

**PUBLIC COPY**



**U.S. Citizenship  
and Immigration  
Services**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

B2

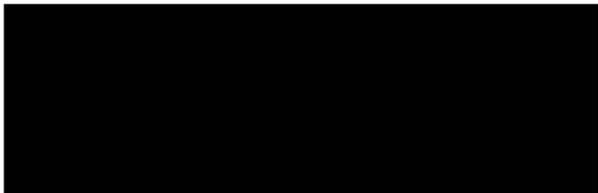


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: FEB 23 2009  
EAC 06 037 50950

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).

*Mai Plurson*

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, counsel argues that the director's decision failed to address all of the petitioner's evidence, including her more recent work.

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). If the ten criteria do not readily apply to the alien's occupation, the petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4). 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 November 14, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a television producer. 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.*

The petitioner submitted an October 17, 2005 letter from [REDACTED], journalist and television host of Nine Network Australia's *This is Your Life*, stating:

[The petitioner] and I met while she was a Communications student attending the University of Western Sydney. She contacted me with interests of doing an internship with my then employer Nine Network Australia.

\* \* \*

At the time [REDACTED] contacted me I was Senior News Anchor for the program *A Current Affair*, Australia's version of *60 Minutes* in the United States. . . . [The petitioner] was quickly hired on as my Senior Producer while I hosted the *A Current Affair* program. . . . As my Senior Producer, [the petitioner] worked on many internationally exclusive stories. She was the only Senior Producer from the show sent to New York to cover September 11 for *A Current Affair*.

\* \* \*

[The petitioner's] extraordinary skills as a Producer brought to us the exclusive story of [REDACTED] a terminally ill Australian woman who carried out her promise to take her own life.

\* \* \*

---

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

Another exclusive story that *A Current Affair* obtained due to [the petitioner's] extraordinary abilities as a Producer was with reclusive S.A.S. service of the Australian Army . . . .

\* \* \*

Due to the brilliantly produced stories outlined above, in 2001 *A Current Affair* won a Logie Award (Australia's version of an Emmy Award) for "Most Outstanding Public Affairs Program." I was chosen and honored to accept on behalf of the show. In my acceptance speech I thanked [the petitioner] for being the most proficient, extremely exceptional Senior Producer I have ever had the experience of working with.

According to \_\_\_\_\_ letter, the award was presented to his show (which had multiple producers) rather than to the petitioner. The plain language of this regulatory criterion, however, requires "documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards." We cannot ignore \_\_\_\_\_ statement that the award was accepted by him rather than the petitioner. Further, there is no supporting evidence from the organizers of the 2001 Logie Awards indicating that *A Current Affair* received a Logie Award in 2001 or that the award focused primarily on the petitioner's work. Simply 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)).

On February 1, 2007, the director requested further evidence regarding the aforementioned the Logie Award, including a copy of the award and information demonstrating its scope and significance. In response, counsel states:

Unfortunately, like the Emmy award, the Logie Award is actually a small statuette and as such a "copy" of it is not available. The original is in Australia and not available for photography; however, we present the official list of Logie award winners from 1990 which confirms that the news program *A Current Affair* . . . won the Logie for most popular current affairs program.

We note that the "official list of Logie award winners" submitted by the petitioner in response to the director's request for evidence was not from the competition organizers. Rather, the petitioner submitted a printout from *Wikipedia*, an online encyclopedia, entitled "Logie Awards of 1990." With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>2</sup> See *Lamilem Badasa v. Michael Mukasey*, No. 07-

---

<sup>2</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required



petitioner has not established that earning the respect of her immediate colleagues and having her work produced and broadcasted is tantamount to outstanding achievements or consistent with sustained national or international acclaim at the very top of the television industry. Upon review, we find the director properly considered the evidence submitted, thoroughly addressed counsel's arguments and appropriately addressed the evidence and arguments in his decision. Accordingly, we concur with the director's finding that the petitioner does not meet 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 producer and discussing her activities in the field. 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 contributions that have significantly influenced or impacted her field.

