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[REDACTED]

FILE: [REDACTED]
SRC 06 174 52243

Office: TEXAS SERVICE CENTER Date: MAR 04 2009

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).

J. Beadrick
John F. Grissom, Acting Director
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. 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 she 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.

Specific supporting evidence must accompany the petition to document the “sustained national or international acclaim” that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a “one-time achievement (that is, a major, international recognized award).” *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend 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).

This petition, filed on May 12, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a community health mentor. The petitioner initially submitted a certificate of recognition for being named first runner up to Miss Nepal 1998, information about the Miss Nepal 1998 contestants, nomination as a judge for the Miss Nepal 1999 contest, three letters of appreciation from various organizations in Nepal, and news articles. In response to a Request for Evidence (“RFE”) dated October 4, 2007, the petitioner submitted an

additional news letter, information about judges for the 1999 Miss Nepal competition, a program from the 2005 Miss Nepal competition, background information about Pratrika Weekly magazine, a certificate of participation in a medical conference, information about Omniphones Films, information about the Nepal Youth Society, and twelve letters confirming her participation with social organizations and recommending her.

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. The petitioner does not claim to meet any of the criteria not discussed below.

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

The petitioner states that she meets this criterion because she was awarded first runner-up in the 1998 Miss Nepal beauty contest. We note that this award was given eight years prior to the filing of this petition so could not demonstrate *sustained* acclaim as required by section 203(b)(1)(A) of the Act. Counsel states in his brief on appeal that the Miss Nepal competition "is the highest award in the nation in the field of arts of beauty, discipline and as role model or mentor" and is a nationally and internationally recognized contest in which "hundreds of contestants" compete. In support of this assertion, counsel cited to the 2005 Miss Nepal program, which detailed the Miss Nepal contest's history and established the Miss Nepal contest's link with the Miss World Organization. Evidence contained in the record does not indicate how contestants are chosen or otherwise establish the importance of this pageant such that the petitioner's selection as first runner-up is considered a nationally or internationally recognized prize or award. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *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).

In addition, even if the award had been temporally proximate, the petitioner has not established that winning a beauty contest relates to community health mentoring, the field of endeavor in which she seeks to continue working in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5). Counsel stated in his response to the RFE that the petitioner's participation in the Miss Nepal contest set her up to be a role model for women and that she conveys "[a] message of beauty [to] engender a sense of positive reflection on the meaning of one's own being within nature. Hence, she spreads the importance of life and purity thereof." Using "her Miss Nepal recognition" does not indicate that the petitioner intends to continue work in the same field of endeavor, but instead that she wishes to leverage her

previous success into a different field of endeavor. The petitioner presented no evidence to show that a beauty contest falls into the same field of endeavor as education regarding “sanitation, health and the horrific disease AIDS.”

In light of the above, the petitioner has not established that she 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 states that she meets this criterion by virtue of her membership in the Lions Club, Jaycees, and “other social welfare organization.” The petitioner submitted no evidence concerning her membership in any of these organizations except for Mahila Adarsha Sewa Kendra. For example, she submitted a letter from [REDACTED] of the Lions Club of Kathmandu Everest, which thanked the petitioner for her work with the organization. That letter, however, does not indicate that the petitioner is a member of that organization. The petitioner also submitted letters from other charity organizations thanking her for her volunteer work and participation with the organizations, but only one of those letters indicated that the petitioner was a member of any of the organizations.

Even if the petitioner had shown that she was a member of these organizations, she did not submit membership criteria for any of these organizations to indicate that outstanding achievements are required for membership or that membership applications are judged by recognized national or international experts in their fields. Although counsel states in his appellate brief that: “the petitioner became member of . . . organizations . . . as a result of her outstanding achievement. The organizations would require extensive back ground screening of the individual and his or her outstanding achievement in the field to be a role model of the general public or the targeted group,” the record contains no evidence regarding any of the claimed memberships. Once again, assertions of counsel do not constitute evidence and will not satisfy the petitioner’s burden of proof. *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.

Without further evidence concerning these organizations or the petitioner’s membership in the organizations, the petitioner does not meet 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 regulation, 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

Most of the submitted articles are about the 1998 Miss Nepal contest including the petitioner's receipt of the first runner-up to Miss Nepal. Those articles concerning the 1998 Miss Nepal contest are not primarily about the petitioner as they contain equal information about her, the winner of the contest, and the first winner of the contest who was later stripped of her title or were about all of the contestants in the 1998 Miss Nepal contest. In addition, the articles date from at least seven years prior to the filing of the instant petition, so cannot evidence *sustained* acclaim.

