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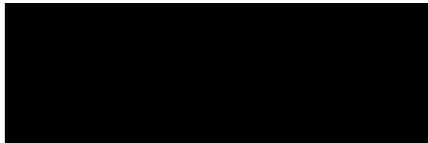
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
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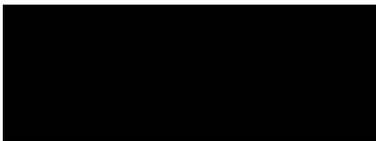


FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **AUG 26 2009**  
LIN 08 024 51512

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.

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

This petition, filed on October 9, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a beautician and/or make-up artist and/or expert in cosmetology.

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).

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 Prabal Gorkha Dachinbahu Medal from the King, dated December 29, 2000, for the petitioner's work in the beauty/make-up industry;
2. A letter, dated July 29, 2007, from ██████████ in the Prime Minister's Office, which confirmed that the petitioner received the medal detailed in item 1 at the Royal Palace in 1999 and that such award is "rarely given" to beauticians;
3. A photograph of the petitioner receiving the medal detailed in item 1 with a caption dated 1999;
4. An Award of Excellence 2005 from the Ministry of Information and Communication in Nepal for the petitioner's "outstanding contribution to Nepali Beauty & Film Industry;"
5. An Award of Excellence as the "No. 1 Beautician/Make-Up Artist 2006" from the Nepal Make-Up Artists Association of Nepal;
6. A letter of appreciation, dated September 12, 2002, for the petitioner's "outstanding contribution to hair styling;"
7. A Certificate of Appreciation from the 8<sup>th</sup> South Asia Federation Games in 1999 was awarded to the petitioner for her "outstanding contribution to the success of the ceremonies;"
8. A Certificate from the Nepal Film Artists Association for the petitioner's "sincere contribution as a hairstylist for the successful completion of the Silver Jubilee Ceremony of Nepali Cine Artists" in 1999; and
9. A Certificate from the Nepal Film Artist Association for the petitioner's "sincere contribution to the Cultural Program" as a hair specialist in 1998.

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

10. A picture of the medal discussed in item 1 with a translation which said that the medal was awarded for “valuable service to Nepal” and it was dated 1999;
11. A letter from the Office of Prime Ministers and Council of Ministers provided more information with regard to the award in item 1, which included that the petitioner was chosen from 33 people selected for this award, that the award is given on an annual basis for those who have made “an extraordinary contribution to the nation through their field of endeavor,” and that the medal is rarely given to Nepalese beauticians;
12. A color copy of item 3 was resubmitted; and
13. An internet printout from the International Electronic Phaleristic Encyclopedia at <http://faculty.winthrop.edu> entitled “Medals of Nepal,” which indicated that item 1 is awarded to members of the royal family and Nepalese citizens for rendering valuable services in Nepal.

In his decision, dated September 23, 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 she has received lesser nationally or internationally recognized prizes or awards for excellence in her field of endeavor.

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. With respect to items 1, 6, 8 and 9, the petitioner failed to provide a certification to accompany the translation. Without the proper certified translations, the AAO is unable to confirm the accuracy of the petitioner’s statements regarding her claimed published materials. Moreover, the reliability of the translations is questionable because Majesty was misspelled in item 1 and the name of the association was referred to as Artist rather than Artists in item 9. Most notably, the translation of the date of the award for item 1 indicates the medal was dated 2000, while all the other supporting evidence, including items 2 and 3 as well as the briefs, stated that this award was given to the petitioner in 1999. 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).

Moreover, the petitioner failed to provide independent documentation that any of these alleged awards constitute nationally or internationally recognized prizes for excellence in the beneficiary’s field, such as evidence regarding the awards’ prestige, selection process or candidates that the beneficiary was competing against or some other evidence consistent with national or international acclaim at the very top of the field. 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 the petitioner to establish every element of this criterion. Aside from the actual awards or certificates, only two letters, items 2 and 11, and one internet printout were submitted to provide additional information regarding the awards. However, letters are not a substitute for objective evidence. Moreover, these materials only provided further

information about one of the awards, item 1. Further, the information was very general and failed to provide specific information such as detailing the selection process, e.g. who the judges were and how the judges were selected to choose the recipients of the awards or their level of notoriety in Nepal. None of the evidence provides insight into the types of competitors that the petitioner was competing against in order to win this award. The additional evidence only indicates that the award is rarely given to beauticians (item 2) and that the petitioner was chosen from 33 competitors (item 11). Item 11 also says that contestants are chosen for their “extraordinary contribution to the nation through their field of endeavor,” however the petitioner’s contribution is not specifically stated. The petitioner has presented insufficient information about her award to enable USCIS to assess its nature or significance. In addition, items 7 and 8 appear to be solely participation certificates, rather than prizes or awards.

