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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] Office: TEXAS SERVICE CENTER Date: OCT 26 2009  
SRC 07 279 55336

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).

*MBeadnick*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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, counsel submits a brief and additional evidence. Some of the evidence is newly submitted initially required evidence. Nevertheless, as the director did not issue a request for evidence prior to issuing the denial, we will consider the new evidence on appeal.

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).

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, 60898-9 (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 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 seeks to classify the petitioner as an alien with extraordinary ability as a choreographer. 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, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

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

[REDACTED] of the Embassy of Nepal in Washington, D.C., affirms that the petitioner "has been awarded numerous prizes, certificates and felicitation in various occasions in Nepal, India, as well as in European Countries." Primary evidence of awards, however, consists of copies of the awards themselves. Affidavits will not be accepted in lieu of primary evidence absent evidence that primary evidence and secondary evidence are either not available or nonexistent. 8 C.F.R. § 103.2(b)(2).

The petitioner submitted a letter of appreciation "awarded" to the petitioner at the 1997 Kallyhood Film Award Ceremony "for the active participation on dance as well as true member for the success of [the] program." In addition, the petitioner submitted a 1998 certificate issued "on the occasion of 'Cultural and Award Ceremony'" acknowledging the petitioner's "active participation as a dance director for the stage program." The petitioner further submitted a 2003 certificate of appreciation from the Nepali Ministry of Foreign Affairs recognizing the petitioner's successful program promoting Nepali dance in Qatar. Finally, the petitioner submitted photographs of a circular plaque with the logo of the Nepal Film Artist National Association and a plaque from St George's College in India. The self-serving captions reflect the dates 1998 and 1994 respectively. Neither plaque references a competition or bears the petitioner's name.

The director acknowledged the statement from [REDACTED], but concluded that the record did not contain copies of any actual awards at national competitions. On appeal, counsel asserts that the director, without basis, questioned the bona fides of individuals supporting the petition. In addition, counsel provides a description of several awards. Specifically, counsel asserts that the petitioner won

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

an award from the Nepal Film Artists National Association, which organizes an annual award ceremony. Counsel now asserts that this “award” was issued in 2002 and the petitioner submits a new photograph of the circular plaque with a self-serving caption stating “2002.” It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not resolved the discrepancy between the dates ascribed to the circular plaque.

Counsel further asserts that the petitioner received an award in 2001 from the Nepal German Association, but subsequently concedes that it was merely a “Token of Appreciation.” In support of these assertions, the petitioner submits a photograph of a trophy with no inscription on it. In addition, counsel asserts that in 1994, St. George’s College organized an international dance competition between different countries and distributed awards to those whose dances were the best. Finally, counsel acknowledges that the awards do not include the petitioner’s name but asserts that they do include the name of the competition.

The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The certificates submitted appear to be expressions of appreciation for the petitioner’s participation rather than nationally or internationally recognized awards or prizes for excellence. The circular plaque does not list a competition, award level or the petitioner’s name. A simple plaque with the name of an association on it cannot be considered to be persuasive evidence that the petitioner won an award from this association. Similarly, the plaque from St. George’s College does not list a competition or award level and counsel concedes that it was only issued in appreciation for participation. The petitioner did not submit any documentary evidence to support counsel’s assertion that the plaques, which do not list a competition, prize level or name, are nationally or internationally recognized awards or prizes issued to the petitioner, such as media coverage of the selection of the petitioner for a prize.

Finally, the petitioner submitted certificates of recognition from American-Nepali associations of unknown national significance issued after the date of filing. These certificates cannot be considered evidence of eligibility as of the date of filing and will not be considered. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 4 I&N Dec. 45, 49 (Reg’l. Comm’r. 1971).

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

The petitioner submitted identification cards establishing her membership in the Nepal Film Technician Association (NEFTA), the Film Artist Association of Nepal, Eurasia Reiyukai, the Nepal Dancer Association and an unknown association listed only in Nepalese with no translation. The director concluded that the petitioner had not established that these associations require outstanding achievements of their members.

