



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 96 037 51742 Office: California Service Center Date:

IN RE: Petitioner:  
Beneficiary:



SEP 12 2000

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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data omitted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrence M. O'Reilly, Director  
Administrative Appeals Office

SEP 12 2000 - 0182200

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, now moves to reopen this proceeding. The previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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, specifically as a filmmaker, specializing in documentary and educational films. 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. The AAO concurred with the director and dismissed the appeal.

Previous correspondence in this matter included detailed citations of the pertinent statute, at section 203(b)(1)(A) of the Act, and regulations, at 8 C.F.R. 204.5(h). These provisions need not be repeated here.

In the notice of appeal, counsel stated that a brief would be forthcoming within 30 days. On March 5, 1997, the AAO dismissed the appeal. In that dismissal, the AAO noted that the record did not contain the aforementioned brief. The absence of the brief was not, however, the sole stated ground for dismissal of the appeal.

Subsequently, counsel indicated that he had in fact submitted the brief, and the AAO has therefore agreed to reopen this proceeding on its own motion, for the limited purpose of considering the content of that brief. With regard to any claimed adjudicative errors by the AAO, the proper forum to address those claimed errors would have been a timely-filed motion to reopen, with fee, from the petitioner. Because Service records reflect no such motion, the AAO need not consider its prior decision apart from the issue of the missing brief.

Six months after the dismissal of the appeal, counsel submitted supplementary documentation. All of this documentation concerns the petitioner's activities during 1997. This material lies outside of consideration in this matter. In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The petitioner filed this petition in November 1995, and his 1997 activities cannot retroactively demonstrate that he was eligible in November 1995 for the benefit sought.

The petitioner's 1996 supplemental brief and exhibits are discussed below.

Gail Silva, executive director of the Film Arts Foundation, San Francisco, California, states:

The Film Arts Foundation had the pleasure of holding the premiere screening of [the petitioner's] most important work, "White Christmas." Indeed, we were aware of this project well before its completion, while [the petitioner] was still a student at the Stanford University graduate program. The Stanford program is one of the most competitive in the country; the fact of being admitted already places [the petitioner] in a select group within the world of documentary film.

While the Stanford program may be prestigious and selective, there is no evidence that a filmmaker achieves any significant acclaim simply as a result of admission to that program. Ms. Silva continues:

White Christmas . . . went on to win important international prizes, and to receive screenings in prestigious venues.

[The petitioner] has received so many honors that I will only discuss the highlights here. The San Francisco International Film Festival Golden Gate Awards are some of the most highly competitive awards in the field. . . .

The Bronze Apple Award is, of course, a completely different venue, yet it is also very prestigious. The National Education Film and Video Festival speaks to the use of the medium as an educational tool. It is unusual for a film to win awards in two such different venues, which again points to the uniqueness of [the petitioner's] talents.

The Wolper Award is also internationally renowned and difficult to win. In competition with hundreds of entries, [the petitioner] won the overall prize.

While the San Francisco International Film Festival, as a whole, may enjoy great prestige, not all awards presented at the festival are of equal value. The record demonstrates that the petitioner won a Special Jury Award in "Division 4. Bay Area Film and Video / Category 1. Documentary." The petitioner has noted that there were 1123 entries in the festival overall, but presumably only a small fraction of these were documentaries produced in the Bay Area. The award is obviously a local, San Francisco award, presented by a local organization (the San Francisco Film Society). Counsel

asserts that the petitioner's award "put[s] him in the top 10% of filmmakers," but at best it puts him at the top of San Francisco-area documentary filmmakers who entered the competition. James Cameron, producer-director of the smash film Titanic, would not have qualified for consideration for this award. Clearly counsel is not justified in asserting that the petitioner's success in a narrow, regional sub-category infers that the petitioner stands "in the top 10% of filmmakers." Discussed here is only one example of counsel's tendency to reduce the petitioner's accomplishments in the form of a percentage.

Documentation from the National Education Film and Video Festival does not establish the prestige of the Bronze Apple Award. A letter from the festival's conference coordinator indicates that, out of 1,435 total entries in the 1994 competition, 379 won gold, silver or bronze awards. Thus, more than one entrant out of every four received an award equal to, or higher than, the petitioner's award. The Bronze Apple is clearly not even the highest award available at the one festival, let alone nationally or internationally, and the large number of prizes awarded indicates that the petitioner ranks, at best, at the lower end of the top quarter of filmmakers represented at the festival.