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

*Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner initially submitted a letter from the Film Artists Association of Nepal (“FAAN”) that stated she was an active member of FAAN and of the Nepal Film Technician Association (“NEFTA”). She also submitted a letter regarding her role as a judge for NEFTA that also indicated she was a “central member.” In response to the RFE, the petitioner provided a letter from the Nepal Beauticians Association of Nepal (“BAN”) and another letter from FAAN. The letter from BAN confirmed that the petitioner was a member of the association since 2000 and that she received her first regular membership with BAN in 1996. The letter further stated that the petitioner was chosen to be a “central member,” which are “executive committee members who are responsible to run the association,” because of “her great contribution in the field of beauty.” The letter from the FAAN certified that the petitioner was awarded honorary membership in the organization in 2001. The letter also provided the criterion for honorary membership in this organization, which included being any person, Nepalese or foreign, who has made an outstanding contribution in the Nepalese film industry either directly or indirectly. It also indicates that full members must have performed in more than five movies.

The director’s decision found that the petitioner failed to provide sufficient evidence for this criterion. On appeal, no new evidence was provided. We agree with the director, finding also that the record lacks the evidence necessary to satisfy this criterion.

In order to demonstrate that membership in an association meets this criteria, the 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, 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.

Although the petitioner provided evidence that she is a member of FAAN, BAN and NEFTA, the evidence consists only of letters, rather than objective independent evidence such as membership certificates. Moreover, the record lacks evidence to establish that outstanding achievements are required for membership in any of these three organizations. For example, no evidence was included (such as membership bylaws or official admission requirements) for any of these organizations to show that they require outstanding achievements of their members. The letter from FAAN indicated an outstanding contribution in the Nepalese film industry either directly or indirectly is required for honorary membership. However, such a requirement is very vague and not necessarily consistent with an outstanding achievement.

The petitioner also failed to show that her membership to be selected as a member in any of these organizations was judged by recognized national or international experts in the field. There was no evidence to indicate who judged her membership in any of these organizations.

Accordingly, 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.*

The petitioner submitted an uncertified translation from *Digdarshan Weekly*, dated July 19, 2005, entitled "Nepali Beauty Industry in International Market after 10 Years." The petitioner also provided an article written in English from *The Nation*, dated July 31, 2005, entitled "I Want to Introduce Nepali Beauty Magic to the World." Both articles fail to include the author's name as required by the parameters of the regulation. Moreover the first article fails to include the proper certification as required by 8 C.F.R. § 103.2(b)(3).

The petitioner claimed in her affidavit, in response to the RFE, that *Digdarshan Weekly* and *The Nation* are popular and widely circulated publications in Nepal. However, no evidence to substantiate this claim was provided. 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)). No new evidence was provided in response to the RFE or on appeal.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, 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 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>1</sup> The petitioner failed to submit evidence to establish that the articles were 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. The record lacked any evidence that these publications have significant national or international distribution, or any other information to support that they should be considered professional or major trade publications, or another form of major media.

For all of the above stated reasons, the petitioner failed to establish that she meets this criterion.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner initially submitted the following evidence:

1. A letter from NEFTA, dated July 15, 2006, which states that the petitioner was a judge to the "Kathmandu Beauty Contest 2003" wherein 45 contestants competed for the award;
2. An offer for employment from Miss India Worldwide, to work for them as a make-up artist for the pageants; and
3. A letter from the Association of Nepalese in the Americas ("ANA") with Friends of Nepal ("FON") thanking the petitioner for her participation in the 25<sup>th</sup> ANA-FON Convention and for her "exceptional quality and extraordinary techniques in make up arts."

The petitioner failed to provide any further evidence in response to the RFE or on appeal.

