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



U.S. Citizenship
and Immigration
Services

B2



DATE: JUL 05 2012

Office: TEXAS SERVICE CENTER FILE:

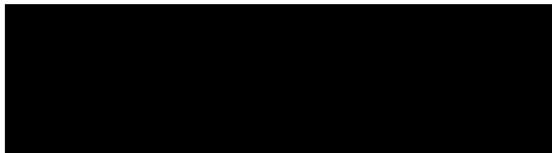


IN RE: Petitioner:
Beneficiary:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 as a photographer. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (vi), and (vii). For the reasons discussed below, the AAO will uphold the director's decision.

I. LAW

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien’s sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO’s decision to deny the petition, the court took issue with the AAO’s evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

The court stated that the AAO’s evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that “the proper procedure is to count the types of evidence provided (which the AAO did),” and if the petitioner failed to submit sufficient evidence, “the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).” *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Evidentiary Criteria²

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

The petitioner submitted a letter from [REDACTED] Department Administrator, School of Visual Communication, Scripps College of Communication, Ohio University, stating:

[The petitioner] was awarded the Enlight Fellowship to study visual communication at Ohio University in the Scripps College of Communication and the School of Visual Communication. [The petitioner] was one of the first two students selected for this new fellowship. The two students were selected based on talent, undergraduate accomplishments and recommendation.

[The petitioner's] graduate degree in anthropology from the University of Colorado, coupled with her acclaimed portfolio and a strong recommendation by academic leaders and Mr. Rich Clarkson, the former Director of Photography at *National Geographic Magazine* quickly made her an outstanding candidate.

The Enlight fellowship is a fully funded tuition scholarship with a cost of living stipend that underwrites a student for two years of education in the School of Visual Communication. [The petitioner's] skills as a visual journalist gained her internships at the *Cleveland Plain Dealer*, the *Dallas Morning News* and the *Washington Post* while on her Enlight Fellowship.

[The petitioner] completed her graduate degree in August of 2010.

Regarding the petitioner's Enlight Fellowship, the AAO notes that academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student fellowships cannot be considered prizes or awards in the petitioner's field of endeavor. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm'r 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification. Moreover, competition for university scholarships and graduate fellowships is limited to other students. Experienced professional photojournalists do not seek student scholarships. The petitioner's Enlight Fellowship represents financial support for her graduate studies at Ohio University rather than a nationally or internationally recognized prize or

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

award for excellence in the field of endeavor. There is no documentary evidence demonstrating that the petitioner's fellowship was recognized beyond her alma mater and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted evidence showing that she received a Silver award in the "Feature" category of the Visual Culture Awards (VCA) photography contest in 2008. The petitioner also submitted information about the contest printed from its website at <http://www.visualcultureawards.com/2008/>. The documentation submitted from the contest's website indicates that 2227 images were submitted by individuals from 38 countries as entries in 19 different categories.³ The submitted information does not indicate how many entries competed in the "Feature" category where the petitioner received an award. Moreover, a competition may be open to contestants from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize from the competition is "nationally or internationally recognized." Further, the contest information submitted from the VCA's own website is not sufficient to demonstrate that the petitioner's Silver award is a nationally or internationally recognized award for excellence in the field of endeavor. USCIS need not rely on self-promotional material. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The petitioner also submitted an internet screenshot of a single page of Google search results for the term *visual culture awards*.⁴ The AAO notes that the first four Google search results on the screenshot reflect internet links to the VCA's website. As shown by the preceding example, Google search results are often duplicative. Further, they are not always about the particular object of the search. For these reasons, the petitioner's submission of a single Google search results screenshot is generally not a reliable gauge of recognition in one's field of endeavor. Regardless, none of the search results specifically mention the petitioner's Silver award in the Feature category. Moreover, without copies of the full articles identified in the Google search results, the AAO cannot conclude that they are about the petitioner's Silver award or that her specific award from the VCA equates to a nationally or internationally recognized award for excellence in photography.

The petitioner submitted documentation indicating that she attended the "Fall Digital Photography at the Summit" one-week training workshop in Jackson, Wyoming in 2006. The petitioner asserts that she received the "Spirit Award" at the preceding photography workshop stating: "The evidence for the Spirit Award I won in 2006 is an e-mail I sent to Rich Clarkson on Oct. 10, 2006." The petitioner submitted a copy of her October 10, 2006 e-mail that she sent to Rich Clarkson, who runs the workshop, thanking him for the Spirit Award. In response to the director's request for evidence, the petitioner submitted an October 21, 2010 letter from William Allen, former Editor-in-Chief, *National Geographic* magazine, stating:

³ "Each category will be judged by a single jury member who will award the Gold, Silver, Bronze and up to seven Award of Excellence recipients." See <http://www.visualcultureawards.com/2008/>, accessed on June 11, 2012, copy incorporated into the record of proceedings.

⁴ The Google screenshot submitted by the petitioner indicates that the search term *visual culture awards* was not placed in quotes, thereby generating many results unrelated to the VCA photography contest.

