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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAY 28 2009**  
EAC 06 017 50733

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

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

**John F. Grissom**  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center on March 21, 2007. The petitioner appealed the director's decision on April 19, 2007. The director subsequently reissued his decision on June 14, 2007, and the petitioner appealed this decision to the Administrative Appeals Office (AAO) on July 10, 2007. 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.

We note that the record also contains a copy of a second Form I-290B, Notice of Appeal or Motion, dated December 5, 2007, which moves to reopen and reconsider the director's June 14, 2007 decision. The record before the AAO does not indicate whether the motion was accompanied by a fee or was accepted by the Nebraska Service Center. However, even if filed with the proper fee, the motion would have been untimely, as it was filed more than 30 days after the director issued his decision. The AAO will consider all of the evidence contained in the record of proceeding, including evidence submitted with this unreceipted motion.<sup>1</sup>

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.

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<sup>1</sup> The petitioner was represented by different counsel during the earlier stages of this proceeding. Former counsel will be referred to as "prior counsel" in this decision.

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, 60898-9 (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 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 television director and producer. 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).

The petitioner submitted documentation indicating that he won the Japan Prize Contest 2001 United Nations Children’s Fund (UNICEF) Prize and the Grand Prize at the New York International Children’s Film Festival (NYICFF) in 1997. The petitioner did not initially allege that these prizes constituted major, internationally recognized awards. However, in his brief accompanying the motion to reopen and reconsider (MTR), counsel asserts that these awards are major, internationally recognized awards and that the petitioner qualifies for this visa preference classification as an alien of extraordinary ability based on these awards.

With the petition, the petitioner submitted a copy of a November 14, 2001 certificate from UNICEF indicating that the jury of the Japan Prize Contest had recommended the UNICEF Prize be awarded to Young Asia Television Nepal for the program *Four Years in Hell*. The record contains an undated letter from Worldview Global Media Limited in Sri Lanka that indicated the petitioner was the “Country Representative of Young Asia Television for Nepal.” A February 21, 2002 letter from Young Asia Television informed the petitioner that his program *Four Years in Hell* would be screened at the TV Competition of the North-South Media Festival.

In response to the director’s request for evidence (RFE) dated August 22, 2006, the petitioner submitted copies of pages from the website of the Japan Broadcasting Corporation (NHK) accessed on September 19, 2006, and from the website of the European Broadcast Union, also accessed on September 19, 2006, indicating that the Japan Prize is an international education program competition sponsored by NHK “to encourage quality educational TV programmes and to promote international understanding and cooperation among nations.” A review of the NHK website, accessed on February 25, 2009 and made a part of the record, indicates that the UNICEF Prize is a special prize awarded in the Audiovisual Division of the Japan Prize competition.

The petitioner also submitted certified translations of media coverage of the prize awarded. The documentation attributes production of the program *Four Years in Hell* to the petitioner. The petitioner also submitted a copy of a July 7, 2007 letter from [REDACTED] who stated that he and the petitioner produced the program together.

In denying the petition, the director stated that an Internet search revealed that the film *Four Years in Hell* was produced and directed by [REDACTED] and that despite [REDACTED] letter, it cannot be determined what the petitioner “actually contributed to this production.”

In an October 27, 2007 letter, [REDACTED] stated:

Particular reference is made to the films “Four Years in Hell” and “Kumari – the Living Goddess.” Both these films were completed because of [the petitioner’s] initiative and implementation. Without [his] research, direction, and camera expertise, neither of the films would have been produced. With respect to each film my duties were to raise funds and arrange the distribution of the films.”

As noted by counsel, the director did not identify the sources used in his Internet research and did not make the search results a part of the record. Therefore, the use of such research is an improper basis for denial of the petition. However, the AAO conducted its own Internet search, including Educational Media Reviews online,<sup>2</sup> Filmmakers Library,<sup>3</sup> and Media Rights: Films,<sup>4</sup> all of which are made a part of the record. All indicate that [REDACTED] was the producer or director of the film. None made an attribution to any input by the petitioner.

