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FILE:

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Office: TEXAS SERVICE CENTER

Date: JUN 25 2009

IN RE:

Petitioner:
Beneficiary:

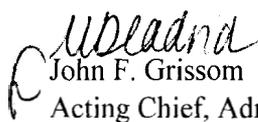
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The Director determined 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).

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 November 15, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an actor and entertainer.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).

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

To fulfill this criterion, the petitioner initially submitted an excellence award, dated June 15, 2004, from the *Tej Tara Weekly Chronicle* for his "long contribution to the entertainment sector." An award, dated February 14, 1998, from the Association of Writers and Kathmandu Editors ("AWAKE") given to the petitioner for "his immense contribution to the Nepalese Film and Entertainment Industry" was also provided for this criterion. After a review of this initial evidence, the director issued a Request for Evidence ("RFE") dated March 7, 2008. In the RFE, the director notified the petitioner that the evidence provided was insufficient to fulfill this criterion. More specifically, the RFE requested that the petitioner provide evidence to establish the "origination, purpose, significance and scope of each award, as well as the criteria used to nominate and judge the participants and award winners." The petitioner failed to provide any new evidence in response to the RFE. As such, the director, in his September 24, 2008 decision, found that the petitioner had not met this criterion. On appeal, the petitioner resubmitted the same two awards and provided no additional evidence or information regarding their significance.

We concur with the director that the petitioner failed to fulfill this criterion. No evidence was provided to demonstrate that these award certificates constitute nationally or internationally recognized prizes for excellence in the petitioner's field, such as supporting evidence showing the prestige associated with receiving the awards 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 it is his burden to establish every element of this criterion. Moreover, the record even lacks general information about the competitions (such as the award criteria, the area from where participants were drawn, the number of entrants, or the percentage of entrants who earned some type of recognition). In addition to failing to establish the international or national recognition of these awards, we note that the excellence award from *Tej Tara Weekly* indicated that the petitioner has only been nominated for such recognition. Mere nomination is

insufficient to establish the petitioner's actual *receipt* of an award as required by the regulation at 8 C.F.R. § 204.5(h)(i). Additionally, the AWAKE award misspelled writers and secretary, as "writers" and "secretar" respectively. These errors cast doubt on the authenticity of such evidence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Nonetheless, the evidence still fails to demonstrate that either of the two "awards" was nationally or internationally recognized for excellence in the petitioner's field.

In light of the above, the petitioner has not established 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.

In order 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 experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner initially submitted his membership credentials for the Film Artists Association of Nepal, which indicated that he was an Associate Member from October 12, 2006 through July 16, 2007. The petitioner, likewise, provided a letter, dated October 13, 2006, from the Chairman of the Film Artists Association of Nepal who certified that the petitioner was an Associate Member and stated that he is a "prominent and well-known Cine artiste of Nepalese Silver Screen."

In his RFE, the Director requested additional information including the membership requirements for this organization. In response to the RFE, the petitioner provided various web pages from the Film Artists Association website, www.nepalfilmartist.com. The website explained that Associate Members, like the petitioner, are "artists who have performed in five movies or less." In addition, the website indicates that "any artist professionally involved in the Nepalese Film Industry is entitled to be a member of the association." The petitioner also submitted an updated membership card for the Film Artists Association of Nepal that indicated that his membership was valid until February 31, 2009. In addition, the petitioner provided a letter, without a date, from the Administrative Chief of the Music Association of Nepal who confirmed that the petitioner was a member of that organization as well. On appeal, the petitioner resubmitted the same evidence he submitted in response to the RFE.

The director concluded that the petitioner failed to establish that outstanding achievements are required for membership in any of these organizations. We agree and find that the record lacks

evidence showing that these groups require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. The Film Artists Association's membership information indicates that membership is awarded at several levels. The lowest level, "associate membership," which is the one accorded to the petitioner, covers an artist who has "performed in five movies or less." The second level, "full membership," requires an artist to have performed "in more than five movies." The highest level, "honorary membership" is limited to any person who has "made an outstanding contribution in the Nepalese film industry either directly or indirectly." The petitioner has failed to establish that his membership in the Film Artists Association as an "associate member" required outstanding achievements pursuant to the regulation at 8 C.F.R. § 205.5(h)(ii).

As it relates to the petitioner's claim of membership in the Nepalese Music Association, no evidence of the membership requirements were provided. This association also appears to have separate levels of membership. Specifically, while the petitioner is listed as a "member," the organization also has "honorary members" and "executive members." Accordingly, although the petitioner has established that he is a member of these organizations, he has failed to establish that to be accorded such member status, the organization required outstanding achievements of the petitioner. In addition, the record lacks evidence to show that membership in either the Film Artists Association or the Music Association of Nepal is judged by recognized national or international experts in the field.

As such, 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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication or broadcast, or from a publication printed in a language that the vast majority of the country's population cannot comprehend. 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 initially submitted the following articles; "Regmi's Album with a difference" dated May 10-16, 2007 from the *People's Review*, "Musical Album Mana Released" dated June 5, 2007 from the *Tej Tara Weekly Chronicle*, and an untitled article dated May 15, 2007 from the *Tej Tara Weekly Chronicle*. All three articles discuss the petitioner's new singing album, and only briefly

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.

comment on his acting career. Moreover, none of the three articles provide the author's name. They only state that the article was written "by our reporter" or "by our correspondent." The petitioner additionally provided information regarding the various Nepalese publications. However, none of these materials included information about the publications for which the articles regarding the petitioner appeared. Counsel for the petitioner argues that *The Rising Nepal* is a newspaper in wide circulation, and says that the petitioner was published in *The Rising Nepal* in May 2006. However, this article was not submitted. The petitioner also provided his artist profile for www.nepalsite.com. However, there is no proof that this profile was published on the web, or otherwise. Regardless, no evidence about this source or the reliability of its contents was provided. We note that in today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. However, we are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication is a form of "major media." The petitioner must still provide evidence, such as, a widespread readership or overall interest in the publication in order to demonstrate that the publication is a professional or major trade publication or a form of major media in order for us to credit these articles. In his RFE, the director requested additional information, as the information provided was insufficient to fulfill this criterion.

