitioner has made . . . original contributions of major significance to the field." We concur with the director's finding. In the fields of literature, advertising, public relations, and entertainment, it is not enough to be talented and to have others attest to that talent. An alien must

have demonstrably impacted the field in order to meet this regulatory criterion. 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. While the petitioner has earned the admiration of her employers and colleagues, there is no evidence establishing that specific work attributable to her is tantamount to original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other writers nationally or internationally, nor does it show that the literary field has somehow changed as a result of her work.

In this case, the recommendation letters submitted by the petitioner are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's professional contacts is not presumptive evidence of eligibility; USCIS 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 writers' 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 original contributions of major significance that one would expect of a writer who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

The petitioner submitted the following:

1. Cover and excerpts from the petitioner's book of poetry entitled *Foot Prints of a Dreamer*;
2. Promotional flyer for petitioner's book launch and signing of *Foot Prints of a Dreamer* at 47 Great Jones Street in New York;
3. Photographic abstract for the movie *Ompong en E-Tok* identifying the petitioner as writer of the screenplay;
4. Letter from [redacted] of Ad Creator Marketing & Communications stating that the petitioner served as the company's freelance copywriter for six years;
5. Letter from of Web Focus Solutions, Inc. stating that his company has regularly employed the services of the petitioner as a writer for its websites; and
6. Letter from [redacted] of 3rd Generation Video Production stating that his company has employed the services of the petitioner as a "writer for its AVPs and related services." The letter was accompanied by timing sheets and corresponding video images for five presentations written by the petitioner for productions made by Philip Morris International.

In addressing the petitioner's evidence for this criterion, the director's decision stated:

> As evidence in support of this criterion, the petitioner references testimonial letters, a copy of a book cover, information regarding a book launching/signing, and a photo abstract of the movie OMPONGS [sic]. While this evidence demonstrates that the petitioner has been active in the field, it does not constitute a display at an artistic exhibition or showcase within the context of the criterion. Merely being engaged in the field is not sufficient to meet this criterion. Not every production, event, performance, etc. can be considered an exhibition or showcase such that it is indicative or consistent with national or international acclaim.

We concur with the director's findings. There is no evidence showing that the material referenced in items 1 through 6 above is consistent with sustained national or international acclaim at the very top of her field. The mere fact that a book is written is not evidence that the work itself has been artistically exhibited or showcased. The record contains no evidence to show, for instance, that the petitioner's poetry book had substantial readership, that 47 Great Jones Street in New York is a distinguished literary venue, or that the book was otherwise circulated in such a way as to be considered exhibited or showcased and in a manner consistent with sustained national or international acclaim. Regarding item 3, there is no evidence, for instance, showing the venues where the movie was displayed, an approximate number of viewers, or any critical acclaim or favorable press reviews associated with the movie *Ompong en E-Tok.* In regard to items 4, 5, and 6, we cannot conclude that the petitioner's ability to secure employment as a writer equates to having her work shown at exclusive artistic showcases or exhibitions.

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

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

As previously discussed, the petitioner submitted letters from [redacted] of Ad Creator Marketing & Communications stating that the petitioner served as the company's freelance copywriter for six years, [redacted] of Web Focus Solutions, Inc. stating that his company has regularly employed the services of the petitioner as a writer for its websites, [redacted] of 3rd Generation Video Production stating that his company has employed the services of the petitioner as a "writer for its AVPs and related services," and [redacted] of Philippine Fiesta, Inc. stating that the petitioner works for his company as a writer and an editor. There is no evidence establishing that the preceding companies have distinguished reputations or that the petitioner's role for them on a project-by-project basis was leading or critical.

In response to the director's request for evidence, the petitioner submitted a letter from Creative Manager, ABS-CBN Broadcasting Corporation, Quezon City, Philippines, stating that the petitioner "held the position as screenwriter" under his unit. letter indicates that "there were ten incumbents in [the petitioner's] scriptwriting team" and then lists the duties and responsibilities of her position. The petitioner's evidence does not demonstrate how her role differentiated her from the nine other screenwriters on her scripting writing team or the Creative Manager, let alone ABS-CBN Broadcasting Corporation's other employees, managerial staff, and corporate executives.

The petitioner also submitted a letter from President, Rotary Club of Las Piñas – Camino Real, District 3830, stating that the petitioner's position of "Project Creative Head" for the club involved translating English materials into Filipino, conceptualizing visual media projects, and assisting in the preparation of write-ups and speeches. We acknowledge that Rotary International has a distinguished reputation, but there is no evidence showing that the Rotary Club of Las Piñas – Camino Real, District 3830, has a distinguished reputation. Further, the petitioner's evidence does not demonstrate how her role differentiated her from the other club volunteers, let alone the district officers such as the president and secretary.

While the petitioner may have performed admirably on the projects to which she was assigned, the documentation submitted by her does not establish that she 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. Accordingly, the petitioner has not established that she meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate her receipt of a major internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). 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 of endeavor. 8 C.F.R. § 204.5(h)(2).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a 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.