Other evidence of record, however, indicates that the petitioner was instrumental in the production of the film. In a December 16, 1998 letter, the director of the New York International Children’s Film Festival (NYICFF) invited the petitioner and the subject of the film to attend the film’s screening at the NYICFF Awards ceremony and to accept an award for the film. The petitioner submitted a copy of the award with his name inscribed. A February 21, 2002 letter from the North-South Media Festival informed the petitioner that his film “Four Years in Hell” was selected to be screened at the festival and asked him to inform [REDACTED] of the selection. In an October 27, 2007 letter, [REDACTED] stated that the petitioner was the force behind the film, and that his primary responsibility was to raise funds and arrange for the film’s distribution. We note that the petitioner also submitted articles from several newspapers that report on his receipt of the UNICEF Prize. However, as discussed further below, the names of the publication and the dates of the articles are written by hand. Therefore, it cannot be determined that the articles actually appeared in the publication named. Nonetheless, we find the evidence is sufficient to establish that the petitioner was the winner of the UNICEF Prize at the Japan Prize Contest.

<sup>2</sup> <http://libweb.lib.buffalo.edu/emro/emroDetail.asp?Number=843>, accessed on February 25, 2009.

<sup>3</sup> [www.filmmakers.com/index.php?a=filmDetail&filmID=1092](http://www.filmmakers.com/index.php?a=filmDetail&filmID=1092), accessed on February 25, 2009.

<sup>4</sup> [www.mediarights.org/film/four\\_years\\_in\\_hell](http://www.mediarights.org/film/four_years_in_hell), accessed on February 25, 2009.

However, the petitioner has not established that the UNICEF Prize at the Japan Prize Contest is a major, internationally recognized award and that his receipt of the award constitutes a one-time achievement which makes him eligible for this visa preference classification.

Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (September 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a \$1 million cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

The petitioner submitted no documentation to establish that the Japan Prize competition is reported in the top international media. While the petitioner submitted copies of news articles regarding the Japan Prize competition, the news coverage appears to be of a local or national nature. The record does not reflect that the Japan Prize or the UNICEF Prize is one recognized by the general public. However, the prize will be considered as receipt of a lesser nationally or internationally recognized prize as discussed further below.

Counsel also alleges that the petitioner's receipt of the Grand Prize at the NYICFF in 1997 is also receipt of a major, internationally recognized award and makes him eligible for this visa classification. The petitioner submitted a copy of a December 16, 1998 letter from the NYICFF inviting him to appear in New York to accept the 1997 Grand Prize award for his film *Kumari – The Living Goddess*.

In response to the RFE, the petitioner submitted a February 25, 1999 letter from the NYICFF to the petitioner explaining his receipt of the award. According to the letter, signed by Eric Beckman, the director of the festival:

The 1997 NYICFF Grand Prize was presented to you as the filmmaker of *Kumari – The Living Goddess*. The Grand Prize is selected each year by audience vote. We had no award ceremony in 1997 but decided to honor you retroactively at this year's festival. There was no money awarded – only the bronze statuette inscribed with your name.

The petitioner also submitted a copy of an undated article from *Time Out New York*. The article indicates that the short film *Kumari – The Living Goddess* was presented at the inaugural NYICFF. Other documentation indicates that the NYICFF was founded in 1997 and bills itself as "the largest festival for children and teens in North America." The record does not, however, support counsel's assertion that the Grand Prize at the NYICFF is a major, internationally

recognized award. The petitioner submitted no documentation such as announcement of the winners in international news or any other documentation that the NYICFF is other familiar to the general public such as with the Nobel Prizes or the Oscars. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). However, the petitioner's receipt of this award will be considered as receipt of a lesser nationally or internationally recognized prize as discussed further below.

The petitioner's evidence does not establish that he is the recipient of a major, internationally recognized prize or 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 also submitted evidence that he claims meets the following criteria.<sup>5</sup>

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

As noted above, the petitioner initially alleged that his receipt of the 2001 UNICEF Prize at the Japan Prize Contest and of the Grand Prize at the 1997 NYICFF was evidence that he meets this criterion.

In his October 27, 2007 letter, Frode Pedersen states that the NYICFF "has become a major event" and that "The Grand Prize awarded by the New York International Children's Film Festival is a prize nationally and internationally recognized within the television and motion picture industry for excellence in the field of endeavor." However, nothing in the record supports [REDACTED] statements regarding the status of NYICFF. 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, even if the Grand Prize is recognized as a nationally or internationally recognized award, the petitioner submitted no documentation to establish that his receipt of the prize during the festival's inaugural year was receipt of a nationally or internationally recognized award in 1997. The evidence therefore does not establish that the petitioner's receipt of the 1997 Grand Prize at the NYICFF was receipt of a nationally or internationally recognized award of excellence in his field.

