

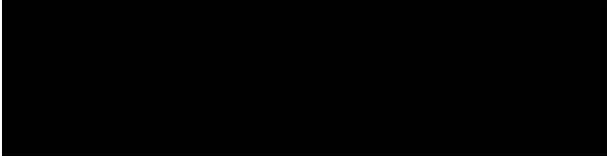


U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUL 08 2009
LIN 07 155 51326

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)

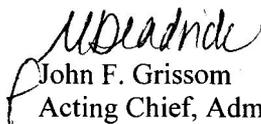
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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. The petition 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 business. The director determined 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 the director “wrongfully concluded” that he had not met any of the ten regulatory criteria and that had the evidence been “reasonably looked” at, it would establish that he met six of the ten criteria.

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 to the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and the 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, 60898-9 (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 has 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 May 2, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a journalist. 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 of the criteria outlined in 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 that, he claims, meets 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 claims to meet this criterion based on his receipt of "a national award called 'Gorkha Dashinbahu Fourth.'" The petitioner stated that he was awarded this "first national award" by the late King Birendra Bir Bikram Shah Dev on December 29, 1991 for his "excellent contribution to the field of journalism, social services and food crisis management." The petitioner submitted documentation indicating that he was conferred the right to wear "the order of 'Prabal Gorkhadachhinbahu Medal'" by the King of Nepal. The document, dated December 29, 1991, indicates that the petitioner worked for Nepal Food Corporation but does not specify his duties, his position with the company, or the basis for the award.

The petitioner submitted a copy of a March 10, 2007 letter from the general manager of the Nepal Food Corporation, in which he described the petitioner as "an official writer and analyst" and stated that:

He has been involved in several research activities and has penned articles extensively on government and politics, social and economic issues with reference to the prevailing situation in Nepal. [He] has also been an editor of the ***Khadya Bulletin*** a newspaper published by this office.

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

He has over a three decades association with the Nepal Food Corporation in the capacity of a senior official. His expertise to manage food supply to the people of mountain and hilly regions at the crisis time has been commendable. His contributions through [writing] in leading journals, newspapers and magazines of Nepal on various issues have remained exemplary.

In a request for evidence (RFE) dated February 22, 2008, the director advised the petitioner that the “significance of the Prabal Gorkhadachhinbahu Medal to the field of journalism has not been established” and instructed the petitioner to submit such evidence. In response, the petitioner submitted an April 4, 2008 letter from the Embassy of Nepal signed by the First Secretary and certifying that:

[The] Prabal Gorkhadachhinbahu Medal IV [is] one of the highest awards in Nepal used to be only conferred to those Nepali Citizens who have demonstrated extraordinary performances and made outstanding contribution to various areas, such as arts, journalism, social services, government services, politics and scientific achievements from their respective positions.

[The petitioner] was conferred this award in 1991 by the King, Head of State, for his extraordinary contributions to succinct but eloquent reporting on Nepal’s food situations from short-and-long term perspectives.

██████████ who identified himself as the publisher and editor of *Rastrapukar Weekly* and a current Member of Parliament, stated in an April 27, 2007 letter that, although the petitioner “was writing against the direct rule of the king, for his extraordinary contributions to solve the food crises in Nepal, he was awarded the highest-ranking reward from the Head of the State of Nepal.” He further stated that the petitioner “worked with us in the capacity of a senior co-editor, columnist, correspondent and representative from the Western Region of Nepal from 1974 to 1991.” The general manager of the Nepal Food Corporation, ██████████ certified in a March 9, 2008 letter, that the petitioner was chief editor of the *Nepal Food Bulletin* published by the Nepal Food Corporation.:

Articles published by [the petitioner] in this bulletin have profoundly contributed to highlight Nepal’s long-term and short-term food scenarios. Additionally, [his] writing on food situations of Nepal in this bulletin and in other media have been referred by other planners and scholars. [The petitioner’s] regular contributions to this bulletin to critically analyze food production and distribution situation in the country has been instrumental to compare Nepal’s food scenarios on the global and regional contexts . . . After [he] took over the chief-editorship of this bulleting, this paper started serving as one of the bases for planning for food storage and supply in Nepal.

In denying the petition, the director stated that “the evidence does not establish that this particular award qualifies as a journalistic award.” On appeal, the petitioner submits another

letter from [REDACTED] in which he certified that the petitioner was hired “to bridge this corporation’s activities with free media,” and that he was awarded the Prabal Gorkhadachhinbahu Medal in “1993.”

The evidence establishes that, while the Prabal Gorkhadachhinbahu Medal is a nationally recognized award, the evidence does not establish that the medal is recognized as an award of excellence in the petitioner’s field of endeavor, journalism. According to the Nepali Embassy, the medal is awarded by the King to those who have “extraordinary performances” and who have made “outstanding contribution to various areas, such as arts, journalism, social services, government services, politics and scientific achievements.” There is no documentation as to how these recipients are chosen or how their achievements were evaluated.

Furthermore, even if the Prabal Gorkhadachhinbahu Medal can be considered a nationally recognized award for journalism, the petitioner received the award in 1991, 16 years prior to the filing of the visa petition. The petitioner stated that he has received several letters of appreciation, but as discussed further below, these letters are not nationally or internationally recognized awards or prizes in the petitioner’s field of endeavor. One nationally recognized award, received 16 years prior to the filing of the petition, is not sufficient to meet this criterion, which requires “prizes or awards,” and is not consistent with the sustained acclaim that the petitioner must establish under section 203(b)(1)(A)(i) of the Act.

The petitioner also submitted a “Certificate of Appreciation” from the J.P. Foundation, indicating that it was for his “contributions in the fields of writings espousing the cause of peace, and social and economic justice.” The document is dated July 8, 2005 but purports to include the petitioner’s “personal involvement and participation in the peaceful People’s Movement of April 2006.” The petitioner submitted no documentation to explain this inconsistency. 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).

The petitioner also alleged that he received letters of appreciation from several organizations. However, the letters included in the record are letters of recommendation in support of the petitioner’s visa petition and will be discussed further below. Additionally, the petitioner submitted no documentation to establish that the certificate of appreciation from the J.P. Foundation or any of the letters of appreciation that he allegedly received are nationally or internationally recognized as awards of excellence in his field.

The petitioner has failed to establish that he 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.

To demonstrate that membership in an association meets this criterion, 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 work 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. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner stated that he was a member of 11 organizations including the J.P. Memorial Organization, the Human Rights and Peace Society, the Nepal Bar Association, the Public Administration, and the Federation of Nepalese Journalists (FNP). A May 15, 2008 letter from the President of the FNP indicated that the petitioner had been a member of the organization since 1984. The petitioner submitted no documentation of the membership requirements of the FNP, and submitted no documentation to establish that any of the other organizations that he claimed to be a member was an organization within his field of endeavor. Additionally, he submitted no documentation that any of the organizations, two of which he was a founding member, requires outstanding achievements of its members as judged by national or international experts.

The petitioner has failed to establish that he 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 stated that he has "participated as a judge, jury editor and expert to evaluate various articles published in national newspapers."

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, evaluating the work of professionals or top artists at a national

competition is of far greater probative value than evaluating the work of amateurs or students at a local contest.

The petitioner submitted a copy of a "Certificate for Being a Member of the Assessment Panel" from the J.P. Foundation. The document, signed by the foundation president, certified that the petitioner served as a "Panel judge time and again in this Foundation for evaluating the contribution of various personalities in the Nepali society." The certificate does not indicate that the petitioner's role as a judge was in the field or in any allied field of journalism. In response to the RFE, the petitioner submitted a letter from the founder and chairman of the J.P. Foundation, [REDACTED] in which he stated that the foundation "provides scholarship[s] to students, organizes annual debate programs, and essay competitions among the topmost students of Nepalese educational institutions," and "organizes debate programs among social workers who have been involved in human right[s] activities." The letter stated that the petitioner judged the students' competitions and monitored and served as a panelist on academic debates. The letter does not indicate that the competitions are limited to the field of journalism or any allied field of journalism.