On appeal, counsel lists the purported membership criteria for the Film Artist Association of Nepal, NEFTA, the Nepal Dancer Association and Eurasia Reiyukai. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner also submitted letters from the various associations. [REDACTED] of the Nepal Dancer Association, asserts that membership "is only given to the selective personalities." [REDACTED] of NEFTA) also states that membership "is only given to the selective personalities." Neither letter provides the actual membership criteria and the petitioner did not submit the bylaws or other official material from the associations listing the requirements for membership.

Even if we were to consider counsel's attestations regarding the membership criteria, those criteria do not suggest that outstanding achievements are required. According to counsel, membership in the Film Artist Association of Nepal is open to any artist professionally involved in the Nepalese Film Industry. Full membership is awarded after involvement in more than five movies. It is inherent for a film choreographer to work on movies. Participation in one's field is not an outstanding achievement. Counsel further indicates that NEFTA is open to any artist professionally involved in the Nepalese Film Industry. While counsel lists other requirements, such as the receipt of any award, involvement in the industry for ten years and promotion of Nepali art at the national and international level, it is not clear that a member must meet all of these requirements. Thus, we are not persuaded that NEFTA requires outstanding achievements of its members. Finally, counsel asserts that members of Eurasia Reiyukai must be involved "in any fields." We are not persuaded that this is an outstanding achievement.

As the petitioner has not submitted the official membership criteria she cannot establish 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.*

The petitioner's self-serving resume includes a list of "highlighted newspaper." 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). In his initial letter, Mr. [REDACTED] asserts that the petitioner's performances have been highlighted by various national, widely circulated newspapers. The petitioner did not, however, submit copies of any published material. Thus, the director concluded that the petitioner had not established that she meets this criterion.

On appeal, the petitioner submits a 2001 interview with the petitioner in *Tarun Saptahik*, a 1999 interview with the petitioner in *Punarjagaran Saptahik*, a 2000 article about the CMT International Tourist Festival in Germany that lists the petitioner as a participant in the *Himalayan Times*, a 1999 article about learning dance that quotes the petitioner in *Deshantar Saptahik*, a 1998 article about the South Asian Music and Dance Festival that lists the petitioner as a participant in *Saptahik*, an untranslated 1999 article in *Saptahik*, a 2000 article about the petitioner in *Deshantar Saptahik* and articles in German newspapers about events where the petitioner participated.

While counsel provides information about the significance of the Nepali newspapers, as stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. We acknowledge that *Saptahik* indicates that it is a Nepali National Weekly, although it is less clear that the other newspapers that include "Saptahik" in their titles are also national weeklies. Even if we were to concede that the articles about the petitioner (rather than events where she participated) appeared in major media, it remains that those articles end in 2001, six years before the petition was filed. Thus, they are not indicative of *sustained* national or international acclaim.

In light of the above, the petitioner has not established that she meets this criterion with evidence indicative of sustained national or international acclaim.

*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.*

Initially, the petitioner submitted a December 28, 2006 letter from [REDACTED] of the National Centre of Dance in Katmandu, thanking the petitioner for "the conduction of unbiased judgment in the Folk, Modern and classical dance contests organized by this institute every year." The director concluded that this letter did not establish the skill level and participation level of the contests or the criteria for selection as a judge. On appeal, the petitioner submits a new letter from [REDACTED] asserting that the programs for which the petitioner has served as a judge select the top 15 dancers in all of Nepal. According to [REDACTED], judges must have knowledge about folk, modern and classical dance, have been involved as a choreographer for more than 10 years and must have choreography in films and stage shows.

The record reflects that the petitioner is a teacher at the National Centre of Dance. The letters from Mr. [REDACTED] provide insufficient detail regarding the nature of the competitions at the center, such as whether they are limited to students at the center who happen to come from different areas of Nepal.

Internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion. *Kazarian v. USCIS*, 2009 WL 2836453, \*5 (9<sup>th</sup> Cir. 2009). Even if the competitors were not students, the petitioner's selection as a judge does not demonstrate any recognition beyond the center where she teaches.

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

The petitioner submitted several letters discussing her role in various projects and providing general praise. The director concluded that the record contained no evidence pertaining to this criterion. On appeal, the petitioner submits new letters, some of which discuss activities that postdate the filing of the petition. Such activities cannot be considered as evidence of eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. These letters will be considered insofar as they address the regulatory criterion. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field, however, are insufficient to meet this criterion. *Kazarian v. USCIS*, 2009 WL 2836453, \*5 (9<sup>th</sup> Cir. 2009).