As discussed above, however, the documentation submitted indicates that although the UNICEF Prize was not in the petitioner's name, he was primarily recognized as the person responsible for producing and directing the film *Four Years in Hell*. The evidence of record also establishes that

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<sup>5</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

the UNICEF Prize at the Japan Prize Contest is an internationally recognized award of excellence in the petitioner's field.

Nonetheless, the regulation requires that the petitioner establish sustained national or international acclaim. A single prize, awarded four years prior to the filing of the appeal on October 24, 2005, does not provide evidence of the petitioner's sustained acclaim and is not sufficient to establish that he meets this criterion.

*Published materials 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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted copies of articles about the NYICFF, which includes mention of the showing of his film, *Kumari – The Living Goddess*. However, these articles are about the NYICFF and not about the petitioner or his work.

The petitioner also submitted copies of several documents that he stated were from media such as *Himal Magazine*, the *Kantipur Daily*, and the *Kathmandu Post*. These documents all contain handwritten notations purporting to show the publication and date of the articles. However, the petitioner submitted no documentation to verify that these articles appeared in the publications identified. Without supporting documentary evidence, the petitioner has not met his burden of proof. *Matter of Soffici*, 22 I&N Dec. at 165.

Assuming that the initially submitted documents are what they purport to be, we note that some of the articles discuss programming by Young Asia Television, and are therefore not about the petitioner. Others, dated in 2001, are about the petitioner or his documentary, *Four Years in Hell*. However, the articles appeared only during a few months in 2001. The petitioner submitted no similar documentation of his work prior to or subsequent to that period. The petitioner must establish that he has achieved sustained acclaim. Eligibility under this criterion is not established by references to the petitioner's work during a limited period of time. The evidence does not establish that the petitioner 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 petitioner submitted a copy of a June 25, 2003 letter from the Advertising Agencies Association of Nepal (AAAN), thanking him for being a jury member for the Crity Advertising Awards 2060, a February 12, 2004 letter from the radio station Image FM 97.9, requesting the petitioner to act as a jury member of a music award, "Image Award 2004," and an April 2, 2004 letter thanking him for agreeing to be a jury member. The letter from AAAN indicates that the petitioner was asked to act as a jury member because of his "commendable contribution" to the field that he represented.

The February 12, 2004 letter from the radio station Image FM 97.9 stated that the petitioner would be a member of a three-person panel judging the music award categories of best music video of the year, best video music director, best cameraman, best editor and best music video special effects. In response to the RFE, the petitioner submitted a copy of a page from the website of "adtricks," accessed on September 27, 2006. The document indicates that the CRITY Awards recognize "the talent of the advertising professionals while acknowledging the contribution of advertising agencies to the advertising sector, Nepali business and industries, and the economy as a whole." The awards include best television commercial, best art director, best TVC director, best copy writer, and most popular advertisement. Although these awards are advertising and music awards, they appear to be in an allied field of endeavor to that of the petitioner.

Nonetheless, although the petitioner submitted documentation that he was asked to be a jury member on both of these programs, he submitted no documentation to establish that he actually participated in the programs. Additionally, not all who sit as a judge will have extraordinary ability or will qualify under this criterion. The AAO interprets this regulation to require that the selection and participation process for serving as the judge of the work of others in the field be indicative of national or international acclaim in the field. The evidence does not establish that the petitioner was chosen to participate as a jury member because of his national or international acclaim. The invitation from AAAN indicated that the petitioner was selected because of his "commendable contributions" to his field. However, a "commendable" contribution is not automatically the equivalent of national or international acclaim.

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

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

Prior counsel stated in his November 1, 2006 letter accompanying the petitioner's response to the RFE that the evidence "clearly demonstrates his original contribution of major significance in the field of television production and direction and more specifically, the genre of 'edu-tainment' or 'info-tainment.'" The petitioner submitted copies of letters from several individuals that prior

counsel asserted detail the petitioner's "pioneering work in his field, his high level of expertise relative to others in his profession, and corroborates [his] national and international prestige in relation to his colleagues." The letters, however, do not attest to any original contribution by the petitioner that was of major significance in the petitioner's field of directing and producing. Prior counsel asserts that the petitioner "provided the world with a rare glimpse of the Upper Mustang Region of Nepal with his documentary film of the area which is original and extraordinary as access to this area has always been forbidden to tourists and visitors." However, prior counsel provided no analysis and the petitioner submitted no documentation to indicate that the petitioner's filming coup constituted a contribution of major significance to the field.

