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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass Ave, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 06 2003

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now on appeal before the Office of Administrative Appeals. 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. At the time of filing the director determined there was not sufficient evidence to establish eligibility and the petitioner was requested to submit further evidence. The director subsequently determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. Counsel's arguments and the new evidence on appeal will be considered alongside the initial submission, below.

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

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

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 Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner seeks classification as an alien with extraordinary ability in the arts as a staff photographer. On appeal, counsel argues that the Bureau failed to consider the petitioner's extraordinary ability in the field of endeavor, photojournalism. We note that

on the petitioner's Immigrant Petition for Alien Worker, Form I-140, he lists his job title as "Staff Photographer." Given that the petitioner claimed this title, and that we can find no distinguishable difference between the work of a photojournalist and a staff photographer, the Bureau did not misapply the relevant standards of the classification.

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.

Although the petitioner has not submitted evidence of a major, international award, he has submitted evidence which he, through counsel, claims meets the following criteria:

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

On appeal, counsel argues that the Bureau failed to carefully review the record because the director's decision states the petitioner did not submit evidence of all of the awards listed. Counsel claims that the petitioner submitted "copies of awards and and [sic]/or information of each of the 24 awards" received. However, though counsel may claim to have submitted copies or information for all of the awards, a list of awards in counsel's brief and the petitioner's resume are not considered probative evidence that the petitioner actually received the award.

Upon counting the awards listed in counsel's original brief, we note the total number comes to 22 awards, not 24 awards as counsel states on appeal. Moreover, an examination of the record reflects evidence of only 16 of the 22 awards listed by counsel. The record does not contain evidence of the following awards that were listed in counsel's brief: First Place in *Sports Feature* at the National Press Photographer's Association's (NPPA) Regional Clip contest, First Place in *General News* at the 1998 NPPA's Regional Clip contest, First Place in *General News Section* at the NPAA's Regional Clip contest in 1996, *Gannette well-done award* in December 1995, Third Place in *Photo Story* at the 1994 West Virginia Press Association Better Newspaper Contest, and 1994 *Photographer of the Year* from Marshall University School of Journalism. Clearly, as evidence of these awards was not in the record for the director to assess, there was no error in his determination that the petitioner failed to submit evidence of all of the awards listed. Additionally, no further evidence of these missing awards was submitted on appeal. Simply going on record without any supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

We also note that, although not mentioned on the list in counsel's original brief, the record contains evidence of the petitioner's 1995 second place award by the West Virginia Press Association Better Newspaper contest for *Best Photo Essay*. Further, the record contains an

award for 2nd place in *Feature/Multiple Picture* from the Region 6 monthly clip for March 2001, that was submitted in response to the director's request for evidence. This evidence also is not noted in either of counsel's briefs.

The petitioner submits evidence of his acceptance into the Missouri Photo Workshop which counsel claims is "one of the most prestigious workshops in the nation for Photojournalists." No evidence has been submitted into the record to indicate that acceptance into this workshop is considered to be a prize or award.[1] The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, it appears based upon the name alone, that the workshop is local in nature, and not nationally or internationally recognized.

The other awards offered into evidence also appear to be local and regional awards for the petitioner's photography in South Carolina, New York and West Virginia. For instance, the petitioner won *Photographer of the Year*, *Best of Show*, *Sports Features* (1st place), *News Picture Story* (1st Place), and *General News* (honorable mention) in the 1999 "Pictures of the Year" contest sponsored by the South Carolina News Photographers Association (SCNPA); the *Bernard Kolenberg Memorial Award* by the New York State Associated Press Association; and 3rd place in *Photo Story* at the 1994 West Virginia Press Association's Better Newspaper Contest.

While counsel's asserts that the petitioner's awards for first place in *General News* and *Feature Picture* were awarded as part of the SCNPA's Monthly Clip contest, the evidence in the record does not support this assertion. The only evidence of these awards is a photocopy of a page in which many award winners are listed. While we do not dispute that the petitioner did win awards for first place in both *General News* and *Feature Picture*, as the photocopy contains no heading to identify the source, or make any mention of the SCNPA, we are unable to discern any connection to the SCNPA. As stated previously, we cannot accept the assertions of counsel as evidence.

