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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: MAY 04 2009  
LIN 07 156 51067

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 (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.

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, 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.

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 May 4, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a choreographer of Nepalese dance.

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.

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

To fulfill this criterion, the petitioner initially submitted merits of appreciation, awards and acknowledgement letters. These included a merit of appreciation from Rupy's International School awarded “for dedication and contribution towards the school,” dated December 7, 2005 and a certificate of appreciation from FIC Marketing Nepal to “praise worthy effort and active presentation,” dated July 10, 2004. The petitioner then provided pictures of various awards and photographs of the petitioner holding awards without any translation and/or minimal explanation. A picture of the petitioner receiving an appreciation letter from Prince Paras Bir Bikram was also provided. However, the actual letter from the prince was not submitted. After a review of the initial evidence submitted, the Director issued an Request for Evidence (“RFE”) dated March 4, 2008. In the RFE, the Director notified the petitioner that the evidence provided was insufficient to fulfill this criterion. More specifically, the RFE requested that a copy of the award that clearly identifies the name of the award and recipient be provided. In response to the RFE, the petitioner provided photographs of the awards previously submitted, purportedly given to him by the Nepal Film Artists National Association, the Nepal German Association, Thakali Sewa Samiti, St. George's College, the Nepal Motion Picture, Dabar Anmol Motion Picture and St. Xavier's College. Although each award picture contained a caption that described the award and indicated that the petitioner was the recipient, the petitioner submitted no documentary evidence of his actual receipt of the awards. In addition, the petitioner provided no direct translations of the information contained on the awards with the appropriate certifications as required by 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. On appeal, the petitioner does not claim this criterion is applicable to his case. Nonetheless, we will address this criterion.

With regard to the award certificates provided by the petitioner, the Director states that the record does not include evidence showing the “significance and overall stature and prestige” of his awards. Additionally, the Director notes that the record fails to establish any of the awards are “indicative of national or international acclaim.” We concur with the Director's finding that there is no evidence showing that these prizes constitute nationally or internationally recognized prizes for excellence in the petitioner's field, such as supporting evidence showing the prestige associated with receiving the awards or some other evidence consistent with national or international acclaim at the very top of the field. 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. Moreover, the record even lacks general information about the competitions (such as the award criteria, the area from where participants were drawn, the number of entrants, or the percentage of entrants who earned some type of recognition). In addition, because the petitioner failed to submit evidence which demonstrates his actual

receipt of the photographed awards and to include certified translations, the AAO cannot determine whether the evidence supports the petitioner's claims.

In light of the above, the petitioner has not established 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.*

In order 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 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. 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 petitioner initially submitted his membership credentials for the Nepal Film Technician Association, the Film Artist Association of Nepal, the Nepal Dancer Association, and the Eurasia Reiyukai. In his RFE, the Director requested information to demonstrate that membership in the organizations is "limited to only those with outstanding achievements in the field." In response to the RFE, the petitioner provided a letter from the President of the Nepal Film Technician Association stating that membership in this group is "only given to the very few and selective personalities." On appeal, the petitioner resubmits the membership cards, as well as the aforementioned letter from the President of the Nepal Film Technician Association. Additionally, the petitioner submits another letter from the Secretary of the Nepal Dancer Association dated March 15, 2008. This letter states that the petitioner has been given lifetime membership in this group to acknowledge his "great talent and his devotion" and that membership is "only given to the selective personalities."

The Director concluded that the petitioner failed to "establish that outstanding achievements are required for membership in any of these organizations." We agree and find that the record lacks evidence (such as membership bylaws or official admission requirements) showing that any of the groups require outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one.

The letters provided by two of the organizations' leaders fail to state the requirements of membership or state what types of outstanding achievements are necessary for membership. The letters additionally lack evidence demonstrating that membership is judged by recognized national or international experts in the field.

