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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

[redacted]

File: [redacted] Office: California Service Center Date: JAN 2 1 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Gaynard

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was initially approved by the Director, California Service Center. On the basis of further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on July 8, 2002. The matter is now before the Associate Commissioner for Examinations 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. The director determined the petitioner had not established that he qualifies for classification as an alien of extraordinary ability.

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 CFR 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 CFR 204.5(h)(3). It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on August 3, 2000, seeks to classify the petitioner as an alien with extraordinary ability as a producer in the television industry. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to

establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, 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.

Counsel states that the petitioner was "nominated" by the Academy of Television Arts and Sciences ("ATAS") for a 1997 Los Angeles Area Emmy Award." The petitioner submitted a certificate stating: "1997 Los Angeles Area Emmy Awards honors [the petitioner]... nominated for... 'Roots from the Heart'... KVEA." We note here that KVEA is a television station based in Los Angeles. According to the ATAS's website at *www.emmys.org*:

> The Los Angeles Emmy Awards contest, for broadcast achievements produced or solely financed and controlled by Los Angeles television stations, or cable television systems is administered by ATAS... All entries are screened out of Los Angeles by judging panels at local stations..."

We concur with counsel's argument that the petitioner was an active and important member of the team that received this local award. A local Emmy nomination from the Los Angeles Area, however, fails to satisfy this criterion. The petitioner's nomination constitutes local, rather than national or international, recognition. Furthermore, while it is a recognition of one's talents to be nominated, the regulation clearly requires the receipt of a nationally or internationally recognized "prize or award." A mere nomination demonstrates only that the petitioner's work was included in the contest.

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, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that evaluates membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association would not satisfy this criterion, because the issue here is membership requirements rather than the association's overall reputation.

In response to the director's notice of intent to revoke, the petitioner submitted a letter dated May 29, 2002, from Victoria Smart, Membership Services, Academy of Television Arts and Sciences,

North Hollywood, California. Ms. Smart stated: "In light of his [local] Emmy Award nomination in 1997, his numerous screen credits in the television industry, and his other professional merits, the Los Angeles peer group of the Academy granted [the beneficiary] membership to our institution." The petitioner's admission to the Academy by the "Los Angeles peer group" indicates that the petitioner was selected at the local, rather than the national or international, level. Furthermore, according to the Academy's membership requirements provided by the petitioner on appeal, one could achieve active status in the Academy through demonstrating "[s]creen credit as an Executive Producer, Producer or Supervising Producer within the last four years." While it is required that one's work be featured on at least eight hours of national programming, the petitioner has not shown that this level of experience in the television industry constitutes "outstanding achievement." Nor has it been shown that the petitioner's membership was evaluated by nationally recognized experts, rather than his local peer group.

On appeal, the petitioner submits a 2002 membership card for the Producers Guild of America. It should be noted that prior to the appeal, the petitioner had not previously claimed membership in this organization. The petitioner has offered no proof of his membership in the Producers Guild of America at the time of the petition's filing. *See Matter of Katigbak*, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Even if we were to accept this evidence, we note that membership in this organization is also based on "screen credit," rather than outstanding achievement in the television industry, as judged by nationally recognized 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.*

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.

In response to the director's notice of intent to revoke, the petitioner submitted an article appearing in *Arte Magazine* (September 2001) that profiles his documentary "Latinos and the American Dream." On appeal, the petitioner submits a second article featuring an interview of him appearing in CineVideo Magazine (August 2002). These two articles were published subsequent to the filing of the petition. *See Matter of Katigbak, supra.* We note here that while the petitioner did provide some background information about these publications, the information submitted did not show the volume of the magazines' readership. Thus, it has not been demonstrated that these publications qualify as major media or that the petitioner had been the subject of regular coverage in the major media prior to the petition's filing.

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.

In order to satisfy this criterion, the petitioner must demonstrate that his national acclaim resulted in his selection to serve as a judge of the work of others. Further, when assessing the influence of the petitioner on the field under this criterion, judging a national competition would carry far greater weight than judging a citywide competition.

In response to the director's notice of intent to revoke, the petitioner submitted a letter from Liz Korda, Los Angeles Awards Administrator of the Academy of Television, Arts and Sciences. Ms. Korda indicates that the petitioner served as a member of the Jury for the 2000 Los Angeles Emmy Awards. We note here that the petitioner's involvement in the Los Angeles Emmy Awards contest, for broadcast achievements produced or solely financed and controlled by Los Angeles television stations, reflects the petitioner's participation on a panel of judges selected from local stations. Serving as a judge for the local Academy chapter in Los Angeles carries far less weight than judging for the Primetime Emmy Awards for national nighttime programming. Thus, the evidence provided fails to distinguish the petitioner from the majority of producers in the television industry and would not satisfy this criterion.

