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U.S. Citizenship  
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAR 03 2009  
SRC 07 156 51774

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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.

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.

The petition seeks to classify the petitioner as an alien with extraordinary ability as a producer. On appeal, counsel asserts that the director, guided by prior counsel’s brief, erred in his application of the law.<sup>1</sup> Counsel asserts, “The standard applicable to the Petitioner is that of an

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<sup>1</sup> Different counsel represents the petitioner on appeal. The petitioner’s previous counsel will be referred to as “prior counsel” in this decision.

Alien of extraordinary achievement in lieu of the standard of an Alien of extraordinary abilities in the sciences, education, business, or athletics.” Counsel cites the standards for those applying for a nonimmigrant visa petition pursuant to section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) and 8 C.F.R. § 214.2(o)(3)(ii). Counsel then analyzes the petitioner’s evidence according to the criteria for those aliens seeking entry into the United States as an alien of extraordinary achievement in the motion picture or television industry as enumerated in 8 C.F.R. § 214.2(o)(v). Counsel asserts that as the petitioner has met at least three of the criteria listed in 8 C.F.R. § 214.2(o)(v), his petition for permanent legal status under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), should be approved.

Counsel’s assertions are disingenuous and completely without merit. First, section 101(a)(15)(O)(i) of the Act provides nonimmigrant classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics or, “with regard to motion picture and television productions[, has] a demonstrated record of extraordinary achievements.” Section 203(b)(1)(A) of the Act does not provide a separate category for those who can demonstrate extraordinary achievements in motion picture or television production. Second, as previously noted, section 101(a)(15)(O)(i) of the Act pertains to aliens seeking temporary, nonimmigrant status while section 203(b)(1)(A) applies to those who seek permanent status as immigrants. Congress has not made the requirements for these two visa classifications interchangeable. Counsel has cited no statute, case law or policy that would support his conclusions.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien seeking classification as an alien of extraordinary ability must demonstrate sustained national or international acclaim and must establish through extensive documentation that his or her achievements have been recognized in the field. The 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.

The petitioner submitted evidence that he claims meets the following criteria.<sup>2</sup>

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

The petitioner claims to meet his criterion based on his award of a Suncoast Regional Emmy for Outstanding Entertainment Program in 2003. In his April 18, 2007 letter accompanying the petition, prior counsel, apparently quoting information from the Suncoast Chapter of the National Academy of Television of Arts and Sciences, stated:

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

We are a nonprofit membership organization dedicated to excellence in television, known for annual **EMMY AWARDS**. The **Suncoast Chapter** of the national Academy of Television Arts and Sciences is a nonprofit Florida corporation dedicated to excellence in television. We offer annual Emmy Awards called The Suncoast Regional Emmy Awards to television markets in the entire State of Florida, Alexandria, Baton Rouge, Lafayette, Lake Charles and New Orleans, Louisiana, Mobile, Alabama, Thomasville, Georgia and Puerto Rico. The Chapter is composed of professional people who work in television or students who are studying television in colleges or universities and aspire to become professionals. [Emphasis in original.]

No documentation in the record supports any of the statements made by counsel. 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). With the petition, the petitioner submitted pictures apparently of himself holding and kissing an Emmy statue. There is also a group photo in which another individual is holding the statue. None of these photos serve to establish that the petitioner personally received the Emmy for work in his field of endeavor.

In response to the director's request for evidence (RFE) dated July 6, 2007, the petitioner submitted a copy of a page from the website of the National Television Academy accessed on September 26, 2007. The page shows the history of the organization, and states that it is composed of a national office headquartered in New York City and 20 chapters nationwide. The document indicates that the Academy "recognizes excellence in television with the coveted Emmy Award." The document does not mention any awards made by the organization's chapters.

The director denied the petition, stating that according to the organization's website, the Suncoast Chapter Emmys are awarded on a regional basis and is therefore a regional award rather than nationally or internationally recognized. On appeal, counsel contests this assessment, stating that "the mere use of the word EMMY speaks volume of the award," and that the fact that the National Academy has 20 chapters nationwide does not "lessen the value or prestige" of the award. Counsel further asserts that as the area included in the "regional" consideration includes Puerto Rico, the award takes on an "international standing."

Counsel's argument regarding Puerto Rico is without merit. Puerto Rico is a U.S. possession and is considered part of the United States and its territories. Its inclusion into consideration for the regional Emmy award by the Suncoast Chapter does not change the scope or designation of the award as other than limited to a specified region within the United States.

However, counsel's argument regarding the value and distinction of the Emmy brand is more compelling. We agree that the Emmy award carries the connotation of excellence in television.



Reaching the second and third generation Latinos is becoming a challenge among Producers and Media Executives who have a hard time understanding this new cultural group emerging as strong consumers of entertainment Media. [The petitioner] has laid very interesting work frames that have proven successful and which I currently try to build on.

did not identify any specifics of the petitioner's "work frames." Further, while he stated that he is trying to build on the petitioner's work, he did not state that this work was original rather than "interesting" or that his work constitutes a major contribution to producing for television or film.

, of Undertone Films, who stated that the petitioner's "work with the [Telemundo] network not only contributed to its success, but also played a historical role in expanding cable television programming to Spanish speaking viewers, as well as paving the way for more multicultural programming to emerge." While Telemundo itself may have paved the way for other multicultural programming, does not explain how the petitioner was individually responsible for expanding cable television programming to a Spanish speaking audience. Her testimonial falls short of claiming that the beneficiary's initiatives were original contributions of major significance to producing. The petitioner has not established that he meets this criterion.

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

In his letter accompanying the petition, prior counsel stated that, as a producer, the petitioner's "work has been aired in countless television programs/stations." The wording of this criterion indicates it is intended for those in the visual arts such as sculptors and painters. We note that television programs or stations are not "artistic exhibitions or showcases." Further, 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. As a producer of television shows, the purpose of the petitioner's work is to be broadcast on television stations. The petitioner submitted no documentation to indicate that his work was the *subject* of any specific television program.

The evidence does not establish that the petitioner meets this criterion.

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 as a producer 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 indicates that the petitioner is a talented producer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in 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.