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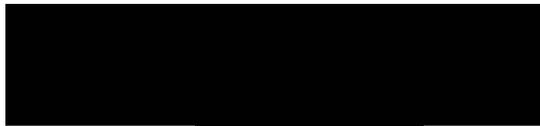
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
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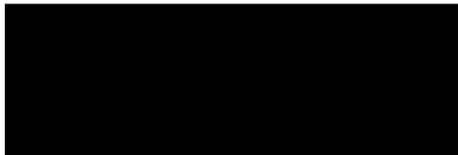
Petitioner:

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.

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. 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 at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director applied incorrect standards in denying the petition.

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

This petition, filed on August 16, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a video editor and/or camera operator.

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).

We note that although the record contains evidence of the petitioner's prior approval as an O-1 non-immigrant, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

As aforementioned, each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply. Thus, the petitioner's eligibility will be evaluated under the regulatory criteria under 8 C.F.R. § 204.5(h)(3) relating to the immigrant classification as claimed by the petitioner.

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

The petitioner initially submitted the following as evidence for this criterion:

1. A picture of an award with no legible inscriptions on it, with a caption below the picture that indicates it is the 2006 Terry Award (Silver) for Formula-D;
2. A picture of the inscription from item 1, which says "2006 Telly Award" and indicating that the award is for Formula D, WATV Productions – G4 TV with the petitioner's name on the bottom of it;
3. A pamphlet for the 28th Annual Telly Awards, which provides guidelines for entrants;
4. A picture of the 2006 Terry Award with a caption that says it is for "NOPI;"
5. A picture of what is supposed to be the 2003 Terry Award for "NOPI," but the picture is not clear and the petitioner's name does not appear to be on the award;
6. A certificate indicating that F.J. Productions, Inc. (Client: Varig Airlines/Varig Promo) was the 2003 Finalist for the 24th Annual Telly Awards;
7. Internet pages from www.telly.com; and
8. A "Fact Sheet" from the 27th Annual Telly Awards.

In response to the Request For Evidence ("RFE"), the petitioner submitted the following evidence:

9. A certificate for the 27th Annual Telly Awards for the 2006 Silver Winner, which indicated the award was given to Formula D, WATV Productions – G4 TV, Giovanni Dal Monte (Editor);
10. A certificate for the 27th Annual Telly Awards for the 2006 Bronze Winner, which indicated the award was given to NOPI Tunervision, Speed Channel, WATV Productions, Giovanni Dal Monte (Editor);
11. A clear picture of item 2;
12. A clear picture of item 4;
13. An email to the petitioner from someone, whose position is not indicated, at the Telly Awards that confirmed the petitioner placed in the editing category (referred to as TV28) in 2006 and 2007 and stated that judges rate each entry on a 10 point scale and that those with 9 points or higher are awarded the "Silver Telly" Statuette;
14. Internet printouts from the Telly Awards website, one page which indicates that WATV Productions, NOPI Tunervision won the 2006 Film/Video Bronze Winners in the 27th Annual Telly Awards and another that indicates WATV Productions, Formula D won the 2006 Film/Video Silver Award (neither mention the petitioner); and
15. A "Fact Sheet" for the 29th Annual Telly Awards, which stated that 7-10% of entrants are chosen for Silver Telly Awards and 18-24% of entrants are chosen for Bronze Telly Awards among approximately 14,000 applicants.

In his decision, dated September 30, 2008, the director found that the evidence was not sufficient to meet this criterion. On appeal, no new evidence for this criterion was provided. We agree with the

director that the petitioner failed to establish that he has received lesser nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

We further agree with the director that inadequate evidence was provided to demonstrate that the 2003 Telly Award was awarded to the petitioner. The petitioner's name does not appear on the actual award or the certificate (items 5 and 6). Moreover, no additional information regarding this award was submitted in response to the RFE or on appeal.

Similarly, it is unclear whether the Bronze and Silver Telly Awards in 2006 were personally awarded to the petitioner. We agree with the director, that without further evidence, "it appears that the awards identified are personalized statuettes and certificates to commemorate the petitioner's involvement in the productions." This can be evidenced through the Telly Award website (item 14), which lists the productions that the petitioner was involved in and the award, but does not mention the petitioner's name.

