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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

SRC 08 161 52129

Office: TEXAS SERVICE CENTER

Date:

FEB 01 2010

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).

Perry Rhew

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 in the arts.¹ 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. 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 argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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,

¹ The petitioner was initially represented by [REDACTED]. Subsequently, the petitioner was represented by [REDACTED]. In this decision, the term “previous counsel” shall refer to [REDACTED].

however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on April 22, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a television drama director. 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 evidence showing that he won a 2007 Lux Style Award for “Best Satellite TV Director” for the “Noorie on Indus” television series. In response to the director’s request for evidence, previous counsel argues that this award is a one-time achievement that satisfies the regulation at 8 C.F.R. § 204.5(h)(3). Previous counsel asserts that the “Lux Style Awards are Pakistan’s biggest event” and that they are “referred to as ‘Pakistan’s Oscars.’” Previous counsel further states: “Since 2002, Lux Style Awards have been recognizing nationally (i.e. Pakistan) acclaimed stars in the Performing Arts.” The petitioner submitted information about the Lux Style Awards demonstrating that they are nationally recognized in Pakistan, but there is no evidence establishing their major international significance. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3), however, specifically defines a one-time achievement as a major, *internationally* recognized award. A “national” award limited to Pakistani artists does not satisfy the plain language of the regulation for a one-time achievement.

On appeal, the petitioner no longer claims that his Lux Style Award is a qualifying one-time achievement. Further, the petitioner’s appellate submission does not address the “international” significance and scope of the petitioner’s Lux Style Award. Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement. 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 large 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 global in scope and internationally recognized in the alien’s field as one of the top awards in that field. In this instance, there is no evidence showing that the petitioner’s Lux Style Award equates to a major, *internationally* recognized award. This award will be further addressed as a lesser “nationally” recognized award under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

Barring the alien’s receipt of a major, internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply

relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria 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.

The petitioner submitted documentation showing that “Noorie on Indus” was nominated for a 2007 Lux Style Award for “Best Satellite TV Serial.” There is no evidence showing that the series ultimately received the award. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of “the alien’s receipt” of nationally or internationally recognized “prizes or awards” for excellence in the field of endeavor. A mere nomination is not tantamount to a prize or an award.

As discussed previously, the petitioner submitted evidence showing that he won a 2007 Lux Style Award for “Best Satellite TV Director” for the “Noorie on Indus” television series. The petitioner also submitted supporting documentation demonstrating the national significance of his award. The director did not accord proper weight to this award, which is sufficient to meet this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner submitted evidence of his membership in the United Producers Association (UPA). In response to the director’s request for evidence, the petitioner submitted general information about the UPA including its membership criteria. A document submitted by the petitioner from the UPA’s internet site states:

Documentation needed and Constitutional requirements to join the UPA:

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

1. Registered NTN (Production Company Owner) / NIC holder (Individual Producer) Mandatory
2. Registered with Chamber of Commerce (Company owner) Not Mandatory
3. Three passport size pictures for UPA file: Mandatory
4. Must have a bank letter of business (Company / Individual) / Employment Certificate (Individual): Mandatory
5. Voting member: Minimum production requirement for joining and onwards annual renewal. One implemented production contract with a television Channel / Network in company / individual's name – Financial Scale irrelevant. Mandatory
6. Voting Members Criteria: Executive Producers (Company / Individual) who own their own private production house or individual business free of any Channel or Network employment / financial partnerships (Contractual work not included) / Freelance Producers (Individual) who work on contract bases for production houses or channels and are not on the payroll of any channel / network.
7. Non Voting Members Criteria: Producers who work for private production houses / Channels / Networks as employees – Channel / Network Owners who produce their own programming / Television Channel / Network employees who are producers.

We cannot conclude that the preceding membership requirements (such as registrations, employment certifications, or the execution of a single production contract) are tantamount to outstanding achievements. Further, there is no evidence showing that prospective members of the UPA are judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, the petitioner has not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. 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.³

The petitioner submitted five brief articles in *Telewise* discussing various television programs that were directed by the petitioner. These articles are primarily about the television programs and only mention the petitioner's name in passing. The plain language of this regulatory criterion, however, requires that

³ 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.

the published material be “about the alien.”⁴ Further, there is no evidence (such as circulation statistics) showing that *Telewise* qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted promotional flyers for various television shows that he directed. The plain language of this regulatory criterion requires “[p]ublished material about the alien in professional or major trade publications or other major media” including “the title, date, and author of the material.” The promotional flyers submitted by the petitioner do not meet these requirements.

The petitioner submitted various non-translated articles published in the Urdu language. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. The preceding articles were unaccompanied by an English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3) and by the plain language of this criterion. Further, there is no evidence showing that the articles were in professional or major trade publication or some other form of major media.

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

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

On appeal, counsel argues that the petitioner’s direction of “over 20 television drama series” including the award winning “Noorie on Indus” meets the requirements of this regulatory criterion. The petitioner’s award for “Noorie on Indus” relates to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), a criterion we find that the petitioner has already met. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, USCIS clearly does not view these criteria as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Further, we cannot conclude that the petitioner’s ability to secure employment as the director of various television drama series is tantamount to original artistic or business-related contributions of major significance in the field.