On appeal, counsel argues that the monthly clip competition is open to all photojournalists, not just photojournalists in South Carolina, and that the award was given by the "South Carolina **National** Photographers Association (SCNPA)" (emphasis added by counsel). Counsel, therefore, insists that this award is not a regional award as determined by the director. As counsel has not provided any documentation to support the assertion that the competition was open to all photojournalists, we are unable to establish the veracity of counsel's statement. Moreover, upon examination of the information in the record, including numerous references in counsel's briefs, it is apparent that SCNPA stands for the South Carolina **News** Photographers Association (our emphasis). While we are not alleging that counsel has intentionally

[1] Evidence contained in the record from the NPPA indicates that educational events such as the "Electronic Photojournalism Workshop," the "Flying Short Course," and the "Oklahoma Television Workshop" are the premier events of their kind. The NPPA makes no mention of the Missouri Photo Workshop.

misrepresented the facts, clearly this fact, along with the other inaccuracies noted on the part of counsel, casts doubt on the veracity of any of counsel's statements.

Regardless of whether evidence of the missing awards was actually submitted for the record, the petitioner has failed to show that any of the awards (missing or otherwise) are nationally or internationally recognized. The awards won by the petitioner are all from the local, state or regional associations. While we acknowledge that some of the petitioner's awards were received from a state or regional association that is part of an overall national association, such awards cannot be considered national awards.

The petitioner also provides evidence that his newspaper won first place in NPPA's Picture Editing Quarterly Clips in April 2002, and the Award of Excellence in the Best of Newspaper Design Competition by Society of Newspaper Design in February of 2000. Counsel asserts that the "section front" was designed by the petitioner. The record, however, does not establish that the petitioner was the actual recipient of these awards. Although a photograph taken by the petitioner does appear on the page for which each of the awards were given, the awards were not given for the photographic content, but rather, for the design and editing of the features on that particular page. In fact, the evidence in the record shows that the awards were actually given to Janet Kahler and Greg Peters, respectively. Counsel's claim otherwise appears to be less than genuine especially when other evidence noted in the record specifically states that Janet Kahler, not the petitioner was the "page designer" for the award winning "section front."[2] Counsel's claim is entirely refuted by definitive evidence in the record, and the credibility of counsel's many other unsubstantiated claims must be viewed in this light.

The record also reflects that the petitioner received 3rd place in Portrait and Personality from the Southern Short Course in News Photography (SSC). [3] The "seminar information" contained in the record about the SSC indicates that it is the "longest running photojournalism seminar" with the sole purpose of providing "educational programs for students and photojournalists." Further, the SSC indicates that "[e]ven though the word 'southern' is in the name, the competition has no geographic limits and is open to anyone, student or professional." However, the fact that the competition is open to all, with no geographic limits, does not make the award a national award, nor does is show that the award is nationally recognized.

> *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*

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[2] We note that the 2nd, 3rd, and honorable mention winners for the 1st place award given to [redacted] list several people as the award winner. It is evident that more than one person could have shared the award, however, the petitioner's name is clearly not included in the award for 1st place.

[3] See footnote 1. The NPPA also makes no reference to the Southern Short Course in News Photography.

While counsel indicates that the petitioner is a member of the NPPA and the SCNPA, he makes no claim that these organizations require outstanding achievements of their members, much less provides any documentation to establish this fact, as required under the criterion. [4] Clearly, membership in a professional organization alone is insufficient to meet this criterion.

As indicated earlier in this decision, SCNPA is one regional association, made up of mostly southern states, of the overall national NPPA. According to information contained on NPPA's website, membership is open to any professional news photographer or other person whose occupation has a direct professional relationship with photojournalism.[5] NPPA also claims membership of over 9,000 professional members worldwide and 1500 student members.

It is obvious from the above that neither the NPPA, nor its regional association, SCNPA, require outstanding achievements of their members; one need only be a professional news photographer, or in a photojournalism occupation, or even a student. For these reasons, the petitioner has not shown that he is a member of associations in the field that require outstanding achievements of their members as judged by recognized national or international experts.

> *Published materials 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 submits an article published in *The Gazette* as a special feature about the petitioner's work "Niagara Neighbors." The articles described the petitioner's series of color photographs that were then on display at the Castelanni Art Museum. However, there is no evidence in the record that demonstrates that *The Gazette* is a major trade publication or other major media.

Similarly, the publications *Knight Ridder News* and *Inner State*, in which articles about the petitioner appear, are not shown to be major publications. Moreover, without any date of publication for these articles, we can only assume that they were published after the filling of the petition, otherwise they would have been submitted as evidence to accompany the petition. Evidence not in existence at the time of filing cannot be used to establish eligibility retroactively. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

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[4] In counsel's brief, counsel lists membership in these two associations under the heading "Membership in Professional Organizations."