In his August 7, 2007 brief, prior counsel asserts that the petitioner's invitations to participate in the Prix Jeunesse International Film Festival and the 2002 North-South Festival are evidence that he meets this criterion. Nonetheless, the petitioner submitted no documentation to establish how an invitation to any event constitutes a contribution of major significance to his field of endeavor.

In his December 12, 2007 brief, counsel asserts that the petitioner also meets this criterion based on his "critical role in establishing the television industry in Nepal." Nothing in the record, however, supports counsel's statement. While the record contains documentation that the petitioner was the country representative for Young Asia Television for Nepal, there is no evidence that the petitioner or Young Asia Television was instrumental in the development of the television industry in Nepal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

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

The wording of this criterion indicates it is intended for those in the visual arts such as sculptors and painters. The petitioner did not initially claim to meet this criterion. In his December 12, 2007 brief counsel claims that the petitioner meets this criterion based on the presentation of his work, including *Four Years in Hell* and *Kumari – the Living Goddess*, at forums such as UNICEF, NYICFF, Prix Jeunesse International, and the North-South Media Festival. However, the evidence does not indicate that the petitioner's work was featured more prominently than others in the competitions or that his work was the main focus of the competitions or festivals. Accordingly, the petitioner has not established that he meets this criterion.

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

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

Prior counsel alleged that the petitioner “has performed in a leading critical capacity for multiple organizations and establishments with excellent, world renowned reputations.” Counsel cites the petitioner’s position as Country Representative of Young Asia Television for Nepal and managing director of YA Media Nepal Pvt. Ltd. The petitioner submitted documentation regarding the programming from Young Asia Television at Nepal and evidence that Young Asia Television won the UNICEF Prize. However, the winning of one prize does not, by itself, indicate that the organization enjoys a distinguished reputation. The petitioner also provided a copy of a page from *The Himalayan Times*, which states that “International Media Network Nepal Pvt. Ltd., is Nepal’s foremost media company.” Nonetheless, the reputation of a parent company such as the International Media Network Nepal Pvt. Ltd. does not necessarily impute to that of a subsidiary such as YA Media Nepal Pvt. Ltd. The petitioner submitted no other documentation to establish that Young Asia Television Nepal or YA Media Nepal Pvt. Ltd. is an organization with a distinguished reputation.

Prior counsel also asserted that in the positions discussed above, the petitioner performed in a critical capacity for Nepal Television, His Majesty’s Government Film Development Board, Katmandu, the Kantipur Television Network, the Film Journalist Association of Nepal, the Danish Broadcasting System, the Norwegian Broadcasting Corporation and the Japan Broadcasting Corporation. The documentation of record, however, does not support prior counsel’s assertions. The petitioner submitted no documentation that he worked for these organizations in any capacity.

Prior counsel also stated that the petitioner “produced many documentary programs” for UNICEF, the United Nations Development Programs, and the International Labor Organization. However, the petitioner submitted no documentation that his production of films was in a leading or critical role for these organizations. Prior counsel also asserts that the petitioner meets this criterion for his work as an appointed member of the faculty of Tribhuvan University charged with formulating the criteria and curriculum in establishing a Bachelor in Film Studies for the university and as treasurer of Worldview Nepal’s Executive Board. The evidence submitted by the petitioner indicates that he was appointed to a committee to work on the degree program for the university. There is no evidence that he served in a critical capacity on the committee or for the university. He also submitted documentation that he served as a volunteer treasurer of the nonprofit group Worldview Nepal. Nothing the record, however, establishes that Worldview Nepal is an organization with a distinguished reputation or that treasurer of the group is a lead or critical role. Further, the evidence does not establish that the position of treasurer with Worldview Nepal is within the petitioner’s area of expertise. Thus, even if the petitioner’s position and Worldview Nepal met the two-prong requirement of the regulation, the petitioner

has not shown how the position of treasurer fits within his area of expertise and therefore is evidence of his extraordinary ability.

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

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a television director and producer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner has obtained a measurable level of success in his field, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.