As such, the petitioner has not established 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 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 or broadcast, or from a publication printed in a language that the vast majority of the country's population cannot comprehend. 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.<sup>1</sup>

The petitioner initially submitted an August 10, 2001 music review in *The Rising Nepal*, wherein the article evaluates the petitioner's singing album. The article only reviews the petitioner's album and makes no mention of his work as a choreographer. This article therefore failed to meet the regulatory requirement that the publication must relate to the alien's work in the field for which the classification is sought. He also submitted an article from Nepal's *Teen Glamour*, entitled "Film 'Karan Arjun.'" However, the article was not primarily about him but rather the film itself and included only two sentences mentioning the petitioner, each only stating he is the dance director for the film. The plain language of this regulatory criterion requires that the published material be "about the alien." The petitioner additionally provided three extractions written in English without certified translations from the following publications; *Saptahik Jansatta*, *Annapurna*, *Gorkharpatra*. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. The petitioner has failed to submit the original documents from which the extractions were made. The preceding articles were accompanied by only partial English language translations and the individual translations were not certified by the translator as required by 8 C.F.R. § 103.2(b)(3). Moreover, the article in the *Gorkharpatra* relates to his singing career, not to choreography, the field in which he is trying to obtain his classification. The petitioner also submitted photographs of himself appearing in various publications. However, as this criterion specifically requires an author, title, and translation, the publication of photographs do not qualify the petitioner under this criterion. The specific regulatory requirements reference published written work instead of visual work. As such, these photographs do not qualify the petitioner under this criterion. Regardless, the petitioner was not even mentioned by name in any of the captions underneath the photograph except for one. These articles also failed to contain the required translation as required by 8 C.F.R. § 103.2(b)(3) either in full or at all. Lastly, the petitioner provided a summary statement regarding the petitioner being interviewed on Nepal Television. However, translations of such interview were not provided. Further, like photographs, a television interview does not meet the plain language of the regulation

The Director requested additional evidence including the complete articles with the publication name, date and certified translations, if necessary. In response to the RFE, the petitioner resubmitted copies of documents previously submitted as well as new evidence to include a new article from *Vishwaparikrama* dated March 16-31, 2008. This article postdates the date of filing the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45,

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<sup>1</sup> 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.

49 (Comm. 1971). Accordingly, the AAO will not consider this article in this proceeding. The petitioner also submitted articles from *Expo 2000 Hannover Bild*, *Regensburg* and *Expo Journal* with what appear to be incomplete or summary translations. Nonetheless, none of these articles even mention the petitioner and there are no captions for the photographs that identify him. Likewise, an article in the *Donau-Post* also provided only a summary translation.

Finally, there is no evidence (such as circulation statistics) showing that any of the preceding articles submitted by the petitioner were printed in professional or major trade publications or some other form of major media. Many of the articles appear in regional papers rather than nationally or internationally circulated publications. Regional coverage or coverage in a publication read by only a small ethnic segment of a country's total population is not evidence of national or international acclaim. On appeal, the petitioner included an internet printout from [www.mediaseen.com](http://www.mediaseen.com), purporting to show that the Annapurna Post is a widely circulated publication in Nepal. However, no evidence about this source, the reliability of its contents or any other information to support the assertions regarding the Annapurna Post was provided. Nonetheless, there is no evidence that the record contains an article from the Annapurna Post. There is only an extract that translates an article title as Hamal Annapurna Correspondence, which we cannot conclude is the same publication. The petitioner, on appeal, also argues that the Hannover Bild is a widely read publication in Europe. Similarly, only an internet printout was provided from [www.mondotimes.com](http://www.mondotimes.com) to support this claim, without any other evidence to substantiate its validity. Regardless, the translation of the article from Hannover Bild contained in the record appears to be only a partial translation that does not even mention the petitioner.

As discussed above, the articles submitted by the petitioner were not written primarily about him. If mentioned at all, the articles only briefly mentioned the petitioner or captioned his name under a photograph. Moreover, many of the articles were not accompanied by the original document and by complete translations and instead only provide summary translations. Without complete translations, the actual content of the articles cannot be ascertained. *See* 8 C.F.R. § 103.2(b)(3).

In light of the above, the petitioner has not established 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.*

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 choreographers and/or dancers is of far greater probative value than judging a local competition for youth or novices.