The petitioner also submitted a copy of a letter from [REDACTED] who stated that the petitioner served as a "judge and panelist of our annual debate programs, to identify top ranking students to award scholarships and in organizing meeting to [sic] various Sanskrit scholars." The letter from [REDACTED] appears on letterhead that is not accompanied by an English translation, and therefore it is not clear as to what organization [REDACTED] belongs and on whose behalf he writes his letter. His letter indicates that the "foundation organizes annual Sanskrit literary competitions among school and college students" and "works for the conversation of promotions [sic] of various languages spoken in the country." The evidence of record does not indicate that these competitions are in journalism or an allied field.

The petitioner also submitted a February 4, 2008 letter from [REDACTED], who stated that the petitioner worked for him as a desk editor on the *Rajdhani*, "the leading Nepali daily." An April 29, 2007 letter from [REDACTED] chairman of the Press Council Nepal, indicated that the petitioner "served on editorial boards of a number of publications." However, [REDACTED] did not specify the publications on which the petitioner served. Furthermore, duties or activities that nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself.

Although the petitioner also alleged that he had served as a judge with the Nepal Press Union. However, he submitted no documentation to support his statement. 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)).

The petitioner has 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 claims to meet this criterion based on his “working as a senior editor, editor, columnist and contributor in many nationally and internationally renowned newspapers and magazines.” The petitioner submitted letters of recommendation and reference attesting to his position as an editor and writer for several publications. ██████████ stated that the petitioner’s writings “often irked authorities in power” and were “read with great interest and have been of immense influence in public policy debates.” The director of Kantipur Publications and ██████████, Executive Chairman of the Gorkhapatra Corporation, also stated that the petitioner’s writings “have been of immense influence in the formulation of national policies.” Nonetheless, none of those writing letters on behalf of the petitioner specify any contribution of major significance to the field of journalism.

In response to the RFE, the petitioner submitted additional letters, including from the Office of the Attorney of Nepal, lauding the prolific nature of his writings on behalf of democracy and human rights. The issue is the petitioner’s original contributions of major significance to his field of endeavor. Although the petitioner’s writings may have had political relevance, he submitted no documentation to show for instance that his articles changed or influenced journalism in any way, such as changing the way others covered issues so as to establish his original contribution of major significance to the field.

The petitioner has failed to establish that he 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 claims that he has “published many peer-reviewed articles in international and national newspapers.” The petitioner submitted a list summarizing his articles that had appeared in various newspapers and magazines. He also submitted documents in Nepali that were not accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In response to the RFE, the petitioner submitted copies of several papers and articles that he indicated were written by him and published in various publications or presented at conferences. The documents are accompanied by an English summary of the article or paper. Therefore, they do not comply with the terms of the regulation at 8 C.F.R. § 103.2(b)(3), which provides:

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which 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.

Accordingly, the documents are not probative evidence in this proceeding. Further, the petitioner submitted no documentation to establish that the publications in which these articles and papers appeared constitute professional or major trade publications or other major media.

On appeal, the petitioner submits copies of what he states are copies of his articles that appeared in the monthly bulletin of the Nepal Food Corporation. As with the other articles submitted, the petitioner failed to submit certified translations and failed to submit documentation to establish that the monthly bulletin of the Nepal Food Corporation constitutes major media or a professional or major trade publication.

The petitioner provided a copy of a paper that he stated had been “recently” submitted to *Habitat International*. However, as this article has not been published, it is not evidence of the petitioner’s eligibility for this visa preference petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1),(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner has failed to establish 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.

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner claims to meet this criterion based on his position as division manager and senior planning officer in Nepal Food Corporation. Repeating the words of [REDACTED] the general manager of the Nepal Food Corporation, the petitioner stated:

I have been involved in researching activities and have penned articles extensively on government and politics, social and economic issues with reference to the prevailing food situation in Nepal and South Asia. My expertise in managing the food supply to the people in the remote hill and mountain regions in time of crises has been commendable and has been recognized in the form of job promotion within Nepal Food Corporation and outside.

