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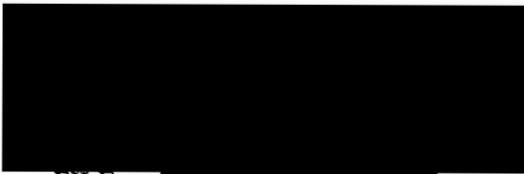
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] LIN 07 102 53309

Office: NEBRASKA SERVICE CENTER

Date: NOV 09 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).

U.D. Adnick
Perry Rhew
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. More specifically, the director found that the petitioner had 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).

On appeal, counsel for the petitioner argues that the director abused his discretion and that the petitioner meets the statutory requirements and at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).¹

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.

U.S. Citizenship and Immigration Services (USCIS) and the 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

¹ Different counsel represented the petitioner during the initial stages of this petition and will be referred to as “prior counsel” in this decision.

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, filed on February 22, 2007 seeks to classify the petitioner as an alien with extraordinary ability as a Kathak instructor and dancer. 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 of the criteria outlined in 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 that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

In his January 5, 2007 letter submitted at the time of filing, prior counsel claimed that the petitioner meets this criterion. However, the petitioner did not specify any prize or award that he had won or that he believed qualifies him for this criterion. The petitioner submitted a copy of an article, with translation, from the December 15 to December 22, 2005 edition of the *Weekly Pakistan Post*. The article about the petitioner, which does not identify the writer, indicated that:

In 1974 Kim Ill Swing the president of South Korea has awarded him a gold medal due to influence of his performance. In Pakistan he has achieved all major awards regarding his art in which "Nigar" and "Screen" awards are most mentionable. He has also achieved Best Kathak Dancer's award from England.

In a June 16, 2006 letter, [REDACTED] the artistic director of Lotus Music & Dance stated that the petitioner had "been awarded the Gold Medal for his brilliant performance by Pakistan's

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

President Muhammad Ayub Khan.” A June 16, 2005 letter from the National Performing Arts Group (NPAG) of the Pakistan National Council of the Arts also indicated that the petitioner was the recipient of the “Gold Medal” but did not specify when he received it. The petitioner submitted no documentary evidence of the awards mentioned in the article or of his receipt of the gold medal mentioned in Kamala Cesar’s letter and provided no information about the significance of any of the awards he allegedly won.

In an April 19, 2001 letter, [REDACTED] of the television show *Good Morning Pakistan* in New York, certified that the petitioner “was awarded best dancer award by the National Days Celebration Committee of Pakistan during the Independence Festival at Battery Park in August 2000.” The petitioner again failed to submit documentary evidence of this award, as well as evidence that this award is nationally or internationally recognized as award of excellence in his field.

The petitioner submitted no additional documentation in support of this criterion in response to the director’s July 7, 2008 request for evidence (RFE). On appeal, the petitioner submits a copy of a photograph that counsel states depicts his receipt of the “best award for dancing in 1988” from the Pakistan Culture Minister. The petitioner provided no other information about the award or its significance as it relates to this criterion. Counsel asserts that “[t]here are other awards and medals that the applicant won. These are physical objects which cannot be sent to the USCIS as documents but they are mentioned in articles.” The petitioner failed to submit documentary evidence such as official photographs of the medals that he allegedly won and provided no documentation that any award that he won was nationally or internationally recognized as a prize or award of excellence in his field. Finally, it is noted that awards for participation such as the local awards from the County Executive for Mineola, NY and the Pakistan Music Village are not national or international awards.

The petitioner has failed to establish 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.

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 claims to meet this criterion based on his membership in the NPAG. The letter from NPAG, signed by [REDACTED] of the organization’s Karachi office, indicated:

The [NPAG] was originally established as the Art Academy in the early 1970's . . . and is renowned for showcasing traditional folk dance and music of Pakistan on official tours to foreign countries and for invited foreign dignitaries to Pakistan. The dancers of the [NPAG] were to be representative of the most talented and well versed in their respected fields, and included top Kathak performance such as [the petitioner] . . . When the [NPAG] was later governed by the Arts Council of Pakistan, . . . the group of performers continued to represent the very best of the arts, music and culture of Pakistan. . . .

[The petitioner] was selected by PIA's Arts Academy in 1971 for his excellence in Kathak dance and as a professional performer.

While [redacted] stated that the dancers of NPAG "were to be representative of the most talented and well versed in their respected fields," the petitioner submitted no documentation to establish that the selection criteria for the NPAG required outstanding achievements as judged by recognized national or international experts in their fields. Additionally, even if the NPAG selected members based on outstanding achievement, which the petitioner has failed to demonstrate, the petitioner's Form I-140 indicates that he has been in the United States since 1994. He provided no documentation that his association with NPAG continued after he left Pakistan. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). If he was no longer a member of the NPAG, we cannot base his eligibility for this criterion on his former association with the NPAG. Accordingly, the petitioner has failed to establish 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 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.

As discussed above, the petitioner submitted a copy of an article about him that appeared in the December 15 to December 22, 2005 edition of the *Weekly Pakistan Post* published in New York. The petitioner submitted no documentation to establish that the *Weekly Pakistan Post* is a professional or major trade publication or other major media. The petitioner also submitted a copy of an article about him that appeared in the January 13, 1981 edition of the *Daily News*, which describes itself as the "Largest-Circulating English Evening Daily of Pakistan." The record contains no other evidence to establish that his paper is major media.

Other documentation submitted by the petitioner consisted of photographs of him in performances, on brochures or in promotional advertisements. The petitioner is occasionally identified in these documents as one of the dancers. As this criterion specifically requires an author, title, and translation, the publication of photographs do not qualify the petitioner under this criterion. Those specific requirements reference published written work instead of visual work. As such, published photographs do not qualify the petitioner under this criterion. Further, a simple mention of the petitioner in an article such as the *Weekly Akhbar-E-Jehan* or in a photographic caption is not published material primarily about the petitioner or his work.

On appeal, the petitioner submits a copy of a document titled “The Arts Academy Presents The National Dance Ensemble from Pakistan.” The document does not mention the petitioner and does not appear to have been published in a professional or major trade publication or other major media as required by 8 C.F.R. § 204.5(h)(2)(iii). The petitioner also submits a copy of an article that appeared in January 23, 1984 edition of *The Labor Press*. The article is about the performance of the Pakistani dance troupe in North Korea and does not mention the petitioner. The petitioner submits no documentation to establish that *The Labor Press* is a professional or major trade publication or other major media. Further, the article does not identify the author of the material as required by the regulation at 8 C.F.R. § 204.5(h)(2)(iii).

The petitioner therefore has submitted two articles about himself. Even if we accept that both articles appear in major media, which we do not, two articles over a 24-year time period are not consistent with what is required by this highly restrictive classification nor are they indicative of sustained national or international acclaim. Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3).

The petitioner has failed to establish that he meets this criterion.

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

The petitioner claims to meet this criterion through his performances. This criterion, however, relates to the visual arts. The petitioner is a performing artist. It is inherent to the field of performing arts to perform on stage. Not every stage performance is an artistic exhibition or showcase. 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. While we do not find that the petitioner’s performances have no evidentiary value, they cannot serve to meet this criterion. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. We find that the petitioner’s performances are best considered under the leading or critical role criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii) and discussed below.

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.

As discussed above, the petitioner was a performer with the NPAG, an organization under the auspices of the Pakistani government. In a May 8, 2006 letter, [REDACTED], a faculty member in the Department of Dance at Sarah Lawrence College, stated that she specializes in world dance with expertise in Middle Eastern Dance. [REDACTED] further stated:

[The petitioner] is one of the original dancers who performed and toured with the Performing Arts Group, playing an important role not only in fulfilling Pakistan's goal in promoting its art and culture to the world, but also in establishing the rich dance and music heritage of Pakistan. His talent and ability in Kathak dance is evident in being selected to the pivotal national performance group, in his performances on countless stages and on television to a world-wide audience.

The documentation provided by the petitioner adequately establishes that the NPAG was an organization with a distinguished reputation. However, the petitioner submitted no documentation to establish that he served in a leading or critical role for the organization. There is no evidence that the petitioner was the sole Kathak dancer or that the dance itself was critical to the success of the NPAG or to the Pakistani government. Moreover, it appears that the petitioner was one of many dancers. The record contains no evidence which distinguishes the petitioner's role within the NPAG from those other dancers so as to establish that his role was leading or critical to the NPAG. Further, as discussed previously, the petitioner submitted no documentation of his association with the NPAG during the period since his entry into the United States in 1994.

Prior counsel stated that the petitioner has also performed in a leading and critical role for the United Nations. The record contains a program for the UN's Human Rights Concert, 1973. The petitioner is listed as one of the dancers. However, a single performance in which the petitioner was among many other dancers does not establish his leading or critical role for the UN.

It is further noted that the evidence submitted by the petitioner in response to the director's RFE in regard to his performances such as the Newark Museum and Public School 266, indicates that these performances took place after the time of filing. A petitioner must establish eligibility at the time of filing. The 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. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we will not consider this evidence in this proceeding.

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 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. Much of the evidence submitted by the petitioner documents his career prior to 1994, the year he entered the United States and does not establish the sustained acclaim necessary for this restrictive visa classification.

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.