The director found that the petitioner failed to meet this criterion, and we agree. The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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). For example, judging a national competition for top cosmetologists is of far greater probative value than judging a local competition for youth or novices.

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<sup>1</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.

The petitioner provided evidence of her service as a judge for a beauty contest (item 1). However, the record lacks evidence such as the level of prestige associated with judging such a competition, the requirements necessary to become a judge, the names of the models the petitioner evaluated and/or their levels of expertise and the prestige associated with judging such a competition. Moreover, we agree with the director that “it is unclear how serving as a judge in a beauty contest constitutes judging the work of others in the field of cosmetology.” The director also found that items 2 and 3 fail to establish how the petitioner has judged the work of other make up artists, and we agree.

In light of the above, 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.*

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.

The petitioner provided various reference letters in order to support this claim. However, no new evidence was submitted in reference to the RFE or on appeal. In his decision, the director found that the record lacked objective documentary evidence to demonstrate that the petitioner has made any original contribution of major significance to her field, and we agree.

None of these letters referenced a specific contribution made by the petitioner. While the letters discussed her experience in make-up and hair, as well as her teaching abilities, they fail to demonstrate specifically how the petitioner has made a contribution of major significance in her 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 counsel for the petitioner argued the articles written by the petitioner, which were originally provided in an attempt to satisfy 8 C.F.R. § 204.5(h)(3)(vi), constitute evidence for this criterion, these articles were not even addressed as pertaining to this criterion until the appeal. Nonetheless, the articles themselves do not support the proposition that the petitioner has made a contribution of major significance.

As discussed above, the petitioner has failed to establish how her work has influenced her field and to detail specifically what contribution she has made of major significance in her field. Accordingly, the petitioner has not established that she meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner initially submitted an article she wrote for [www.nepalipost.com](http://www.nepalipost.com) dated August 2<sup>nd</sup>, without a year, entitled "A High Demanded Profession in USA: Cosmetology." The article was cut off on the right hand side, so could not be fully read. The petitioner also submitted an article she wrote for [www.tiptopwebsite.com](http://www.tiptopwebsite.com), undated, entitled "The art of Mendhi." The petitioner additionally provided an article from [www.kantipuronline.com](http://www.kantipuronline.com) which was not translated and none of the information in the article could be confirmed, including whether the petitioner wrote the article.

In his RFE, the director requested, among other documents, a certified translation of the article from [www.kantipuronline.com](http://www.kantipuronline.com). However, in response to the RFE, the petitioner only provided a letter from the editor at Kantipur Publications, dated July 15, 2008, to confirm that the petitioner is an "occasional writer" for the newspaper. No new evidence was provided on appeal.

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. As a certified translation for the article from [www.kantipuronline.com](http://www.kantipuronline.com) was not submitted, the AAO will not consider this article.

Further, the record failed to prove that any of the petitioner's articles were published in any professional or major trade publications, or another form of major media. Likewise, the evidence did not indicate how the petitioner's articles on websites or newspapers qualify as scholarly.

As such, the petitioner has not established that she 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 initially submitted a letter from Evergreen International, a professional law and accounting firm in Nepal, dated July 26, 2007, which stated that the petitioner's monthly income "seems to be up to \$3,000" and that the average beautician salary is \$720 per month. A letter from Sagarmatha Television, dated September 13, 2005, was also provided. This letter was an offer for employment as a senior make-up artist with a salary of 70,000 rupees per month. No new evidence was provided in response to the RFE or on appeal.

In his decision, the director found that the evidence failed to establish that the petitioner received a high remuneration for her services in relation to others in her field. We concur with the director. The

evidence submitted was not supported by independent evidence, such as the petitioner's tax returns or wage statements. 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)).

Moreover, 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's accountant claimed that the petitioner received a higher salary than other beauticians. However, the source of these claims is unknown. Further, it is unclear who the petitioner was being compared to in order to make such a determination. There is no indication that the petitioner has earned a level of compensation that places her among the highest paid beauticians in Nepal, the United States or any other country.

We also find that because a discrepancy exists between the petitioner's salary as claimed in the letter from her accountant, and her salary as listed on the Form I-140 (\$26,820 per year), the petitioner should resolve such an inconsistency with additional 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).

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 she 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 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 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.