The petitioner also submitted news articles published in "Beau Monde" and "Manoram Apsara Monthly Family" magazines about her, however, the articles do not bear dates of publication and the petitioner provided no documentation regarding whether the publishers are professional, major trade publications or other major media publications. The petitioner also submitted a number of additional photographs and articles that appear to have been published in the Nepalese news, however, none of the articles bear dates, some of the articles do not bear titles, authors, and full translations; and the record is devoid of documentation such as the circulation information of the newspapers that printed the submitted articles. Without such information, we are unable to conclude that the publications are professional, major trade publications or other major media publications as specifically required by the criterion. Again, despite counsel's assertions that "[the petitioner] was interviewed by the leading newspapers . . . [and] the articles were published with major headlines in nationally popular magazines and trade publications that have significant national distribution[,]" no evidence appears in the record to verify his statements and assertions of counsel do not constitute evidence and will not satisfy the petitioner's burden of proof. *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.

In light of the above, the petitioner has not established that she 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 submitted evidence that she served as a judge for the 1999 Miss Nepal beauty contest. 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

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.

national competition or a competition for top artists, athletes, or performers is of far greater probative value than judging a local or regional competition or a youth, student, or amateur competition.

As stated above, the petitioner has not shown how her participation with beauty contests relates to her work in her field of endeavor, a community health mentor. The record in this case includes a letter nominating the petitioner as a judge in the 1999 Miss Nepal contest and a letter thanking the petitioner for her service. The letter submitted from The Hidden Treasure, the group responsible for organizing the Miss Nepal contest, states that judges include “[m]odels, former winners of beauty pageants, editors of leading fashion magazine and newspaper, stage actors and actress, fashion designers, etc.” (errors in original), and the letter naming the petitioner as a judge cites her “experience in modeling and her commitment to the Miss Nepal Pageant as a first runner up in 1998” as the reasons she was selected. Counsel’s brief on appeal states that the petitioner was chosen as a judge “based on her outstanding talent, skill and the achievement in the field,” however, no evidence appears in the record to support his statement and, once again, assertions of counsel do not constitute evidence and will not satisfy the petitioner’s burden of proof. *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 record contains no evidence to establish that the petitioner’s participation as a judge of the 1999 Miss Nepal contest was in her field of endeavor or that participation is indicative of extraordinary ability as required by this highly restrictive classification.

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

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner claims eligibility under this criterion through her work as a journalist and work with various charities and social welfare organizations.

The letter from [REDACTED] of Patrika, stated that the petitioner worked for the weekly tabloid “covering various subjects.” The letter does not indicate that the petitioner performed in a leading or critical role for the tabloid as opposed to working as one of any number of reporters. In addition, a letter submitted by the managing director, [REDACTED], indicates that the petitioner was merely a volunteer rather than an actual employee of the paper. The petitioner did not provide copies of any of the articles that she wrote so we are unable to determine whether she “contributed articles on various issue for young women, weekly menu, arts, culture and fashion, etc. . . . [and] focused on educating others especially young women on being healthy and avoid disease like AIDS” as claimed in the response to the RFE. In addition, the information provided does not indicate that Patrika is an organization with a distinguished reputation. Instead, the information provided states that Patrika “is one of the top ten cultural magazines of Nepal” and that the tabloid focuses on “the various dimensions of Nepal’s vast heritage.” This information was provided by Patrika so is not an objective source of rankings or other indication of reputation. In addition, being “one of the top ten cultural magazines” does not provide sufficient detail to evaluate its standing in Nepal (for example, how many cultural magazines exist, what is Patrika’s exact ranking in the top ten, etc.).

The letters regarding the petitioner's charity work with Basudha, South Asia Federation Games, SAARC Tuberculosis Centre, the National Tuberculosis Centre, Rupak Memorial School, Mahila Adarsha Sewa Kendra, Morning Star Children Charity, Nepal Youth Society, and the Lions Club of Katmandu Everest do not state that the petitioner performed in a leading or critical role, but instead that the petitioner also volunteered for the organizations. The letters do not indicate the number of hours the petitioner devoted to the organization, how the petitioner performed differently from any other volunteer, or how any of her contributions significantly affected the organizations. Even though several of the letters indicate that the petitioner contributed to certain events including "provid[ing] assistance and training during the [SAARC] conference and serv[ing] as an influential speaker" and collecting money for Morning Star Children Charity and Rupak Memorial School, no evidence was presented to indicate how participation in these discreet events influenced the organization as a whole. In addition, the petitioner presented no evidence regarding the organizations' backgrounds, standing in the community or world, or any other aspect of their reputations.

The petitioner also claims eligibility under this criterion through her involvement with film organizations and as a model for various companies. The petitioner submitted evidence that she appeared in a music video for a song by [REDACTED] produced by Omniphones Films; that she modeled products for Ishwori Footwear Industries, Friends in High Places and Sharnawi Toothpaste Factory; and that she is involved with Kalika Movies, Studio PVT, Asha Advertising PVT, and the Nepal Motion Picture Association. The petitioner provided no evidence as to how her roles with these organizations were leading or critical. In addition, the only information provided about any of these organizations come from the organizations themselves and are therefore not objective and not sufficient to prove their reputation.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she 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 herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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 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.