While the petitioner's dances and choreography are presumably original, 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 letters establish that the petitioner has successfully maintained employment in her field and has impressed those she has worked with, they do not identify specific contributions and explain how those contributions have impacted the field of choreography.

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

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

The petitioner submitted letters attesting to her choreography of dances promoting Nepal at Nepalese cultural events in countries including India, Germany, China and the United States. The petitioner also submitted letters confirming that the petitioner choreographed dances in films, television, videos and stage performances. While most of these letters do not identify any specific films, videos or stage shows, [REDACTED], director and writer in Nepal, asserts that the petitioner was an assistant dance director for the films '[REDACTED]' and '[REDACTED]' and choreographed the dances in [REDACTED]". The record, however, contains no information about the distribution or success of these movies or when they were filmed. [REDACTED] of the Royal Nepal Academy, confirms that the petitioner performed at the late king's Golden Anniversary Birthday.

The director concluded that no evidence was submitted relating to this criterion. On appeal, the petitioner submits letters describing the petitioner's participation in dances for a U.S.-Nepalese television station and other cultural events in the U.S. after the date of filing. This participation cannot be considered as evidence of eligibility as of the date of filing and will not be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. [REDACTED] of *Vishwa Sandesh*, reiterates that the petitioner has choreographed dances for Nepali movies and music videos and has performed at a local high school. The petitioner also submitted articles about the petitioner's dance troupe performing in Germany in German newspapers of undocumented circulation.

This criterion primarily relates to the visual arts. The petitioner's occupation is in the performing arts. It is inherent to the occupation of choreographer to choreograph dances for performance. The petitioner must demonstrate that her dances have been performed at the type of exclusive exhibitions designed to showcase her work comparable to what would be required of a visual artist.

The record does not establish that the cultural events at which the petitioner has performed are significant exhibitions rather than small-scale cultural festivals. As stated above, the record contains no evidence regarding the circulation of the German newspapers covering the performances by the petitioner's troupe and the petitioner has not submitted any box office receipts or other evidence that the events were widely attended. It appears that the petitioner performed rather than choreographed the dance for the king's birthday. Moreover, the petitioner did not document the date of this event or the nature of the petitioner's participation, such as whether it was part of a student troupe. Thus, this one event is not evidence of sustained national or international acclaim as a choreographer.

While we do not question the sincerity of the petitioner's references, programs and film credits would serve as more objective documentary evidence of the petitioner's actual role in stage productions and film. We reiterate that 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). *See also* 8 C.F.R. § 103.2(b)(2)(i) regarding reliance on affidavits. Moreover, it is the nature of a film, stage and video choreographer to choreograph dances for audiences. Not every film, stage performance or video is an exhibition showcasing the choreographers' work such that they are indicative of or consistent with the choreographers' national or international acclaim. In addition, the evidence reflects that, for at least some of the films, the petitioner was only an assistant dance director. The record contains no evidence of the distribution or success of the films, stage productions or videos for which the petitioner served as the primary choreographer. The petitioner's choreography on behalf of Nepal television, broadcast on Shanghai television, occurred in 1998, nine years before the petition was filed, and is not evidence of sustained national or international acclaim. Moreover, the record contains no evidence as to whether the television show was broadcast nationally.

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

The petitioner has never claimed to meet this criterion and the director concluded that no evidence was submitted relating to it. We acknowledge the submission of evidence that the petitioner served as a teacher, assistant dance director and chief assistant dance director at the National Centre of Dance. While the published material suggests that the National Centre of Dance enjoys a nationally distinguished reputation, the record does not contain an organizational chart or other evidence reflecting how the role of a chief assistant dance director fits within the hierarchy of the center. The record does not include stage, film or video credits confirming the petitioner's exact role in these productions or their reputation. In light of the above, 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.*

While the petitioner submitted two letters attesting to her annual remuneration, the petitioner did not submit a contract or pay stubs confirming her actual remuneration. Regardless, the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires evidence of a high remuneration in relation to others in the field. In the absence of evidence documenting the high end compensation for choreographers in Nepal, the petitioner cannot establish that she 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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a choreographer 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 indicates that the petitioner shows talent as a choreographer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.