The petitioner initially provided a certificate of merit issued on November 20, 2005 for judging an event at St. Xavier's College. This certificate does not indicate what competitive event was judged by the petitioner. Additionally, a letter was provided dated December 28, 2006 by the Senior Director of the National Center of Dance thanking the petitioner for judging the annual folk, modern and classical dance contest of the organization. Another letter from the Principal of the Fluorescent English Higher Secondary School thanks the petitioner for his judging "various entertaining cultural programmes (programs)." Lastly, in a letter from the Organizer of the Aarati Culture Group dated December 26, 2006, the petitioner is appreciated for judging a "dance competition." In response to the RFE, the petitioner provided an invitation letter from the National Center of Dance and one from the Aarati Culture Group. Neither invitation provided additional information concerning the nature of the competitions or the competitors. On appeal, the petitioner additionally submitted a letter from the director of Rupy's International School stating that the petitioner judged children in the Inter House Song and Dance Competitions in 2001. This is the only letter provided which describes the competitors at the event, which in this case were youths.

The record lacks evidence establishing the level of prestige associated with judging the competitions in the record, the requirements necessary to become a judge in those competitions, and the names of the dancers he evaluated and/or their levels of expertise or other evidence of his judging that is indicative of this highly restrictive classification.

In light of the above, the petitioner has not established 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 did not claim this criterion initially or on appeal. Nonetheless, the Director considered the several letters of recommendation that were submitted to be potential evidence of this criterion, and in his RFE specifically requested that the petitioner identify "original contributions and provide objective documentary evidence of their significance in the field." This additional requisite evidence was never provided and the Director did not find the petitioner satisfied this criterion.

An example of one of the letters initially reviewed includes a letter from the Nepalese Embassy.

First Secretary of the Embassy of Nepal, states:

[The petitioner]... has (made a) significant contribution in his field of performing dance art in Nepal.... accomplishments to date have been very promising and we can expect a lot from him in the future as well. He is a truly dedicated and a bona fide artist. His contribution to the dance and choreography field is exemplary. I wish his a great success in his endeavors.

The preceding letters of recommendation, as well as the other letters provided, discuss the petitioner's talent as a choreographer, his training, and examples of where he has performed. However, they fail to demonstrate that he has made original contributions of major significance in his field. The letters include no substantive

discussion as to which of the petitioner's specific artistic achievements rise to the level of original contributions of major significance in the 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 artistic talent is admired by those offering letters of support, there is no evidence demonstrating that his work has had major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other performers nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion.

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

The petitioner did not initially submit any identifiable evidence regarding this criterion. The Director confirmed this in its RFE. In his denial, the Director also indicated that this criterion was not claimed and that the record does not establish eligibility for this criterion. Nonetheless, on appeal, the petitioner argues that various letters previously provided fulfill this criterion. In a letter from the Nepal-German Chamber of Commerce and Industry, an officer states that the petitioner was involved in many performances including the Himalayan Festival 1999 in Berlin, Germany, the World Exposition Expo 2000 in Hannover, Germany, and the Himalayan Road Show 2001 in various European countries. The letter boasts that the petitioner "is a reputable dancer and has experience of performing in various country promotion programmes (programs) and others in national as well as international" programs. Moreover, in another letter from the Nepal Tourism Board, the Assistant Manager stated the following performances in which the petitioner participated including Discover Nepal in 1999, Destination Nepal Campaign in 2002 and 2003, and the China Road Show in 2002. The director of the Nepal Festival of Music and Dance also indicates in his letter that the petitioner "has participated as Lead Dancer and Choreographer from Nepal's National Center of Dance" in the annual festival that began in 2003.

The plain language of this criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. It is inherent to the performing arts to perform. Therefore, not every performance is a showcase or exhibition of the work of every performer. Without evidence that the petitioner's performances were comparable to the exclusive artistic showcases that might serve to meet this criterion for a visual artist, we cannot conclude that the petitioner meets this criterion. Even if this criterion could be met by the petitioner's performances, it appears that the most recent performance occurred in 2003, four years prior to the petitioner filing for this classification. Such a lapse in time would be insufficient to demonstrate *sustained* acclaim in the petitioner's field. Although the petitioner's participation in the Nepal Festival may have occurred more recently, the letter does not specify the dates of his involvement.

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

On appeal, counsel argues that the reference letters submitted on the petitioner's behalf are comparable evidence of the petitioner's extraordinary ability as a choreographer. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in

this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

The reference letters submitted in support of this petition have already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (iv) and (v). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of her field. While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he 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 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. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.