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

On appeal, counsel states that the petitioner's work has been displayed on television in both Europe and the United States. The wording of this criterion, however, strongly suggests that it is intended for visual artists, such as sculptors and painters, rather than for television producers and directors. Television programming is covered by the "commercial success in the performing arts" criterion, below. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

Counsel states that "Latin Dreams" was displayed by the Cervantes Institute in Munich, Germany. Documentation submitted in response to the director's notice of intent to revoke indicates that this event occurred on February 15, 2002. According to the letter from Miguel Angel Nieto, Executive Producer, Alea Television, "Latin Dreams" was not first released until September 2001, more than one year subsequent to the filing of the petition. *See Matter of Katigbak, supra.*

Documentation from the petitioner regarding the Cervantes Institute states the following:

> The Cervantes Institute is a public institution founded in 1991 by the Spanish State. The purpose of our institution is to foment the Spanish Language and to spread anywhere in the world the cultural patrimony of all the countries of Hispanic languages. At the moment there are 35 institutes distributed in more than 20 countries of Europe, America, Africa and Asia.

Even if were to consider this evidence, it has not been demonstrated that the showing of the petitioner's documentary enjoyed national or international attention. For example, the petitioner offers no evidence of significant media coverage of the event.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

Counsel references several witness letters from individuals who have previously collaborated with the petitioner. The individuals include Miguel Angel Nieto, Executive Producer, Alea Television; Jose Louis Trassens, Senior Executive Producer, KVEA Los Angeles; Juan Miguel Muniz, Producer for CNN in Spanish (Los Angeles); and Todd Slayton, Senior Vice President of PROMAX, an international association of promotion and marketing professionals in the electronic media located in Los Angeles. These witnesses briefly describe their interactions with the petitioner, but they offer no evidence that the petitioner ever fulfilled a leading or critical role for their organizations. Miguel Angel Nieto mentions that the petitioner served as director of "Latin Dreams," a joint production of Spanish Public Broadcasting, European Television Channel *Arte*, and Alea Television of Barcelona, but this documentary was released subsequent to the petition's filing date. *See Matter of Katigbak, supra*. Furthermore, it has not been shown that the petitioner's documentary was well received by critics, viewed by significantly large audiences, or that it received high ratings from television rating systems such as Nielson.

The petitioner submits literature about Alea, CNN, and PROMAX, but the petitioner offers little evidence as to his specific role within their organizations. A review of the documentation provided reveals no evidence to establish that the petitioner has regularly supervised or overseen other individuals within these organizations. Further, the record does not indicate that the petitioner has consistently exercised substantial control over creative or business decisions executed by these organizations. Thus, the petitioner has failed to satisfy 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.

The director's notice of revocation stated: "It shall be noted that, according to the self-petitioner's Forms 1040 for the 2000 and 2001 tax years, he earned $61,189 and $32,817, respectively." On appeal, counsel states that the majority of the petitioner's projects were produced in Europe and as a result his earnings were not reportable in the United States. The petitioner, however, offers no evidence of his alleged European earnings. In this case, the petitioner has not shown that his compensation is high when compared to top television

producers from Spain, Europe or the United States. The plain wording of this criterion requires evidence of a high salary "in relation to others in the field" and the petitioner has presented nothing as a basis for comparison.

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

Simply showing that one's documentaries have been broadcast on television does not constitute commercial success. The petitioner offers no evidence that his programs were highly rated when compared to other successful television productions and no specific information regarding the number of national or international viewers. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. We note, for example, the absence of national or international media coverage about the petitioner or his documentaries that existed prior to the filing of the petition. In this case, the petitioner has offered no evidence showing that he has been commercially more successful than the vast majority of other professional television producers.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in the field. The regulatory criteria describe types of evidence which the petitioner may submit, but it does not follow that every television producer who has contributed to a broadcast that aired nationally or internationally, or who has been nominated for a local award, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field. We cannot ignore that several of the petitioner's witnesses such as Miguel Angel Nieto, Executive Producer, Alea Television, and Jose Louis Trassens, Senior Executive Producer, KVEA Los Angeles, appear to have earned considerably more prestige and authority in the television industry. A simple comparison of their titles and responsibilities with those of the petitioner shows that the petitioner has not amassed a record of accomplishment placing him at or near the top of his field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, 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 in this case, however, does not establish that the petitioner has distinguished himself as a producer in the television industry 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 indicates that the petitioner shows potential in his career, but it is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Upon review, the petitioner has been unable to present sufficient

evidence to overcome the findings of the director in his decision to revoke the approval of the petition. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the approval of the petition remains revoked.

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.