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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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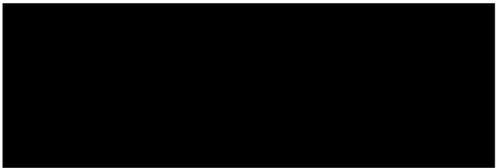


File: WAC 98 212 50032 Office: California Service Center Date: **AUG 1 2001**

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)

IN BEHALF OF PETITIONER:



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prevent clearly unwarranted
invasion of personal privacy

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

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 the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability in his field of endeavor.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). These will be discussed below. It should be reiterated, however, that the petitioner must show that the

beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a playwright and director.

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met at least three of the necessary criteria.

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

The petitioner received the Marton Award from Young Playwrights Inc., an organization whose board of directors includes numerous theatrical luminaries, such as Stephen Sondheim and Wendy Wasserstein. Despite the name of the organization, the Marton Award is plainly not limited to young playwrights; past winners, since the award was instituted in 1984, include [REDACTED] who has been publishing his work since the 1950s. The petitioner won a London Fringe Award for Best Playwright of 1992/3 from the Sunday Times Theatre Club.

In 1996, one of the petitioner's plays won the Award for Outstanding Theater at the Gay & Lesbian Alliance Against Defamation ("GLAAD") Media Awards. A letter from a GLAAD official describes the awards:

We will be honoring a number of influential media, news and entertainment figures who have provided fair and accurate images of lesbians and gay men to the public. Co-hosts and presenters in previous years have included [REDACTED]

[REDACTED]

Impact and importance of these awards were underscored by Tom Hanks, who cited his attendance at the 1994 GLAAD ceremony as the inspiration for his Academy Awards acceptance speech for Best Actor.

While the GLAAD Media Awards have a specific focus, aimed at fighting discrimination, the significance of the awards within the entertainment community is clear from the above-described participation of many award-winning entertainers. Also, from the roster of winners and participants, it is clear that the winners need not be gay themselves, which would introduce an artificial

restriction; rather, the emphasis is on the handling of issues rather than the orientation of the individual winners.

The petitioner has won other awards which appear to be narrower or more local in scope, and he has documented nominations for awards that he does not appear to have actually received; but the above awards appear to satisfy the 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 petitioner documents his membership in New Dramatists, the Theatre Communications Group, and the Dramatists Guild. The record, however, does not establish the membership criteria for any of these associations. A pamphlet from the Dramatists Guild appears to indicate that any playwright whose work has been produced can qualify for membership.

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.

A lengthy introduction precedes the petitioner's play Porcelain in the anthology Staging Gay Lives. This introduction indicates that Porcelain "has been produced all over the United States."

Reviews of the petitioner's work, and articles about the petitioner, have appeared in Time, the New York Times, the Los Angeles Times, and other major national publications as well as trade publications such as American Theatre. Interviews with the petitioner appeared in The Dramatists Guild Quarterly, the New York Daily News and other publications. The petitioner submits copies of articles, both reviews of his work and profiling his own career, that appeared in The Village Voice and many other publications across the country. Many of these publications are local rather than national in nature, but the petitioner's ability to garner local media attention throughout the country, from Seattle to Boston to Dallas, demonstrates that his acclaim is not limited to one particular region. Many of the reviews are in-depth, multi-column articles, rather than brief pieces which do little more than acknowledge the local performance of one of the petitioner's plays. The scope and variety of the articles shows that interest in the petitioner's work is not limited to any one particular ethnic or social group (although some of the publications are specialized in this way).

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 petitioner has served on jury panels for the Los Angeles County Music and Performing Arts Commission, the Playwrights' Center in Minneapolis, Minnesota, the A.C.T. Women Playwrights Festival in Seattle, Washington, and the 21st Century Playwrights Festival in New York City. The petitioner has thus acted as a judge for several national-level events, which took place throughout the country, demonstrating that the petitioner's reputation is not confined to one particular locality.

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

Counsel asserts that the petitioner meets this criterion because he has been a resident director for the Asian Theater Workshop at the Mark Taper Forum and the East West Players, both in Los Angeles. The record does not clearly document the reputations which these entities enjoy outside of the Asian-American communities in southern California.

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

The record amply demonstrates that the petitioner's plays have been performed throughout the country, and that the petitioner has directed several stage plays including several that featured acclaimed comedian and actor Margaret Cho. The record does not, however, reflect the degree of commercial success that these plays have enjoyed.

The director denied the petition, offering a brief description of the evidence of record and concluding without further discussion that this evidence does not establish extraordinary ability. On appeal, counsel states that the petitioner "is considered by the international theatre community to be one of the most important playwrights of our time." The petitioner submits copies of previously submitted documents, as well as new evidence such as a newly-published article about the petitioner from the New York Times. This evidence, much of it regarding the petitioner's new play Red, indicates that media attention to the petitioner's work has not diminished since the filing of the petition.

The petitioner also submits letters from several witnesses. David Henry Hwang, author of the Broadway play M. Butterfly, states that the petitioner "has established himself as one of the world's

leading dramatists. . . . His plays have received international acclaim." Todd London, artistic director of New Dramatists, deems the petitioner to be "one of the most remarkable and important theatre writers of our moment. He is internationally known as one of the world's most renowned and leading playwrights. George C. Wolfe, a director and producer as well as the author of such plays as Bring In 'Da Noise, Bring In 'Da Funk and Jelly's Last Jam, states that the petitioner "is clearly one of the most important and influential playwrights of our time." These and other witnesses acknowledge that the petitioner's work is sometimes pigeonholed as "Asian-American theater" but they assert that its appeal is universal.

Counsel asserts that the "[p]etitioner submitted strong, overwhelming and powerful evidence in *more than* the statutorily required minimum three (3) categories." While the petitioner's evidence does not satisfy all of the criteria that counsel claims, that evidence does amply satisfy at least three of them by virtue of his prizes, service on panels as a judge of the work of others, and media coverage of his work. The evidence in these categories shows more than minor, sporadic, local attention; it establishes a pattern of national recognition as a significant force in modern theater. Upon consideration of the very substantial record of proceeding, we find that the director's somewhat cursory decision was in error.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained.