

identifying data deleted
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

B2

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 29 2009
SRC 07 800 26651

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

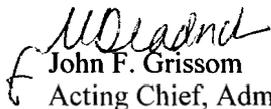
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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, Texas 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 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.

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 July 31, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an actor. 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.

In a December 22, 2006 letter, the Royal Nepal Academy certified that the petitioner received the best character actor award in 1988 for his role in *Bibasta Ko Bhumari Bhitra*. A December 19, 2006 letter from Radio Nepal certified that the petitioner "participated in the 'Samanantar' a radio drama that was awarded the FIRST position in a Competitive Radio Drama Festival in the year 1992." The petitioner submitted no other documentation regarding these awards.

In a request for evidence (RFE) dated December 31, 2007, the director requested additional documentation from the petitioner to establish that the awards were nationally or internationally renowned. In response, the petitioner submitted additional letters from the Royal Nepal Academy and Radio Nepal, again confirming his receipt of these awards. He also submitted a January 21, 2008 letter from [REDACTED] who identified himself as the proprietor of RP Entertainment LLC in Cockyeville, Maryland and who stated that "we also know that [the petitioner] was awarded by the theater and Radio for his best performances in Nepal." The petitioner submitted no other documentation of the awards that he received from the Royal Nepal Academy or Radio Nepal or that these awards are nationally or internationally recognized as awards of excellence in the petitioner's field.

In his February 7, 2008 letter accompanying the petitioner's response to the RFE, prior counsel² asserted that the regulation does not require that awards received under this criterion be "major national awards. Clearly [the petitioner] has received awards that are nationwide." Counsel also asserts on appeal that the petitioner received "nationwide" awards," and that since Radio Nepal

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

² The petitioner was represented by different counsel, who will be referred to as prior counsel, during the initial stages of this proceeding.

is owned by the Nepalese government, the petitioner's award from Radio Nepal is "an award from the Government of Nepal therefore A National Award."

Counsels' arguments are without merit. The requirement of the regulation at 8 C.F.R. § 204.5(h)(3)(i) provides that, to meet this criterion, the petitioner must show that he has received an award that is nationally or internationally recognized as an award of excellence in the petitioner's field. An award that is given to an individual selected from a nationwide pool does not necessarily impart national significance to that award. The petitioner submitted no documentation, such as expansive media coverage or similar documentation, that would establish that awards granted by the Royal Nepal Academy or Radio Nepal are nationally or internationally recognized as awards of excellence in the petitioner's field.

Furthermore, the documentation submitted indicates that the petitioner received these awards in 1988 and 1992. Two awards received more than 15 years prior to the filing of the visa petition is not consistent with the requirement of section 203(b)(1)(A)(i) of the Act that the petitioner must establish sustained acclaim.

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.

In his August 16, 2007 letter, prior counsel stated that the petitioner was "a life member of Film Artistes Association of Nepal (FFAN)." Prior counsel asserted that the petitioner had "received letters from numerous other national organizations from TV and cinema attesting to his work, and his stature as an artist in Nepal." Prior counsel also asserted that although "these organizations [do] not necessarily require outstanding achievement to become a member, the very fact that these organization have written letters in support of [the petitioner] evidences his achievements . . . over the past 20 years." The petitioner submitted a copy of an April 16, 2007 letter from the chairman of the FFAN certifying that the petitioner was a life member of the association. The petitioner provided no documentation regarding the membership requirements of the organization. Further, he provided no documentation that he was a member of any other organization that wrote letters of reference on his behalf.

In response to the director's RFE, the petitioner submitted information taken from the website of the FFAN. A list of names that appeared on the website, which apparently is a partial list of

members, shows the petitioner at number 50. The information provided does not include any information about the membership requirements of the organization. On appeal, the petitioner submits a copy of this membership card in the FFAN indicating that he is a life member. He also submits a copy of a March 27, 2008 letter from the chairman of FFAN, [REDACTED] who states that to become a "life member" of the association, one must have played at least four cinemas, must have a "contribution in the same field for many years in the society," and must have been a general member for a "few years." The criteria as outlined by [REDACTED] do not establish that the FFAN requires outstanding achievement of its regular members or of its life members.

On appeal, counsel repeats the argument of prior counsel that letters of reference submitted on the petitioner's behalf is evidence of this criterion. However, the petitioner submitted no documentation that he was a member of any of the other organizations.

The petitioner has failed to establish 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 order to meet this criterion, published material must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted copies of several newspaper articles that purportedly appeared in *Katmandu Today*, *Gantabya Nepal*, *Rajdhani*, *Nepal Samacharpartra Daily* and *Gorkhapatra Daily*. The translations accompanying the articles do not identify the translator and are not accompanied by certifications that the translations are complete and accurate and that the translator is competent to translate from Nepalese into English. We note that the translations are signed and dated but there is no evidence that the individual signing the documents is the translator.

The documents therefore do not comply with the terms of 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.

Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Furthermore, the translated documents do not include the author of the articles, as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner also submitted information about himself taken from the online encyclopedia *Wikipedia* and his own website. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.³ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Additionally, the information provided by the petitioner on his own website is not consistent with the underlying purpose of this criterion which is to demonstrate that major media distributors consider the alien and his work worthy of coverage. Information included in one's own website does not carry the evidentiary weight of independent journalistic coverage in major media.

