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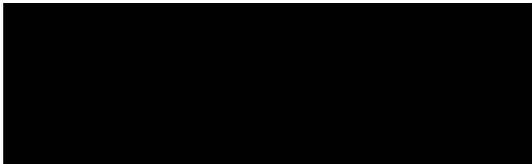
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

B2



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 11 2009**
SRC 08 224 55305

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:

SELF-REPRESENTED

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, 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 that 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) and that the director applied incorrect standards in denying the petition.

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 she has sustained national or international acclaim at the very top level.

This petition, filed on July 3, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a film analyst. In 2006, the petitioner finished her doctoral degree in Film and Critical

Theory. While she was a doctoral student, she worked as a film reviewer and reporter for two Greek publications. She also worked at Aristotle University, where she was a student, as a film instructor. On appeal, in her brief, she reclassified herself as an erotic thriller specialist, rather than a film analyst. We find the change to be insignificant as under either title the petitioner has not established her eligibility for classification.

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).

We note that although the record contains evidence of the petitioner's prior approval as an O-1 non-immigrant, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

As aforementioned, each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply. Thus, the petitioner's eligibility will be evaluated under the regulatory criteria relating to the immigrant classification as claimed by the petitioner.

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

The petitioner submitted a Tzina Politi Award, which she was granted for the year 1999 for her thesis paper. The award was given by the Department of English Literature at Aristotle University, where she received all her degrees. Four other students won this award along with the petitioner. It appears that this award was limited to only student applicants at this particular university. The second award claimed by the petitioner was the ESSE Bursary in 2005. As proof to establish her receipt of this award, the petitioner provided only an email from the selection committee. The email indicates that the selection committee received thirty-three research proposals and awarded six candidates with 1,000 euros and two candidates with 1,500 euros. The petitioner received 1,000 euros for her proposal, which appears was given only to student applicants who were PhD candidates. The grant of 1,500 euros appears to have been available only to professors. Without other documentation of the award such as evidence regarding its prestige, selection process or candidates that the petitioner was competing against, the petitioner failed to establish the national or international recognition of these awards. The petitioner's claims that these awards are nationally and internationally recognized are not sufficient to meet her burden of proof. 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)).

The plain language of this regulatory criterion requires the petitioner's "receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The petitioner submitted no evidence that either of the awards given to the petitioner constitutes a nationally or internationally recognized prize or award. We note that both of the petitioner's awards appear to have been limited to students only rather than being open to competition from throughout her field.

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

In the director's decision, he noted that "no evidence was submitted" to fulfill this criterion. However, on appeal, the petitioner argues that her work was referenced in two publications. First, the petitioner argues that her work has been quoted in a doctoral thesis which is currently under publication by Lexington Books, entitled "All and Nothing: White Heterosexual Masculinity in Contemporary Popular Cinema." **An excerpt, rather than the full thesis, was provided.** In the excerpt submitted, the petitioner's article was cited in the bibliography and the petitioner was referenced in the acknowledgement section. As the petitioner was only briefly mentioned, this thesis was not written about the petitioner. Additionally, there is no evidence that this thesis was published in a professional or major trade publication. The petitioner only states that the thesis is "under publication" for Lexington Books. However, the excerpt provided offers no evidence that the thesis has been published.

Similarly, the petitioner submits an excerpt of another bibliography of Literary Theory, Criticism, and Philology, in which her work was cited. In the bibliography, the sole reference to the petitioner is "Karagiannidou, Aneta. See Greek feminist criticism." This again does not fit within the regulatory parameters that the published material be about the alien. Moreover, there is no evidence to show that the University of Zaragoza, Spain, who appears to have been the publisher of this article, represents a professional or major trade publication. Moreover, the date listed on the top of the bibliography says only 2007. Therefore, it has not been established that it was published prior to the date of filing. A petitioner must establish eligibility at the time of filing. A visa petition may not be approved after the petitioner 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).

For all of the above stated reasons, the petitioner failed to establish that she meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

In his decision, the director found that the petitioner had satisfied this criterion. More specifically, the director stated,

The beneficiary has contributed through film and critical studies through papers and presented them at international conferences in various European countries. In addition the beneficiary contributed to the first three volumes of the first Greek film guide series, and authored numerous film reviews and analyses.

Upon review, we disagree that the three volumes regarding Greek cinema that the petitioner has purported to write should be considered as evidence. The petitioner's submission only includes the

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.

copies of the book covers instead of the complete volumes of her works. Moreover, the copies of the book covers are not accompanied by certified translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Moreover, certified translations were not provided for any of the film reviews and analyses as required by 8 C.F.R. § 103.2(b)(3). As such, these also cannot be considered. It is noted, however, that even if considered, the petitioner has failed to establish the impact that any of these works have had on her field to demonstrate what, if any impact she has made on her field.

The petitioner also presents evidence that she spoke at the following conferences: “America – Home of the Brave” for the American Studies Colloquium, Olomouc (2004), “Nights to Remember” for the Film and Media Programme, University of Southampton (2000), and “Politics and/in Aesthetics” for the English Departments of Aristotle University, St. Cyril and St. Methodius University (2005). Additionally, the petitioner submitted an email confirming her participation in a conference in Strasbourg in 2002. The email provides no information regarding the conference nor does it clearly specify that the petitioner will even be speaking at the event. However, the petitioner failed to provide evidence for any of these engagements regarding the type of audience who attended these presentations, the number of attendees, or the selection criteria for the presenters. As such, the evidence does not demonstrate that the petitioner’s participation in these conferences conveyed her national or international acclaim or that her participation in such events made a contribution of major significance to her field.

As discussed above, the petitioner has failed to establish how her work has influenced her field and how it is considered to have been a contribution of major significance to her field. Accordingly, the petitioner has not established that she meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted the following as evidence of her authorship:

1. “Until Death Tears Them Apart: Male Narration and Female Spectacle in Roman Polanski’s *Bitter Moon*,” *Gamma Journal of Theory and Criticism*, published by the Department of English and American Studies of Aristotle University (2001);
2. “Oops... Hollywood Did It Again: James Cameron’s *Titanic* and Fantasy of the Absolute,” *Interdisciplinary Literary Studies: A Journal of Criticism and Theory*, published by Penn State Altoona (2003);
3. “Hollywood and the 9/11: The Re-Invention of the Mythical American Body,” *America-Home of the Brave: American Studies Colloquium, Olomouc: Palacky University Press* (2005);
4. “A Frame-Theoretic Interpretations of Anne Sexton’s Poem ‘Buying a Whore,’” *Proceedings of the 11th International Symposium on Theoretical and Applied Linguistics, Thessaloniki: University Studio Press* (1997);

5. Copies of Book Covers in various volumes of *Kinimatografikes Epitihies* including the petitioner as one of the authors: “The Top Films,” “The Dark Films,” and “The Funny Films” (2004-2005);
6. Copies of Film Reviews and Analyses for “Exostis” and “Fix Carre”; and
7. “The Politics of Sexual Representation in Erotic Thrillers: The case of Sea of Love,” presented at the Politics and/in Aesthetics conference in June 2005 and under consideration for publication by University of Delaware Press.

Items 1-4 were all published by various university publishers. The evidence provided for Item 4 is incomplete, as the full article was not provided in the petitioner’s submission. Instead, only an internet website printout citing an article that involved collaboration with the petitioner was provided. Yet no evidence about this source, the reliability of its contents or any other information to support the article’s existence was submitted. Likewise, the petitioner only provided book covers of the volumes purportedly written by her for Item 5. The petitioner also failed to provide certified translations for the book covers. Item 6 also does not include certified translations. Because the petitioner failed to submit certified translations for Items 5 and 6, the AAO cannot determine whether the evidence supports the petitioner’s claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, this evidence is not probative and will not be accorded any weight in this proceeding.

Items 1 through 3, all published by academia, are the only articles that can be considered for this criterion. However, the petitioner has failed to provide evidence to establish these university publishers can be considered major media. The mere fact that all the petitioner’s articles were published by university press does not make it major media.

The petitioners work was also cited to in two different bibliographies, one which was part of another student’s thesis and one which appears to also be written in connection with a university. These citations were previously discussed in greater detail under the criterion related to 8 C.F.R. § 204.5(h)(3)(iii). As authoring scholarly articles is inherent to the research field,² such as the instant case where the petitioner was a doctoral candidate, we evaluate a citation history or other evidence of the impact of the petitioner’s articles when determining their significance to the field. These references to the petitioner in the bibliography of two academic pieces fail to demonstrate that the petitioner’s articles were frequently cited in a manner consistent with sustained national or international acclaim.

Item 8 is being reviewed for potential publication by the University of Delaware Press. However, no evidence exists to show that Item 8 was ever published or that it was published as of the petition’s

² The Association of American Universities’ Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition was the acknowledgement that “the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment.” Thus, this national organization considers publication of one’s work to be “expected,” even among researchers who have not yet begun “a full-time academic and/or research career.” This report reinforces USCIS’s conclusion that publication of scholarly articles is not presumptive evidence of sustained national or international acclaim.

filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. As such, Item 8 cannot be considered for this criterion.

As such, the petitioner has not established that she meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

On appeal, the petitioner argues that she will have a critical role in the development of a new erotic thriller project in her current capacity as a script researcher for NewKat Studios. Prior to the petitioner's appeal, no evidence was submitted for this criterion.

A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. at 49. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The petitioner cannot establish that she has performed a leading role through a set of facts that occurred after the filing of her petition.

Moreover, even if she was able to do so, 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. There is no evidence demonstrating how the petitioner's role differentiated her from the others in the company. Further, there was no independent evidence, other than two letters written by the Co-founder of NewKat Studios demonstrating that NewKat Studios has a distinguished reputation as compared to its competitors. As such, the petitioner has not established that she 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.

On appeal, the petitioner submitted a letter dated August 5, 2008 from [REDACTED], Co-Founder of NewKat Studios. This letter indicates that the company is willing to pay the petitioner \$100,000 for her involvement in a development project. Prior to the petitioner's appeal, no evidence was submitted for this criterion.

As previously stated, 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. *Matter of Katigbak*, 14 I&N Dec. at 49. The Immigrant Petition for Alien Worker (Form I-140) was filed on July 3, 2007. As the petitioner was offered a position at NewKat after the time of filing, evidence of the salary she is to be paid by NewKat Studios does not demonstrate that she "has commanded" a high salary or remuneration.

Nevertheless, even if the petitioner was offered her current position at the time of filing, the plain language of this regulatory criterion requires the petitioner to submit evidence that she has commanded a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field. There is no indication that the petitioner has earned a level of compensation that places her among the highest paid script researchers, erotic thriller specialists or film analysts in Greece, the United States or any other country.

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 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 the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.