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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 29 2009
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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:

[REDACTED]

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 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 that the petitioner had not established the sustained national or international acclaim requisite to 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:

(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 July 27, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a marketer and public relations specialist. The petitioner submitted supporting evidence both with his initial application and in response to a Request for Evidence ("RFE") dated January 2, 2008 including letters of recommendation, information about movies he worked with, news articles, salary information, information about the British Academy of Film and Television Arts ("BAFTA"), information about the UK Film Council, and brochures or pamphlets from various events.

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

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

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

Barring the alien's receipt of a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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 an alien's eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). **We address the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not addressed below.**

On April 18, 2008, the director denied the petition, finding that the petitioner did not meet any of the regulatory criteria for establishing sustained national or international acclaim at 8 C.F.R. § 204.5(h)(3).

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

Counsel asserts that the petitioner established eligibility under this criterion by virtue of *Harry Potter and the Sorcerer's Stone's* win of the Maxwell Weinberg Publicists Showmanship Award for Movies from the ICG Publicists Awards. Although information exists of the award, including as referenced in the 2007 Publicists Directory and Sourcebook, the lack of evidence regarding the recognition of the award and the evidence

regarding the petitioner's role with the winning team is insufficient to qualify him under this criterion. The petitioner submitted two articles from *Variety*, one announcing the 2002 winners including the *Harry Potter* publicity team and the other containing some information about the ICG Publicists Awards. Although news articles indicate recognition, no information was submitted about *Variety* so that we are unable to conclude that an article in that publication is sufficient to establish national or international acclaim in keeping with this highly restrictive visa category. The only information submitted about the ICG Publicists Award comes from the 2007 Award booklet and the article in *Variety* which quotes the chairman as saying that the Awards are "the one event in the entire year where [the] publicists dare to say that [they] play a role in the entertainment industry." Although counsel states on appeal that the ICG Publicists Award "is the most prestigious honor in the field of motion picture marketing," without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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. The articles from *Variety* are insufficient to establish any recognition for the winners of this award.

In addition, the information submitted about the petitioner's role within the *Harry Potter* publicity team does not establish that the petitioner or his work was a main reason that the publicity crew of *Harry Potter* received the award. A January 24, 2008 letter from [REDACTED] vice president of global brand management for Warner Bros. Entertainment, states that the petitioner made "unique contributions" to the publicity for *Harry Potter* including "a number of critical cornerstones of the first film campaign that [the petitioner] contributed to greatly which helped in the overall success of the publicity campaign that ultimately went on to win the Publicist Guild Award in 2001." Specifically, [REDACTED] stated that the petitioner coordinated a photo shoot with *Vanity Fair*, interviews and photo shoots for other magazines, and handled the details of publicity involving television programs. However, no evidence appears in the record to show how the petitioner's actions differed from that of other members of the publicity team or how much of the publicity the petitioner actually handled.

In any event, this award dates from 2002, i.e. six years prior to the filing of this petition, so cannot evidence sustained acclaim in the field. On appeal, counsel states that the petitioner did maintain his level of success, citing the petitioner's work with *The War of the Worlds – Alive on Stage!*, Damian Collier and DCES, and with the UK Film Council. The petitioner's work experience is not at issue here and will be discussed in more depth under the criterion at 8 C.F.R. § 204.5(h)(3)(viii). Continued work in the industry, however, does not establish the same level of acclaim as winning awards within the industry.

Accordingly, the petitioner failed to establish that he meets this criterion.

(ii) *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 submitted evidence of his voting membership in the British Academy of Film and Television Arts (BAFTA). In order to demonstrate that membership in an association meets this criterion, a 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, proficiency certifications, 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 March 14, 2007 letter from [REDACTED] executive director and Chief Operating Officer of BAFTA, states that BAFTA "is a professional organization for entertainment industry professionals who have been actively making creative contributions to or for any of the film, television or allied industries and is dedicated to the purposes of this corporation, and is approved by a Board of Directors. Our entire members vote for the British Academy Film Awards." The letter then states that the petitioner "was invited to become a 'Voting Member' of the Academy in February 2003" which makes him one of 1,100 voting members in the US branch of BAFTA. Voting Members are chosen on the basis of significant creative contributions to our industry." The accompanying information indicates that membership in BAFTA is contingent on a person of UK or Irish birth or one who has contributed to the UK or Irish film industry and has been "actively engaged in making creative contributions" for at least four years. This information, albeit conflicting, does not indicate that outstanding achievement is required for membership. The only requirement is active participation in the film industry.

