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



U.S. Citizenship
and Immigration
Services

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FILE:

LIN 06 241 51817

Office: NEBRASKA SERVICE CENTER

Date: MAY 04 2009

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a filmmaker. 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.

The petitioner has submitted evidence that presumably is relevant to the following criteria.

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

In his August 4, 2006 letter accompanying the petition, counsel indicated that the petitioner had received the following "major" awards:

1. For the short film "Cuando La Luna Esta Llena:" award winner at the Palm Springs International Festival of Short Films, IFP Finalist Best Short Films, Best Fiction Film in Cityvisions Film Festival, and selected for the Rhode Island International Film Festival, Garden State Film Festival, Cenequest San Jose Film Festival, Boston International Latino Film Festival.
2. For the short film, "Jikken:" Best Documentary in Cityvisions.
3. For the short film "Anonymous Assassin:" Selected to be shown at the Asian American Film Screenings.
4. A Silver Award at the 2000 Korean Advertising Awards for a commercial production for Samsung Electronics.

The petitioner submitted a document labeled "screenings," which apparently lists the history for "Cuando la Luna esta Llena." The document indicates that the film won Best Screenplay, Best Cinematography and Best Fiction Film at the 2005 Cityvisions Film Festival, was screened at the Rhode Island International Film Festival, at the Independent Feature Project (IFP) as one of five films nominated for Best Short Film Award, at the Palm Springs International Film Festival, at The City College of New York's (CCNY) Second Annual Cinema Cum Laude, at the Cinequest Film Festival, and at the Garden State Film Festival, and was selected as a finalist at the Rochester International Film Festival. The source of this document is not indicated and the document does not reflect who gathered the information or where and when it was compiled.

The petitioner also submitted a webpage from Asian American Film Screenings announcing that the short film "Jikken would be screened as part of Cityvisions." The document, showing that the article was posted on June 1, 2005, indicates that the film was written, directed and edited by Doug Ing in fulfillment of his Master of Fine Arts degree requirements. The petitioner is listed as the producer.

The petitioner submitted letters from faculty members in the Department of Media & Communication Arts at CCNY. They describe the Cityvisions Film Festival as a festival "showcasing graduate student thesis work," and stated that the petitioner's films "Cuando la Luna esta Llena" and "Jikken," on which he served as producer, were winners of best fiction and best documentary at the festival in 2005. Others who submitted letters on the petitioner's behalf also testify that he won awards for these films. The petitioner submitted no other competent

documentary evidence to corroborate the receipt of any awards for these films. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the petitioner submitted no evidence to establish that any recognition at the Cityvisions Film Festival or the Palm Springs International Festival of Short Films is nationally or internationally recognized as awards of excellence in filmmaking.

In response to the director's request for evidence (RFE) dated December 28, 2006, the petitioner submitted documentation of additional screenings of the films, *Cuando la Luna esta Llena* and *Jikken*, at the Poppy Jasper Film Festival and the 29th NY Asian American International Film Festival, respectively. The petitioner also submitted documentation that his short film "Seize the Day" placed in the top 15 at the 3rd Annual 72Hr Film Shootout. The petitioner submitted no documentation to establish that placing among the top 15 in a contest is evidence of winning any award or prize.

The petitioner submitted a partial copy of a program for the 28th Asian American International Film Festival 2005, which shows an entry for his four-minute film "Anonymous Assassin," and a copy of what purports to be the results of the 2000 Korean Advertising Awards, listing the beneficiary as the "silver" winner in the TV category. The translation accompanying this document, however, does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), in that the translator is not identified, and there is no certification that the translation is complete and accurate or that the translator is competent to translate from Korean into English. Accordingly, the document is of no probative value in this proceeding. The petitioner submitted no evidence to establish that mere selection for screening at film festivals, however meritorious, is a prize or award or that it is nationally or internationally recognized as such in his field of endeavor.

The petitioner's evidence does not establish that he meets this criterion.

On appeal, counsel asserts that the petitioner's selection for "competitions" at the IFP Market competition, the Rochester International Film Festival, the Palm Springs Shortfest and the Asian American International Film Festival "should be considered as a 'one time achievement' in a major international competition."

The regulation at 8 C.F.R. § 204.5(h)(3) describes a "one-time achievement" for the purpose of this visa classification as "a major, internationally recognized award." The petitioner submits documentation showing that these festivals enjoy some prestige; however, he submitted no documentation to establish that a prize or award presented by these organizations is considered a major, internationally recognized award or that he has won any award presented at these "competitions." The petitioner submitted a document labeled "screenings" that indicated the short film "Cuando La Luna Esta Llena" was an award winner at the Palm Springs International Festival of Short Films. However, as previously discussed, there is no evidence as to the source of this information and the petitioner submitted no other documentation verifying his receipt of this award.

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.

The petitioner submitted documentation that he is a member of the IFP, which, according to counsel, is "regarded as the most important independent and documentary filmmaking organization." Counsel further asserts that "[m]ost of its members are award winning filmmakers with international acclaim." However, the petitioner submitted no documentation to establish that IFP requires outstanding achievements of their members. In fact, the petitioner submitted no documentation on membership in the organization.

The evidence does not establish that the petitioner 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.

With the petition, the petitioner submitted a copy of a June 1, 2006 "Certificate of Employment" signed by ██████████, President of Kilimanjaro Production. Mr. ██████████ stated that the petitioner worked for the company as a "CM Planner/Creative Director" from February 1999 until March 2000, and that he won the Silver Prize for Korean Ad Awards as director of a commercial production for Samsung Electronics. ██████████ further stated that the petitioner "was paid an annual salary of approximately \$45,000 which was three times more than average annual salary for other directors."

In response to the director's RFE, the petitioner submitted what purports to be a "verification of employment/salary" from ██████████, signed by ██████████ as Chairman of the Board of Directors on June 1, 2006, and a copy of an "annual salary contract" between the petitioner and Kilimanjaro Production dated October 1, 1999, for the period of October 1, 1999 to September 30, 2000. The petitioner also provided a copy of a purported contract between Kilimanjaro Production and ██████████ for the period from November 1, 1999 to October 31, 2000. The translations accompanying these documents do not meet the requirements of 8 C.F.R. § 103.2(b)(3), in that the translator is not identified and the translations are not accompanied by certifications that they are complete and accurate and that the translator is competent to translate from Korean into English.

Further, as noted by the director, it is not clear that the petitioner's job as CM planner is the same as that of filmmaker, his claimed area of extraordinary ability. Further, the petitioner submitted documentation that compared his salary only to those at Kilimanjaro and not to all other filmmakers. The petitioner submitted no evidence that his work at Kilimanjaro or as a filmmaker was significantly high rather to all others in his field.

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. The petitioner submitted letters of recommendation from several individuals who laud his accomplishments and skill.

However, review of the record does not establish that the petitioner has distinguished himself as a filmmaker 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 films the petitioner produced as a student have excelled. The petitioner submitted no evidence of continued and sustained success following his student productions such as to establish that he has risen to the very top of his field of endeavor. The evidence is not persuasive that the petitioner's achievements set her 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.