We acknowledge the petitioner’s submission of several recommendation letters praising his talent as a director and discussing his activities in the field. Talent and employment in one’s field, however, are not necessarily indicative of original artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

⁴ *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

[REDACTED], Jamaica, New York, states: "This is to certify that I . . . know [the petitioner] for last two years. He is one of the best directors and producers of soap and drama series for television in Pakistan. He is most talented and experienced artist in his field in his country."

[REDACTED], Pakistan, states: "This is to certify that [the petitioner] is working for Indus Vision for two years. He has worked in all kind of programmes. He specializes in doing different kinds of shows and Drama Serials. Throughout his stay he was found as loyal, trustworthy and hard worker."

[REDACTED], Karachi, states:
[The petitioner] is a senior Drama and Stage Show Director. He made a lot of drama productions as a free lancer. A few productions made by him like [REDACTED] etc. have also been televised from Pakistan Television Corporation Limited and appreciated by the viewers. [The petitioner] is a talented and hard working director and has fully command in his related field.

[REDACTED] of *Pakistan News*, Jamaica, New York, states:
This is to certify that I personally know [the petitioner] and very fond of his work. [The petitioner] is a worldwide well known director and have launched more then [sic] 20 drama serials on air at almost all the world famous Pakistani Channels such as GEO, ARY, Indus and PTV. . . . He is also well known in Pakistani community in USA

[REDACTED] Illinois, states:
This is to confirm that our firm has been dealing with [the petitioner] of Digital Productions Ltd. since 2005. During this time he has provided our firm with an excellent support in the areas of musical shows' direction, stage drama direction, video commercial direction and musical videos direction for our local and overseas projects.

His services are well recognized in the show biz industry locally in Pakistan and internally across the globe. His past collaborations have helped DDE to produce and deliver successful productions. His meticulous work has been a major factor in our past productions and we are happy to have him as a resource and a consulting partner in this industry.

[REDACTED] of Pakistan, New York, states:
This is to certify that [the petitioner] is a senior Drama Director. He has also worked for stage and the presentation arts in general. He has been working for all the major television networks in Pakistan on different points during his long career. His programmes are highly appreciated by the viewers in Pakistan and the Pakistani community living abroad.

The preceding recommendation letters discuss the petitioner's talent as a director and his activities in the entertainment industry, but they do not specify which of his achievements equate to original contributions of major significance in his field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner is admired for his talent and experience, there is no evidence demonstrating that he has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other directors nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a director who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he 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.

In response to the director's request for evidence, the petitioner submitted an "Employment Contract with Gaaza Entertainment" dated August 1, 2005 reflecting a "Total salary package" of Rs. 85,000. The petitioner also submitted a May 2, 2006 memo to the petitioner from Indus TV Network reflecting a "Total package of Rs. 100,000/- per month for four episodes." The record, however, does not include supporting evidence (such as payment records or income tax forms) showing the petitioner's actual earnings for any specific period of time.

The petitioner's response to the director's request for evidence included information showing Pakistan's per capita income in 2006, Pakistani "Minimum Wages" for "Highly Skilled Workers" as of 2008, median salary statistics from PayScale.com for various engineering and information technology occupations in Pakistan as of 2009, and Pakistani "Average Monthly Real Wages" data by industry and occupation as reported in the "Pakistan Economics Survey 2007-08." None of the preceding information included wage data for the entertainment industry or for television directors. The plain language of this regulatory criterion requires the petitioner to submit evidence of a high

salary “in relation to others in the field.” The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his particular field.

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

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In response to the director’s request for evidence, previous counsel states:

[The petitioner] has had tremendous success with his television productions. His television drama Noorie was one of the top 5 finalists in the 2007 Lux Style Awards in the category of Best Satellite TV Play. Although the drama did not win, it was recognized by top Jurors . . . as one of the top 5 plays (i.e. dramas).

In the initial petition, [the petitioner] submitted evidence regarding his commercial success with Pakistani television dramas with copies of newspaper articles and reviews.

The record does not include evidence to corroborate previous counsel’s comment that the petitioner’s television productions have had “tremendous success.” 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 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). With regard to Noorie’s nomination as a finalist for the 2007 Lux Style Award for “Best Satellite TV Serial” and the “newspaper articles and reviews” mentioned by previous counsel, this documentation has already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (iii). Nevertheless, the record does not include box office receipts, compact disc or video sales, television ratings, or some other form of quantifiable evidence showing that the television programming and plays directed by the petitioner achieved commercial success in a manner consistent with sustained national or international acclaim at the very top of his field. This regulatory criterion calls for evidence of commercial successes in the form of “sales” or “receipts;” simply submitting evidence indicating that the petitioner directed several plays or television shows that were aired by various broadcasters cannot meet the plain language of this criterion. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

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

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

ORDER: The appeal is dismissed.