Supervising Producer, *60 Minutes*, Australia, states:

For the last three years, I have been [the petitioner's] Supervising Producer at *60 Minutes*, a leading weekly investigative news program broadcasted by the Nine Network, Australia's highest-rating television network. [The petitioner] is one of our Producers for *60 Minutes* and is responsible for producing the show's U.S. news coverage.

\* \* \*

[The petitioner] has been successfully producing top-rated shows for the Nine Network for more than a decade now. She is currently producing outstanding programs of international importance for *60 Minutes*, but originally began her promising career with *A Current Affair*, our sister nightly current affairs program.

\* \* \*

I am responsible for assigning the program's top U.S. news coverage to [the petitioner]. I, and in turn *60 Minutes*, depend on her to produce informative, compelling newscasts with true viewer benefit. [The petitioner] is responsible for the story's production once it is assigned to her. [The petitioner's] job is to take the assignment and make it into quality television, in keeping with the high standard set by *60 Minutes*. As our Producer, [the petitioner] takes responsibility for everything from coordinating the crew and equipment, researching and investigating story detail, reviewing and editing all news scripts to scheduling all interviews and working with on-air Reporters in the field. This truly requires the skills of an extraordinary Producer who can meet uncompromising deadlines and produce outstanding international news coverage from across the world.

I feel that [the petitioner's] assignment to cover the aftermath of Hurricane Katrina provides the clearest example of her abilities. We needed [the petitioner] to travel down to Louisiana and Mississippi and report every detail of what was happening down in those areas. . . . [The petitioner's] job was to develop and produce the story showing the people and communities affected by the chaotic destruction of the hurricane. We counted on her skills and knowledge to bring real-time stories and reports to the Australian viewers.

While the petitioner's work is admired by the supervising producer of her unit at *60 Minutes*, there is no evidence showing that her development and production of news stories is tantamount to original contributions of major significance in her field.

[REDACTED] Institute of Film and Television, Tisch School of the Arts, New York University, states:

I had the great pleasure of a face-to-face meeting with [the petitioner]. I experienced for myself the force of her personality, talking through her life and times, using her resume as a jumping off point . . . .

\* \* \*

As a producer and director of American prime-time television for the past twenty years, it is my opinion that [the petitioner] is a producer of extraordinary ability. Her accomplishments are remarkable, her energy boundless, and the ceiling of her success seems limitless.

[REDACTED] letter does not indicate that he was aware of the petitioner's contributions prior to meeting her and reviewing her resume. Nor does his letter specifically identify the petitioner's original contributions as a television producer.

[REDACTED] states:

I first met [the petitioner] in 1997 while working together at ABC's Worldwide Television News, now part of Associated Press Television News . . . .

\* \* \*

Out of the many assignments [REDACTED] and I worked on together the one that best shows her outstanding skills and talents as a Producer is the coverage of [REDACTED] . . . . Because of [the petitioner's] amazing skills as a Producer, not only did we get some of the most incredible interviews but our crew was the only media outlet allowed to work out of the [REDACTED] . . . . [The petitioner] is clearly a Producer of extraordinary abilities and talent. She is without a doubt the best in her field and the best that I've had the pleasure of working with.



illustration with objective evidence that she is in fact making original contributions to her field. . . .

The petitioner's response included copies of DVD recordings for the aforementioned television programs. The petitioner also submitted an April 10, 2007 letter from [REDACTED] stating that the petitioner worked with her on the ABC television series [REDACTED] in the summer of 2006. There is no evidence showing that the preceding work produced by the petitioner had been released or broadcast as of the petition's November 14, 2005 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Subsequent developments in the petitioner's career cannot retroactively establish that she was eligible as of the petition's filing date. Accordingly, the AAO will not consider the petitioner's work for the preceding series in this proceeding. Nevertheless, there is no evidence showing that the petitioner's work for these series was tantamount to original contributions of major significance in her field.