A few years ago I was teaching a photographic workshop primarily for professional photographers and those who aspired to such a career. One student impressed the faculty so much that she was given our top award for her talent, drive and spirit. That young woman was [the petitioner]. That award is not given lightly by some of the top photographers and editors in the world. It speaks to both her exceptional talent now and to the potential to become someone special in the field – one of the people who can make a difference in the world.

Mr. Allen's letter does not specify the name of the award or the date when it was received by the petitioner. Rather than submitting primary evidence of her receipt of the 2006 Spirit Award, the petitioner instead submitted an October 10, 2006 e-mail that she sent to Rich Clarkson thanking him for the Spirit Award and an October 21, 2010 letter from workshop instructor William Allen written more than four years later. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The October 21, 2010 letter from Mr. Allen and the October 10, 2006 e-mail authored by the petitioner do not comply with the preceding regulatory requirements. Moreover, while the petitioner submitted materials about the "Photography at the Summit" workshop and its faculty, there is no specific mention of the Spirit Award in the submitted materials. There is no evidence showing that the Spirit Award is a nationally or internationally recognized award for excellence in the field of photography.

With regard to the petitioner's Enlight Fellowship, her Silver award in the "Feature" category of the VCA photography contest, and her Spirit Award from the Photography at the Summit student workshop in which she participated, the petitioner did not submit evidence of the national or international *recognition* of her particular awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner's specific awards were recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In light of the above, the petitioner has not established that she meets this regulatory 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 AAO withdraws the director's finding that the petitioner meets this regulatory criterion. In order to demonstrate that membership in an association meets this criterion, a 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, 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. 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 an internet screenshot and her identification card from the American Society of Media Photographers (ASMP) indicating that she has been a "General" member since 2010. The petitioner also submitted a letter from Rex Curry, a former board member of the Dallas chapter of the ASMP, stating:

ASMP represents the best editorial, commercial and fine art photographers in the country. Its membership application is very competitive. The applicants must be sponsored by two general members and their portfolios must pass strict reviews by the national ASMP board as well as the local chapter board.

The petitioner states:

To join ASMP, a photographer MUST follow the steps and rules below:

1. Convince two general ASMP members with his/her work that he/she is qualified for the ASMP general membership
2. Be sponsored by two ASMP general members to as [sic] he/she submits the membership application
3. Submit a portfolio website to ASMP
4. The ASMP local chapter board reviews the applicant's portfolio
5. The ASMP national board reviews the applicant's portfolio
6. The applicant can be an ASMP general member ONLY after he/she passes the two strict portfolio reviews.

The petitioner does not specify the source of the above information or submit material from the ASMP listing the preceding six "steps and rules."⁵ Going on record without supporting

⁵ Regarding the ASMP's "General Member" eligibility requirements, the society's website states: "Photographers actively and professionally engaged in media photography are eligible for General Membership with all of its benefits and privileges. General Members must be photographers who have three or more consecutive years of publication experience, and whose primary source of earned income (greater than 50%) is from the licensing of their photography. ASMP requires applicants to be sponsored by two ASMP General Members. General Members have full voting privileges Membership Cost: \$335 and one-time Find a Photographer fee \$50. Join by filling out the application form online." See <http://asmp.org/articles/membership-categories.html>, accessed on June 12, 2012,

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)). Regardless, the AAO cannot conclude that being sponsored by two ASMP members and submitting one's portfolio for review by ASMP board members equate to outstanding achievements. Further, there is no documentary evidence showing that the ASMP's portfolio review boards are comprised of "recognized national or international experts" in photography as required by the plain language of this regulatory criterion.

In addition to the aforementioned deficiencies, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "membership in associations" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapshot.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that her "General" membership in the ASMP meets the elements of this regulatory criterion, which it does not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner's membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts.

In light of the above, the petitioner has not established that she meets this regulatory 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 director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011)

copy incorporated into the record of proceedings. The AAO notes that the preceding requirements are not indicative of outstanding achievements.

(the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that she meets this regulatory 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 director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

On appeal, counsel focuses on three articles authored by the petitioner in *Chinese Journalist*, *Journalism Lover*, and *Journal of Guangzhou University* and asserts that the articles meet the plain language requirements of this regulatory criterion. The petitioner's appellate submission, however, includes only partial English language translations of the preceding articles. The English language translations accompanying the articles were not full and complete translations as required by the regulation at 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. *Id.* Moreover, while the petitioner previously submitted Chinese language online material about *Chinese Journalist*, *Journalism Lover*, and *Journal of Guangzhou University*, the petitioner failed to provide certified English language translations of the submitted material as required by the regulation at 8 C.F.R. § 103.2(b)(3). Thus, the petitioner has failed to demonstrate that *Chinese Journalist*, *Journalism Lover*, and *Journal of Guangzhou University* are "professional or major trade publications or other major media." Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

The petitioner submitted documentary evidence demonstrating that she has displayed her work at artistic exhibitions and showcases. Accordingly, the AAO affirms the director's finding that the petitioner meets the plain language requirements of this regulatory criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

III. CONCLUSION

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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁶ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

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.

⁶ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).