[5] http://www.nppa.org

The record also contains copies of articles published in newspapers and journals such as *The State*, *The New York Times*, *The Washington Post*, *U.S. News & World Report*. These articles, while not written by the petitioner, are accompanied by photographs credited to the petitioner. Neither the articles, nor the photographs are considered as "published material about" the petitioner. Similarly, the photograph taken by the petitioner, which is to appear in *Time Life's, Year in Pictures 2001 Album*, cannot be considered "about" the petitioner. The petitioner's work as a photographer is better addressed by a separate criterion, which we will discuss further below.

The record contains a photocopy of an article about the petitioner that appeared in the spring 2001 edition of Marshall University's "*AlumNews*." An alumni magazine is not considered to be a major trade publication or other major media. Further, as the publication occurred in the spring of 2001, it appears to have been published after the filing of the petition, and cannot be used to establish eligibility retroactively.

Although not referenced by counsel, the record contains other articles that reference the petitioner. We mention these articles for the purpose of acknowledging that although such evidence is in the record, we do not consider to the articles to be "about" the petitioner, as the petitioner is mentioned only as one winner among many others. Further, the photocopied articles make no reference to the title or date of publication. Therefore, regardless of whether the articles are "about" the petitioner, we are unable to determine from the photocopies whether the articles were even published in professional or major trade publications. One such article, published in *The State* on January 28, 2002, was written subsequent to the filing of the petition. Such an article cannot be accepted as evidence as it does not establish eligibility at the time of filing the petition.

> *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 record contains evidence that the petitioner was a judge at the 2000 National Press Photographer Associations photo contest and the United High School Media convention. The fact that the petitioner was, a one-time judge at a high school convention and one regional contest, does not establish that the petitioner was chosen as a judge based upon recognition of his work in his field of expertise. The record does not demonstrate how the judges for these contests are selected.

Counsel also asserts that, "recently [the petitioner] has judged the works of other photojournalist [sic] in the Lake Murray Magazine photo contest. He was chosen because he is the 1999 Photographer of Year for South Carolina." We note again that, in addition to finding previous assertions of counsel to be inaccurate, counsel's assertions, without corroborating documentation cannot be considered as evidence. The record does not contain evidence that demonstrates the basis for the selection of judges in *Lake Murray Magazine's contest*. If we accept counsel's argument as true, there is no explanation for the fact that there

are two other judges on the panel with the petitioner: Greg Peters and Kim Kim Foster. Clearly, the petitioner was the only winner of the 1999 *Photographer of the Year* for South Carolina. As such, the criteria for selecting the judges could not be on the basis of having won the 1999 *Photographer of the Year* for South Carolina, as asserted by counsel. [6]

As such, the evidence submitted by the petitioner does not sufficiently establish eligibility for this criterion.

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

Similar to the prior criterion, counsel argues that the articles published in newspapers and journals such as *The State*, *The New York Times*, *The Washington Post*, *U.S. News & World Report*, which are accompanied by the petitioner's photographs, satisfy this criterion. However, the petitioner is not the author of these articles, nor do we consider his photographs to be "scholarly articles." We will discuss the petitioner's work as a photographer in a separate criterion, discussed further below.

The record does contain two articles written by the petitioner for *The State* as part of a photo-essay series about the highway U.S. 1, as well a second photoessay completed by the petitioner for *The Parthenon*. Evidence submitted in the record about *The State* indicates that its market consists of the "Columbia Metropolitan Statistical Area (MSA), comprised of Richland and Lexington counties." There is no evidence in the record that shows *The Parthenon's* market. Based upon this evidence the petitioner has failed to demonstrate that either of these publications are major trade publications or major media as envisioned by the criterion.

Counsel, in response to the request for further evidence, notes the petitioner's "recent authorship [sic] 'Korea S.C.,'" published in *The State* on July 8, 2001. Clearly, this evidence was not in existence at the time of filing and cannot be used by the petitioner to establish eligibility.

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

Counsel claims that the petitioner's work as a photojournalist supports a finding that his scholastic and business related contributions have been of major significance. We, however, do not consider the petitioner's work to be scholarly or business-related, but instead, artistic.