The Wolper Award is a prize not for established filmmakers, but for students. Because graduate study is not a field of endeavor, a student award is not a significant prize for achievement in the field. The very nature of the award excludes from consideration the most experienced and accomplished documentary filmmakers.

discusses the broadcast of the petitioner's film "White Christmas" on Canadian and French television. The actual documentation from the television company, however, discusses only the "use of footage from your film 'White Christmas,'" as part of a 13-minute segment "about the mythology of Santa Claus." There is no evidence that the petitioner's documentary has been nationally broadcast in its entirety in Canada, France or any other country.

Like Professor of San Francisco State University discusses the petitioner's accomplishments in an attempt to place them in a favorable perspective. Prof. Nichols stresses the difference between documentary filmmaking and "mainstream Hollywood, commercial cinema," and asserts that the petitioner has earned "marks of distinction" by serving on juries and showing his work at prestigious festivals. When considering the claimed international nature of the petitioner's reputation, the AAO cannot ignore the heavy preponderance of witnesses in the San Francisco Bay Area, where the petitioner resides. Regarding the juries and festivals, the petitioner has not demonstrated specifically how he and his work came to be selected. If Prof. Nichols himself is not on the selecting committees, then his knowledge of the selection procedure is by definition second-hand. Prof. Nichols discusses

some events which took place in 1996 and therefore cannot establish the petitioner's eligibility as of the petition's 1995 filing date.

Consulting Professor [REDACTED] of [REDACTED] states "it would be difficult if not impossible to fin[d] any artist launching a career in documentary film with [the petitioner's] special combination of skills, attitude and background. He is extraordinary." [REDACTED] does not indicate that the petitioner is among the best-known documentary filmmakers, nationally or internationally; rather, he indicates that the petitioner is just "launching a career." A news article in the record, meanwhile, indicates that [REDACTED] himself "won a fabled MacArthur Fellowship . . . accompanied by some \$275,000 over five years." This evidence indicates that, even if the Service were to limit its focus to Bay Area documentary filmmakers, the accomplishments of Prof. Else dwarf those of his students, including the petitioner.

A filmmaker can be honored, respected, and recognized, without rising to the level of sustained national or international acclaim. The petitioner must show not only that he is successful or respected, but that he has reached a level of achievement attained by only a tiny proportion of his colleagues.

America's top documentary filmmakers include such well-known names as David L. Wolper and Ken Burns. The petitioner in this matter has not established a level of acclaim which even begins to approach the level which these documentary filmmakers have reached. The petitioner's evidence suggests a pattern of regional acclaim, and acclaim within specialized circles, but no sustained acclaim at the national or international level, of a caliber that would place the petitioner at the top of his field.

Counsel asserts that "factors such as age and number of works" are not relevant considerations. Certainly, the petitioner's age and productivity are not automatic qualifiers or disqualifiers. Indeed, the director never cited age or number of works as factors in the decision; thus, counsel relies on a "straw man" argument, rebutting weak arguments which the director had never made in the first place.

The director did observe that the petitioner "was a student as recently as 1993." This is not an age issue, because the petitioner, who turned 30 in 1993, was relatively old for a graduate student. Concerning "number of works," the director had observed that "all of the . . . awards and most of the published material" in the record "were as a result of one film produced by the alien." The director's observation is quite relevant. The statute calls for evidence of sustained acclaim; a burst of publicity and attention around a single film does not constitute sustained acclaim.

The above arguments demonstrate that the director focused not on age and total number of works (which are irrelevant) but on the petitioner's experience and consistency of recognition (which are highly relevant).

Consideration of the petitioner's brief and supplemental documentation does not alter the AAO's finding that the director acted properly in denying the petition. The record demonstrates a pattern of exaggeration and selective interpretation which seriously impedes counsel's credibility. Winning an award at a festival where one entrant in four wins such an award is not a major achievement, regardless of counsel's assertion that the Bronze Apple places the petitioner among "the top 26% of their profession." The petitioner's sale of excerpts of his film to a French production company is not, by any reasonable standard, comparable to national broadcast of one of the petitioner's films in its original state; yet counsel's statements regarding the petitioner's "being broadcast on" French television make no mention of the documented fact that the broadcast consisted of another producer's documentary film, using only excerpts of the petitioner's work, apparently as background material.

The record demonstrates that the petitioner has begun what appears to be a promising career as a documentary filmmaker, and that some of his work has attracted favorable attention. The record also shows, however, that the top of the field includes documentary filmmakers (such as Jon Else) who are far more accomplished and renowned than the petitioner. The record does not demonstrate that, as of November 1995, the petitioner was among the best-known and most-successful documentary filmmakers in the United States or internationally. The petitioner's accomplishments after November 1995 are irrelevant to the matter at hand, and can properly be considered only in the context of a new visa petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

**ORDER:** The Associate Commissioner's decision of March 5, 1997 is affirmed. The petition is denied.