On appeal, counsel refers to a letter written by [REDACTED] and a second letter from [REDACTED], however, neither of those letters appears in the record and thus cannot be considered. In addition, counsel states that the membership criteria stated above from the BAFTA materials are "not comprehensive and alone, are not sufficient for acceptance. The committee takes into consideration such factors as outstanding, professional achievements in the applicant's field, important industry awards that may support the application, a particularly dedicated and extensive body of professional work and outstanding creative or technical ability in their field." These statements are not supported by the evidence submitted and, again, statements of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Accordingly, the petitioner failed to establish that he meets this criterion.

(iii) 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. 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

Counsel claims eligibility through the inclusion of an interview of the petitioner in *The Guerilla Film Makers Handbook*. We first note that the *Handbook* is a book with over 700 pages in which the petitioner's interview takes up three pages. Second, the petitioner's interview is not about him and his experiences, but is instead

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.

about the UK Film Council and its Los Angeles office. Notwithstanding the *Handbook's* status as major media, in neither of these respects is the *Handbook* about the petitioner as required under this criterion as opposed to being about how to make a movie or about the UK Film Council.

The petitioner also submitted an article entitled "All roads lead to Hollywood for this [text obscured]" published in an unidentified publication on April 5, 2007. Although counsel identified the publisher of the article as *The Los Angeles Times* in the response to the RFE, no evidence was submitted in support of counsel's assertion. The regulatory criterion requires the title, date, and author of any published material submitted to demonstrate the petitioner's sustained national or international acclaim.

Accordingly, the petitioner failed to establish that he meets this criterion.

(iv) 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 claims eligibility under this criterion by virtue of his voting membership in BAFTA, discussed above. 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 artists is of far greater probative value than judging a regional youth or student competition. In this case, the evidence provided states that the Los Angeles chapter alone has 1,100 members and that all of them are voting members. With such a high number of voters, no individual may be shown to be within the small percentage at the very top of their field of endeavor by being eligible to cast a vote. On appeal, counsel asserts that the petitioner received acclaim for his participating as a judge as shown by [redacted] letter praising his contribution to BAFTA. Although the petitioner may have participated in different BAFTA events and "been a fantastic resource to his fellow members," his involvement with the organization does not impact his role as a judge. Instead, the petitioner must show that his role as a judge garnered national or international acclaim, such as through news articles announcing the judges or other similar material. As he submitted no evidence that his judging for BAFTA was nationally or internationally recognized, we cannot conclude that he meets this criterion.

The petitioner submitted evidence that he participated in the 2006 University of California at Los Angeles ("UCLA") "student pitch competition" which, according to [redacted] the academic administrator of the producers' program at UCLA, involves students in the producers' program pitching a project "to a panel of industry professionals" and then to "a panel of judges composed of studio heads and major motion picture producers and to an audience of specially invited industry professionals. The panel and the audience vote on the most impressive pitch." The letter from the 2006 winner, [redacted] commends the petitioner for assistance

rendered after the competition ended, however, this letter does not indicate recognition or acclaim for serving as a judge. Although this information indicates that the competition was in a field allied to that of the petitioner's, it does not show that participation in the student pitch competition requires, or is indicative of, national or international acclaim.

The petitioner also submitted requests for him to serve as a guest speaker at the National Film and Television School and the Women in Film luncheon through the letters from [REDACTED]. The petitioner presented no evidence of how speaking in front of a group amounts to judging as contemplated by this criterion.

Consequently, the petitioner has not established that he meets this criterion.

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

The petitioner claimed eligibility under this criterion by virtue of his maintenance of the www.considerla.com website. The printout of the website shows that it contains a list of upcoming events. Although the page shows five other tabs with such titles as "why la?," "living," "money," "legal," and "careers," the petitioner did not submit a copy of those pages so that we are unable to state that the website is "comprehensive" as claimed on appeal. In addition, the petitioner provided no evidence of how this website is "scholarly" as required by the plain language of this criterion. In any event, the Internet is an arena available to any user with access to a computer regardless of notoriety or recognition in the arts. To ignore this reality would be to render the "major media" requirement in this regulation meaningless. We are not persuaded that international accessibility on the Internet by itself is a realistic indicator of whether a given website constitutes "major media." As no information was provided to indicate that the website is relied upon by persons in the industry, has a large readership, or otherwise garnered national or international acclaim for the petitioner, it cannot meet the definition of major media. Lastly, the plain language of the criterion requires articles in the plural, which is not met by the submission of the one webpage.