Counsel points to the fact that *TIME Magazine (TIME)* has chosen the petitioner's work to appear in its *Time Life, Year in Pictures 2001Album* (*Album*) as evidence of the petitioners original work of major significance. Counsel states, "this distinction alone speaks volumes of

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[6] The biography for Greg Peters does not identify him as a winner of any awards, much less Photographer of the Year for South Carolina in any year. Further, the award won by Kim Kim Foster was for the 1996 North Carolina Student of the Year.

the petitioner's abilities and talents in the area of Photojournalism." As evidence of the major significance counsel states that the *Album's* first print run is 250,000 copies. However, the fact that *TIME* plans to print this amount is not indicative of the impact that the petitioner's work will have. Further, the fact that *TIME* has chosen to initially print 250,000 copies does not demonstrate that such an amount is based on the petitioner's work or that this number is high in comparison to previously published *Albums*. We note from counsel's comments that the majority of work in the Album is dedicated to the events of September 11th, and contains only one of the petitioner's photographs. Further, we note that *TIME* became aware of the petitioner and his work as a result of Mary Anne Golon, Picture Editor, for the magazine, in her role as faculty advisor to the petitioner during the Missouri Photo Workshop, rather than because of the impact that the petitioner has had on his field. As such, we do not find that the publication of one photograph in this album constitutes a contribution of major significance in the petitioner's field.

Counsel submits letters from witnesses as evidence of the petitioner's "exceptional ability in the field of photojournalism." Many of the witness letters submitted are from people who currently work with the petitioner at *The State* or who have worked with in the past at other newspapers.

Greg Peters, Director of Photography for *The State* states:

> For the past two years I have worked directly with [the petitioner] as his immediate supervisor. In this time he has grown to be a well-established member of our award-winning photography staff and brings with him a cadre of unique photojournalistic skills and a special personal perspective.

Other witness letters are from people who have judged the petitioner's work in contests or taught him at workshops. While these witnesses attest to the petitioner's skills and talents as a photojournalist, it is evident that they did not know of the petitioner or his work prior to working with him, as one would expect if the petitioner were nationally or internationally known. While they may have been impressed with the petitioner's talent after meeting him, the letters do not support a claim that the petitioner's work has had major significance.

Perhaps the most independent of all of the witness letters comes from David Handschuh, President of the National Press Photographers Association, who states:

> [The petitioner] is an award winning member of the National Press Photographers Association, which is the Society of Professional Photojournalists.
>
> [The petitioner] has the support of some of our most outstanding members – James Neiss, Larry Nighswander and Greg Peters. It means a lot that each of these gentleman, leaders in the field of photojournalism, support [the petitioner's] petition for residency.

We note that while the petitioner may have the support of leaders in the field of photojournalism, there is no evidence that the petitioner or his work is viewed as being equal to those leaders. Such lack of evidence raises doubts as to the exceptional nature of the petitioner's work as is required for this visa classification. The witness letters and the evidence contained in the record demonstrate that the petitioner is a gifted photographer and that his work, is indeed, original. Neither we, nor the director, have disputed the petitioner's talent or abilities, but they do not distinguish the petitioner's work as far superior to that of other competent artists. Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

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

The record reflects that the petitioner had a solo exhibition of his work, "Niagara Neighbors," at the Castellani Art Museum (Castellani Museum) in Niagara Falls, New York.

Evidence submitted into the record about the Castellani Museum states:

> GENERAL INFORMATION
>
> Dedicated in 1990, the recently built Castellani Art Museum has had immediate impact on the Niagara University Community and the Western New York region as an important cultural and educational resource.
>
> EXHIBITIONS
>
> The Castellani Art Museum's exhibition philosophy centers on four priorities;...serving our diverse Western New York constituencies....

The record also reflects the petitioner's exhibition at the Campos Group, in Niagara Falls, New York.

However, to allow any artist whose work has been submitted for public display to satisfy this criterion would defeat the restrictive nature of Section 203(b)(1)(A) of the Act, and would, thus, render this criterion meaningless. To meet the restrictive nature of regulation, the petitioner must show that his artistic exhibitions and showcases elevate him to the very top of his field. We cannot ignore that the exhibitions in which the petitioner participated occurred in areas close to where the petitioner was residing and served the population of that immediate population. As such, the petitioner is not able to show that his work was recognized beyond these limited areas. In sum, the petitioner has not shown that his exhibitions enjoy a national reputation or that participation in these exhibitions was a privilege extended only to top artists in his field.

Upon careful consideration of the record, we concur with the director's finding that, while the petitioner has enjoyed a measure of success in his work, the evidence does not establish that the petitioner has consistently sustained a reputation as a photographer with national or international acclaim. Although the petitioner has attracted a small number of highly-placed admirers, such admiration cannot be substituted for widespread acclaim. 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, and that the alien's entry into the United States will substantially benefit prospectively the United States.

The evidence indicates that the petitioner has talent and has earned the respect of his colleagues, but we are not persuaded that his achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established his 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.