The petitioner submitted pages from the website of NapaliBhaka.com, listing photos of Nepali actors, including the petitioner. As this criterion specifically requires an author, title, and any necessary translation, the publication of photographs do not qualify the petitioner under this criterion. The petitioner also submitted a page from the website nepalfilmart.blog.com profiling film artists of Nepal, including the petitioner. This document also does not qualify the petitioner under this criterion as it does not include a date or an author. Further, the petitioner submitted no documentation to establish that any of these publications or websites constitutes a major trade publication or other major media.

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.

³ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE 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 to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on June 17, 2009, a copy of which is incorporated into the record of proceeding.

The petitioner submitted a copy of an invitation from the Bishwa Bhasha Campus of Tribhuvan University inviting the petitioner to “act the role of the judge in the program of Internal Children theatre program” to be performed on December 5, 2005. We note that the translation accompanying the document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator did not certify that the translation was complete and accurate or that he or she was competent to translate from Nepalese into English. The petitioner also submitted a photograph that he identifies as his presence at the program and judging the program.

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 top competitors at a national is of far greater probative value than evaluating the work of amateurs at a local level.

The plain language of this regulatory criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others in the same or an allied field of specification.” We cannot conclude that evaluating students, who have not yet begun working in the field, meets this requirement. Further, the record includes no supporting evidence establishing the level of acclaim associated with judging this student contest. The evidence does not establish that the petitioner’s single act as a judge of this theatre program or of the children’s program at Tribhuvan University is indicative of the acclaim required by this highly restrictive classification.

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; however, he does not specify which of his contributions are of major significance to his field. The petitioner submitted copies of compact and digital video discs of his appearances in movies and on TV shows. He also submitted several letters of reference from individuals who attest that he is a “nationally acclaimed actor.” With regard to the petitioner’s achievements as an actor, the letters of recommendation do not specify exactly what the petitioner’s original artistic contributions have been, nor is there an explanation indicating how any such contributions were of major significance in his 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 acting has earned the admiration of those with whom he has worked, there is nothing to demonstrate that he has had

major significance in the field at large. For example, the record does not indicate the extent of the petitioner's influence on other actors nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

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

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner claims to meet this criterion based on his appearance in "numerous film and TV shows in Nepal."

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) reveals that this criterion applies to the visual arts. The beneficiary is a performing artist. A general movie, television or theatrical performance is not an exhibition or showcase of a particular artist's work. It is inherent to the field of performing arts to perform. Not every production, however, is a showcase or exhibition of the work of every performer. The petitioner has not shown that his performances in his various roles showcase his particular performance and not those of every other member of the cast. As the petitioner's performances as an artist are more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x), they have been discussed separately within the context of that criterion.

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.

In his August 16, 2007 letter, prior counsel stated that a letter from K.K.D. Films, signed by its managing director, [REDACTED], attested that the petitioner earned a salary of 100,000 Nepalese rupees for a single performance. Counsel asserted that the U.S. State Department indicates that per capita income for Nepal is 20,640 rupees, and that the petitioner earned four to five times the annual salary of the average Nepalese citizen. Prior counsel repeats this argument in response to the director's RFE and counsel repeats it on appeal.

However, the record does not contain the referenced letter from K.K.D. Films or report from the State Department. Furthermore, the petitioner must establish that his salary or other remuneration is high relative to others in his field. A comparison of compensation to others in unrelated activities or to the per capita income generally in Nepal does not satisfy the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the petitioner submits copies of three letters from Gauriputra Films Pvt. Ltd. In a June 28, 2007 letter [REDACTED] who identified himself as the director, stated that in December 2007, the company agreed to pay the petitioner 95,000 rupees for a role. A January 14, 2008 letter signed by [REDACTED], as director/producer, verified that the petitioner was paid 400,000 rupees for a role in a commercial. A March 24, 2008 letter also signed by [REDACTED]

██████████ indicates that the petitioner's claim of earning 100,000 rupees is the minimum that actors would make before "rewards," which could increase their compensation by 300%.

Nonetheless, the petitioner has not provided any documentation of any salaries or compensation of others within his field of endeavor. Therefore, he has provided no documentation by which to establish that his compensation is high compared to other actors. Further, the pay received by the petitioner in December 2007 is not evidence that the petitioner meets this criterion. The petition was filed on July 31, 2007. 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 of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Although the petitioner claims to meet this criterion, he submitted no box office receipts, video sales or other documentation to establish eligibility under this criterion.

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

The petitioner submitted several letters of recommendation from individuals who attest to his acting skills and his renown as an actor in Nepal. ██████████ First Secretary of the Embassy of Nepal, stated in an April 4, 2008 letter that the petitioner's "contribution to the performing arts is exemplary." ██████████ the chairman of the FFAN states in a January 24, 2008 letter that the petitioner's "acting and dialogues are still been [sic] practiced by the young stars." In a March 24, 2008 letter, ██████████ the production officer for Indreni Film Production stated that the petitioner is "[n]ot only the best actor but also the multitalented personality in our industry."

The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

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.