The petitioner also failed to provide independent documentation that any of these alleged awards constitute nationally or internationally recognized prizes for excellence in the petitioner's field, or that these awards are prestigious, the selection process is difficult or the candidates that he was competing against were of a caliber consistent with this highly restrictive category. 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 places the burden on him to establish every element of this criterion. None of the evidence provides insight into the types of competitors that the petitioner was competing against in order to win these awards. Items 8 and 15 indicate that there were 14,000 applicants, but it is unclear whether all 14,000 applicants were editors. Further, item 3 and 13 explain the selection process, and item 15 (as well as item 8) specifically states that 7-10% of entrants are chosen for Silver Telly Awards and 18-24% of entrants are chosen for Bronze Telly Awards. Therefore, even if only 7% of the entrants are chosen for silver awards, nearly 1,000 people will win the award. Such a high number of winners is not consistent with a prestigious award that would bring acclaim upon the recipient.

Lastly, we would note that the Telly Award was referred to as the "Terry" Award in each caption in the petitioner's initial submission. This inconsistency was never addressed in the brief. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.

The petitioner did not initially claim this criterion. However, in response to the RFE, the petitioner submitted an article from *Speedway* with an uncertified partial translation. The petitioner's RFE response brief also referenced and submitted a report showing the ratings for the Speed Channel's "Superbikes" program, accompanied by a letter and emails explaining the report, claiming that it applied to this criterion. The petitioner also submitted pictures from a program, presumably "Superbikes," that indicated he was the lead editor and producer of the show and an advertisement for another television show "Party Mix." Internet printouts from Speed TV were also submitted, which provided a description of the show and the programming times. No additional evidence was provided on appeal.

The director found that the petitioner failed to satisfy this criterion, and we concur with his decision. Among many other deficiencies noted by the director, the director found that the article in *Speedway* was not primarily about the petitioner. The plain language of this regulatory criterion requires that the published material be "about the alien." We agree, and would add that the article just briefly stated the petitioner's role as an editor. In addition, this criterion specifically requires that the evidence submitted contains a title, date, author and translation, if necessary. However, the petitioner failed to provide a title and date for the *Speedway* article. Moreover, the article was not accompanied by a complete certified translation, and instead only a partial uncertified translation was provided. Without complete certified translations, the actual content of the articles cannot be ascertained. See 8 C.F.R. § 103.2(b)(3). Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS 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.

Moreover, 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 The petitioner also failed to submit evidence to establish that the *Speedway* article was published in a professional or major trade publication or other major media. Regional coverage or coverage in a publication read by only a small segment of a country's total population is not evidence of national or international acclaim. As there was no evidence that the publication has significant national or international distribution, or any other information to support that it should be considered a professional or major trade publication, or another form of major media, the *Speedway* article does not satisfy this criterion.

Further, the broadcast of radio or television interviews or programs do not qualify the petitioner under this criterion. The specific regulatory requirements reference published written work instead of visual or audio work. As such, the additional evidence regarding the petitioner's work on television programs

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.

does not satisfy this criterion. Moreover, the programs were not about the petitioner, but rather were programs that he worked on.

For all of the above stated reasons, the petitioner failed to establish 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.

The petitioner provided various reference letters, which the petitioner's brief argued confirms that he "possesses talents, abilities and achievements that put him in the very highest levels of his field." The petitioner also submitted evidence regarding his participation in covering the CART season and his successful completion of a tandem skydive which he argued satisfied this criterion. In his RFE, the director states that "simply working in his field is not an original contribution." The director also notes in his RFE that "it is unclear how completing a tandem skydive constitutes an original contribution let alone an original contribution of major significance to video editing." The petitioner did not provide new evidence in response to the RFE or on appeal. However, in the petitioner's RFE response brief and his appeal brief, he argued that his experience on various programs as an editor and that his awards, which he originally mentioned with reference to 8 C.F.R. § 204.5(h)(3)(i), demonstrate that he has made contributions of major significance to his field.

We agree with the director that the petitioner has failed to fulfill this 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. However, none of these letters indicate a specific contribution made by the petitioner. While the letters indicate the petitioner has extensive experience as a video editor, talent, language skills, and a unique cultural perspective, they fail to demonstrate specifically how the petitioner made a contribution of major significance in his field. Moreover, while reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

In addition, although the prizes were not even addressed as pertaining to this criterion until the appeal, the prizes themselves do not support the proposition that the petitioner has made a contribution of major significance. Similarly, the petitioner's coverage of the CART season, his tandem skydive and his work as an editor in and of itself does not satisfy this criterion. The

petitioner failed to assert how his involvement in these events and/or his employment constitutes a contribution of major significance.