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

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner claims eligibility under this criterion through work with the UK Film Council and the resulting connections made with executives at film companies and actors. The evidence provided concerning the UK Film Council, a UK government agency that offer[s] policy advice about industrial, economic and cultural issues affecting film, establishes that it is an organization with a distinguished reputation as contemplated by this criterion. Counsel states on appeal that the petitioner "was the key executive within the organization and as such he was responsible for the successful operations of the Council." No evidence in the record supports these statements of counsel. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Counsel refers to a letter from [REDACTED], Chief Executive Officer of the UK Film Council, however, no legible copy of that letter was submitted, so we are unable to consider its contents in our discussion.

The evidence submitted does not establish that the petitioner performed in a leading or critical role for the UK Film Council. The letter from [REDACTED], past British Film Commissioner for the UK Film Council, states that the petitioner “was a remarkable addition to [the] team from the start . . . Three years later, the UK Film Council . . . rehire[d the petitioner and] he quickly became an integral member of [the] team. He helped to facilitate American film productions shooting in the UK and became a key contact . . . in Los Angeles. The letter from [REDACTED], executive director of the UK Film Council, US, states that the petitioner “has played a pivotal role in building such relationships and promoting the UK. [The petitioner’s] PR skills are exceptional and his experience is extensive.” The letter from [REDACTED] of Vanguard Animation, states that the petitioner “works tirelessly to deliver relevant information, leveraging his extensive list of industry contacts to connect [them] with all the right people.” The organizational chart for the UK Film Council indicates that the Information executive and Director of Communications was on the same level as nine other executives and beneath the Executive Director, US and Chief Executive Officer. The chart also indicates that a coordinator and support staff are beneath the petitioner’s level, however, none of the information submitted indicated how many people served in a support staff role or how many people work in the Los Angeles office. On appeal, counsel stated that the UK Film Council has 100 employees in the UK office. However, statements of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The job description furnished by the petitioner stated that he “assist[ed] US filmmakers navigate the British tax incentives system and help them shoot their films in the UK. [He] also raised awareness of emerging British filmmakers and actors to the US industry.” None of these letters establish how the petitioner’s role contributed to the UK Film Council’s overall goals or otherwise promoted the UK Film Council in a manner that could be called leading or critical.

As none of this information specifies the petitioner’s contribution to the UK Film Council or states what the petitioner was responsible for or how his role was leading or critical for the organization, the petitioner failed to establish that he meets this criterion.

(ix) 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 evidence that he earned \$56,202 for a fiscal year in 2006-07 for the UK Film Council. The petitioner submitted no evidence showing what others in the field of film promotion or public relations earned during that time so that we are unable to ascertain whether the petitioner’s compensation was higher than others in the field. As a result, the petitioner failed to establish eligibility under this criterion.

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

In response to the RFE, counsel claims that the petitioner established eligibility under this criterion by being “instrumental in the overall success of the publicity campaign of the first two Harry Potter movies. Although the success of the *Harry Potter* movies is well documented, the petitioner presented insufficient evidence to show that the success of the movies was due to his work as opposed to the nature of the movie or the work of anyone else on the publicity or advertising teams, or the producers or artistic staff. The letter from [REDACTED] senior vice president of marketing communications and publicity for New Line Cinema, states that the petitioner had “extraordinary capabilities during production of *Harry Potter and the Sorcerer’s Stone*” and the petitioner’s “exceptional know-how also helped to turn *Harry Potter and the Chamber of Secrets* (the sequel) into box

office gold.” Although this letter is complimentary of the petitioner’s skills and job ability, it did not provide specifics as to how the petitioner’s work positively impacted the revenue of these movies.

For all of the above reasons, the petitioner failed to establish eligibility under this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The record does not establish that the petitioner had achieved sustained national or international acclaim placing him at the very top of his field at the time of filing. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.