[REDACTED] stated that the government had “been thinking of evolving alternative methods of solving food crisis in the deficit areas of the mountain and hilly regions,” and that the company benefited from the petitioner’s involvement in the process. However, that the company benefited from the petitioner’s work and rewarded him with promotions do not, without more, establish that he worked in a leading or critical role for the company. Additionally, the petitioner submitted no documentation to establish that the Nepal Food Corporation enjoyed a distinguished reputation.

In response to the RFE, the petitioner stated that, while working for the Nepal Food Corporation, he “published numerous articles highlighting various food scenarios in Nepal,” and that this formed the basis of the award of the Prabal Gorkhadachhinbahu Medal. The petitioner stated that at the time, Nepal Food Corporation employed 5,000 employees and about 2,000 journalists, and that he was the manager of the *Nepal Food Bulletin*, which was published on a monthly basis. However, the petitioner submitted no documentation to establish that the manager of the *Nepal Food Bulletin* was a leading or critical role for the company. On appeal, the petitioner submits a July 15, 2008 letter from Nepal Food Corporation. However, the manager, while certifying that the petitioner served as a divisional planning chief, did not indicate how the petitioner’s role was a leading or critical role for the company.

The petitioner also claims to meet this criterion based on his appointment as a special officer in the Lumbini Sugar Factory Ltd. by the Ministry of Industry. The petitioner stated that “[f]or this appointment, individuals must contribute to solve food crises at the national level.” The petitioner submitted a copy of his January 19, 1996 appointment as a special officer to the Lumbini Sugar Factory Ltd., a “fully owned” company of the Nepali government. The petitioner submitted no documentation to establish that the Lumbini Sugar Factory Ltd. is a company with a distinguished reputation or that his role as a special officer was in a leading or critical capacity for the company.

On appeal, the petitioner stated that while he was employed by the sugar factory, he “authored both short-term and long-term plans for the management of sugar plantations in Nepal,” “developed plans to subsidize farmers,” and “reviewed and evaluated sugar production situations around the world to improve Nepal’s sugar production.” The petitioner submitted no documentation that his work with the Lumbini Sugar Factory Ltd. was as a journalist. Thus, even if the company enjoyed a distinguished reputation and the petitioner served in a leading role, his position with the company would not be indicative of sustained acclaim in journalism, his claimed field of expertise.

The petitioner has failed to establish 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 submitted a copy of a May 21, 2006 letter from the Nepal Food Corporation certifying that the petitioner’s annual income is 320,040 rupees and that he “has been receiving [a] high salary since the mid 1990s as a reward for his extraordinary contributions to develop a long-term Food Plan for Nepal and for his analytical and managerial skills.” The January 19, 1996 letter appointing the petitioner as a special officer with the Lumbini Sugar Factory Ltd. indicated that he would receive a monthly salary and allowance of 7,550 rupees. The petitioner submitted no documentation to establish that these salaries were high relative to others in his field.

In response to the RFE, the petitioner submitted a March 9, 2008 letter from the Nepal Food Corporation certifying that the petitioner's salary of 310,104 rupees was "207% more than a regular employee[] filling said position," and that the difference "was due to his outstanding role as a Journalist." The petitioner's documentation compares his compensation only to those who worked for the Nepal Food Corporation. He submitted no documentation to establish that he commanded a high salary as a journalist or that his salary as a journalist was significantly high relative to all others in the field of journalism.

The petitioner has failed to establish that he meets this criterion.

The petitioner also submitted several letters of recommendation in support of his claim of extraordinary ability. These individuals state that the petitioner's writing in support of human rights were during a period when it was dangerous to do so because he wrote against the government. They also indicate that his writings influenced government policy. However, the petitioner submitted no documentation corroborating any influence his writings had on government policy. Additionally, even if the petitioner had political influence through his writings, the record fails to establish that his abilities as a journalist place him among the very best in his field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor. Review of the record, however, 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. 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.