As discussed above, the petitioner has failed to establish how his work has influenced his field and to detail specifically what contribution he has made of major significance in his field. Accordingly, 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.

The petitioner initially submitted evidence to confirm his participation and success in various motor sports events in an attempt to satisfy this criterion. In his RFE, the director requests that the petitioner explain how his involvement in motor sport events constitutes displays of his work at artistic exhibitions or showcases. The petitioner does not further argue, or provide any further evidence regarding the same, that his participation in these events satisfies this criterion either in response to the RFE or on appeal. As such, this evidence does not provide any support for this criterion.

In response to the RFE, the petitioner argued that he has worked as an Editor and/or Senior Editor on various successful television programs and submitted various advertisements for these programs (none of which reference his name). On appeal, no new evidence was submitted.

In his decision, the director indicated that the petitioner has failed to explain and demonstrate how "his work on these productions constitutes a display of his work at an artistic exhibition or showcase within the context of this criterion." We agree with the director, finding also that the petitioner has not met this criterion.

The plain language of this criterion indicates that it is intended for visual artists (such as sculptors and painters). It is inherent in the petitioner's position as a video editor that he contributes to the production of various television programs. Without evidence that the petitioner's work as a video editor is comparable to the exclusive artistic showcases that might serve to meet this criterion for a visual artist, we cannot conclude that the petitioner meets this criterion.

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.

The petitioner's initial brief argued that he satisfied this criterion because he is working as a Senior Editor for WATV productions, and because he has worked on various other projects for the Speed Channel, Spike TV and Bandeirantes TV. The petitioner's brief also states that he covered the CART season and successfully completed a Tandem Skydive for "Mazda Rev It Up." The petitioner then submitted various documents that confirmed his employment and participation in these events. However, the evidence did not provide any information regarding the nature and level of the roles

the petitioner played within these various organizations, or his responsibilities in such roles. As such, the director requested this information in his RFE. In response to the RFE, the petitioner provided a letter from a Production Manager at WATV Productions, dated August 12, 2008, which stated that the petitioner is a “lead/supervising editor” for the “Superbikes” program and that he “leads a team of as many as five editors and instructs operational staff on ways editors can be helped.” The petitioner also provided a letter from a Producer at WATV Productions, which indicated that he “leads a team of editors” and “takes the time to help mentor [our] younger staff.” No new evidence was provided on appeal.

In order to establish that the petitioner performed in a leading or critical role for an organization or establishment with a distinguished reputation, he must establish the nature of his role within the organization or establishment and its reputation. The position should also 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. Although the petitioner provided evidence that he has acted in the capacity as Senior or Supervising Editor in various productions, he failed to show that such involvement is commensurate with a leading or critical role. Additionally, although the letters claim that the petitioner played a leading role as an editor, such letters failed to distinguish his career and his specific employment from others in his field.

The evidence further lacks proof that the television stations the petitioner was employed by had a “distinguished reputation.” There was no independent evidence included regarding the background of the various media organizations for which the petitioner worked or their standing in the community or world.

As such, 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.

The petitioner did not initially claim that this criterion applied to him. However, in response to the RFE, the petitioner provided a few earnings statements for 2008 from WATV Productions, a tax return for 2007 and a Wage and Tax Statement for 2007 (“W-2”). The petitioner’s W-2 indicated that his salary for 2007 was approximately \$76,000. The petitioner claimed that his annual income with benefits is over \$100,000 per year. The petitioner’s RFE response brief requested that the AAO visit the U.S. Department of Labor Website at www.bls.gov/oco/ocos091.htm#earnings which indicates that the median annual salary for video editors for 2006 was \$46,670. However, the petitioner failed to mention that the same webpage indicated that video editors in “the highest 10 percent earned more than \$110,720.” Therefore, even with benefits, the petitioner’s compensation is not even equal to the highest 10 percent of video editors.

In his decision, the director found that the evidence failed to establish that the beneficiary received a high remuneration for his services in relation to others in his field. As no additional evidence was provided on appeal, we concur with the director. The plain language of this regulatory criterion requires the petitioner to submit evidence that the beneficiary has commanded a high salary “in

relation to others in the field.” The petitioner only provided a link to a website in attempt to demonstrate his salary was high in relation to others in his field. However, no actual documentary evidence was provided. There is no indication that the petitioner has earned a level of compensation that places him among the highest paid video editors in Brazil, the United States or any other country.

Accordingly, the petitioner does not meet 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)(i) of the Act and the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.