In light of the above, 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.*

Counsel argues that circulation of the petitioner's work in major media meets this regulatory criterion. The plain language of this criterion requires the petitioner's "authorship of scholarly articles." The television programming produced by the petitioner does not meet this requirement. Further, because the petitioner works as a television producer, the fact that she has produced material for broadcast by major media outlets is not indicative of sustained national or international acclaim at the very top of her field. Such work is inherent to the petitioner's occupation and is the result of the collaboration of multiple contributors.

In response to the director's request for evidence, counsel cites the petitioner's recent work for "entertainment media sources in the U.S., namely HBO, MTV and ABC." As discussed, the broadcast and release dates for the series *One Ocean View* (ABC), *Flight of the Conchords* (HBO), and *Viva La Bam!* and *Adventures in Hollywood* (MTV) on which the petitioner worked post-date the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's work for the preceding series in this proceeding.

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.*

The petitioner submitted letters of support reflecting that she has worked as a producer for [REDACTED] Entertainment Department, and [REDACTED] News. While these organizations may have a distinguished reputation, there is no evidence showing

that the petitioner's role for them was leading or critical. At issue for this criterion is the position the petitioner was selected to fill for these media outlets. 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. In this case, there is no evidence demonstrating how the petitioner's role differentiated her from the multiple producers working for these organizations, let alone their executive staff. The documentation submitted by the petitioner shows that she performed admirably on the projects assigned to her, but it 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.

In response to the director's request for evidence, the petitioner submitted evidence showing that she was a producer for [REDACTED] and a [REDACTED]. On appeal, counsel states that the director "completely ignored evidence of the [petitioner's] more recent work, including her role as producer of the hit [REDACTED] and her work for [REDACTED]." The petitioner's work as a producer and a co-director for these two series occurred subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's work for the preceding series in this proceeding.

In light of the above, the petitioner has not established that she 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 October 17, 2005 letter from [REDACTED] states that "in 2001 *A Current Affair* won a Logie Award . . . for 'Most Outstanding Public Affairs Program.'" According to information submitted by the petitioner from <http://tvweek.ninemsn.com.au>, *TV Week* Logie Awards are chosen by popular vote. As discussed, the record does not include primary evidence from the organizers of the 2001 Logie Awards indicating that *A Current Affair* received a Logie Award in 2001 or that the award focused primarily on the petitioner's work. There is no evidence showing that the commercial success of this program was mostly attributable to the petitioner's work or that the program's audience significantly increased after she was hired as a producer.

The October 27, 2005 letter from [REDACTED] was accompanied by "a list of U.S. and international media outlets that are currently utilizing [the petitioner's] celebrity interviews and coverage." The record, however, does not include actual sales figures or other quantifiable evidence showing that the petitioner's work achieved commercial success in manner consistent with sustained national or international acclaim at the very top of her field. This regulatory criterion calls for evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner produced or contributed to program segments that were utilized by various broadcasters cannot meet the plain language of this criterion.

In response to the director's request for evidence, the petitioner submitted DVD recordings for *Flight of the Conchords* and *Adventures in Hollywood*. Counsel states: "Although [the petitioner's] latest shows . . . are very new, they are commercially successful in that they are premiering on two of the most outstanding television networks today, HBO and MTV." As discussed, the broadcast premier dates for these two shows post-date the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding.

In this case, the petitioner has failed to demonstrate her 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).

Throughout this proceeding, counsel has argued that some of the petitioner's documentation should be considered as comparable evidence of the petitioner's extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4). For example, counsel argues that the petitioner's employment with WTN is comparable evidence for the criterion at 8 C.F.R. § 204.5(h)(3)(ii) and that circulation of her work in major media is comparable evidence for the criterion at 8 C.F.R. § 204.5(h)(3)(vi).<sup>3</sup> The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Nevertheless, there is no evidence showing that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of her field.

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.

---

<sup>3</sup> This evidence has already been addressed earlier in this decision and in the decision of the director.