In response to the RFE, the petitioner submitted an article from the *Review*, dated April 17-23, 2008, written by the newspaper's reporter, without an exact name provided, entitled "Nirakar to star in Kismet." This article discusses the petitioner's career, and states that he is busy shooting for his next film, "Kismet." Another article from the *Tej Tara Weekly Chronicle*, dated April 22, 2008, written by the newspaper's correspondent, again without an exact name provided, entitled "I am happy, my hardwork has paid off: Nirakar" was submitted. This article discusses both his film and music career, and also confirms that he has been signed to do another movie, "Kismet." A letter, dated April 8, 2008, from the *Review's* Publisher and Chief Editor, [REDACTED], was also submitted. In the letter, [REDACTED] of the petitioner, stated that "just recently, he starred in a popularly successful film 'Shankara' and I have come to know that he has now been signed to act in another movie, 'Kismet.'" The petitioner, on his Application to Register for Permanent Residence or Adjust Status ("Form I-485"), indicated that he last arrived in the United States on July 14, 2007, and his I-94 is consistent with the information provided on the Form I-485. It is unclear how the petitioner has been involved in working on Nepalese films after his arrival to the United States. More importantly, the articles submitted in response to the RFE postdate the date of filing the petition. A petitioner 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 (Comm. 1971). Accordingly, the AAO will not consider this evidence in the proceeding. On appeal, no new evidence was submitted by the petitioner.

The record contains insufficient evidence (such as circulation statistics) showing that any of the preceding articles submitted by the petitioner were printed in professional or major trade publications or some other form of major media. Many of the articles appear in regional papers rather than nationally or internationally circulated publications. 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 petitioner provided various materials regarding many Nepalese publications. However, there was no evidence submitted for the specific publications in which

articles regarding the petitioner appeared. In addition, this criterion specifically requires an author, title, and date to be submitted. However, none of the articles provided had an author's name, and one article did not have a title. As such, this evidence provided failed to comply with the regulation.

In light of the above, the petitioner has not established 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 initially provided a compact disc providing samples from his acting career in film and television. He additionally submitted two reference letters. One of the letters was from the First Secretary of the Embassy of Nepal in Washington, DC, dated July 25, 2007, stating that the petitioner's "contribution to the performing arts is exemplary." However, the letter did not indicate a specific contribution of major significance, other than listing the petitioner's experiences as an actor and singer. The President of the International Visitors Alumni Association Nepal wrote the second letter, dated March 15, 2001, wherein he briefly and generally discussed the petitioner's career. In addition, the petitioner provided two certificates of appreciation. The first certificate was from [REDACTED] who produced the petitioner's album, [REDACTED] presented the petitioner with this undated certificate for his "hard work and dedication" that he demonstrated in creating and producing his album. The second certificate was for the petitioner's participation as a model in the Underground England Fashion Flare Event held on November 25, 2001. This second certificate does not appear to relate to the petitioner's field.

As the evidence failed to sufficiently fulfill this criterion, the director asked for additional information regarding this criterion in his RFE. In response to the RFE, the petitioner provided additional reference letters. On appeal, the petitioner resubmitted the same reference letters.

An example of one of the letters, which appears to include more substance, was written by the Executive Editor of *The Rising Nepal*, [REDACTED]. In his letter, he states:

The album "[REDACTED]" for which [REDACTED] wrote the lyrics for all the songs has also been received well by the audience. I was highly impressed to know that the main song of the album has been written by [REDACTED] to bring to the fore the hardships of the blind people and his producers have agreed to donate five per cent of the income from the album to the blind.

This example provides the only specific contribution cited from the letters submitted. Nonetheless, it still fails to show that the petitioner's contribution to the cause for the blind was significant, or that it related to his field as an actor or entertainer. All the other letters of recommendation discuss the petitioner's talent as an actor and/or singer, his ease to work with and his experience. However, they fail to demonstrate that he has made original contributions of major significance in his field. The letters include no substantive discussion as to which of the petitioner's specific artistic achievements rise to the level of original 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. While the petitioner’s talent is admired by those offering letters of support, there is no evidence demonstrating that his work has had major significance in the field. For example, the record does not indicate the extent of the petitioner’s influence on other entertainers or actors nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

Therefore, in this case, the petitioner has not sufficiently met this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion was not claimed initially, in response to the RFE or on appeal. Nonetheless, we have considered this criterion as the petitioner provided evidence of the release of his album, [REDACTED] and of his roles in various television shows and movies. Additionally, some of his reference letters alluded to the petitioner’s possible commercial success. For example [REDACTED], a Director of Kala Niketan Films, wrote that the petitioner’s first film ‘[REDACTED]’ in 1989 was “a huge success and made a lot of money.” However, the petitioner failed to submit any documentation demonstrating the “sales” or “receipts” of the petitioner’s movies or albums to demonstrate that he achieved commercial successes. For example, there is no indication that the petitioner’s performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances.

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

On appeal, counsel argues that the reference letters submitted on the petitioner’s behalf are comparable evidence of the petitioner’s extraordinary ability as an actor and/or entertainer. 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 evidence 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.

The reference letters submitted in support of this petition have already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (v) and (x). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. 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 this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory 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 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. See, e.g., *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.