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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC 98 116 55755 Office: California Service Center Date: JUL 25 2001

IN RE: Petitioner: [Redacted]
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)

Public Copy

IN BEHALF OF PETITIONER:
[Redacted]

Identifying data deleted 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

Handwritten signature: John P. Wiemann

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 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 the sustained national or international acclaim necessary to qualify 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 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 she has sustained national or international acclaim at the very top level.

The petitioner seeks classification as an alien with extraordinary ability as an actor. 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 which, counsel claims, meets eight of the 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 has appeared in award-winning television series such as Due South (in which the petitioner had a recurring but not regular role) and E.N.G. (in which the petitioner "had a guest starring role"). The record contains no evidence that the petitioner, who was not a regular cast member of these series, was responsible for any of the awards the shows received. The regulation calls for documentation of the alien's receipt of prizes. The petitioner does not fulfill this criterion simply by being involved in a project for which someone else received awards.

A letter in the record indicates that Fireworks Entertainment, Inc., submitted an application to nominate the petitioner for a 1997 Gemini Award (identified as the Canadian equivalent of the U.S. Emmy Award¹). This letter does not indicate that the petitioner was formally nominated for the award by the Academy of Canadian Cinema and Television, the entity which awards the Gemini Awards.²

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.

Counsel states that the petitioner "has been made a member of several prestigious and exclusive organizations" such as the Alliance of Canadian Cinema, Television and Radio Artists ("ACTRA"). Counsel does not name any of the other "several . . . organizations." The record contains no evidence to establish that any of these organizations require outstanding achievements of

¹One newspaper article from The Newfoundland Herald, discussing the Australian Logie Awards, calls the awards "the equivalent of the Emmy Awards" rather than "the equivalent of the Gemini Awards," which suggests that, to readers in Newfoundland at least, the Emmy is a more readily recognized award than the Gemini.

²The academy's web site, www.academy.ca, indicates that the petitioner was not among the nominees for a 1997 Gemini Award.

their members. ACTRA appears to be more akin to a trade guild than an exclusive organization.

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 has been the focus of several short pieces, many revolving around her role on the television series F/X. The press coverage allotted to the petitioner, however, appears to be dwarfed by the number of articles focusing on the series' star, [REDACTED] number of the articles in the record about F/X focus on [REDACTED] (sometimes alone and sometimes with [REDACTED] and make little or no mention of the petitioner.

The majority of the published materials in the record do not mention the petitioner at all, being about shows or films in which the petitioner has appeared; are from obviously local publications; or contain only fleeting mention of the petitioner, sometimes referring to the petitioner's character [REDACTED] without identifying the actress who portrays her.

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.

Counsel states that the petitioner "has been a guest instructor in drama at the highly prestigious drama program at the Ryerson Theatre School, the Unionville High School for the Arts, and at various other prominent schools and colleges throughout Canada." The record does not show that the petitioner was an instructor at the two named schools, although some documentation indicates that she attended them as a student.

Even if counsel's claims were supported by evidence, teaching an acting course does not constitute judging the work of others at a level indicative of national or international acclaim; otherwise, every teacher would satisfy this criterion because all teachers evaluate the work of their students.

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

Counsel states that the petitioner's "credits in film, television, and theater represent an extraordinary career that has made a significant contribution to the performing arts and have made her one of Canada's most celebrated and well-known actresses." Simply

listing the petitioner's acting credits does not establish their significance. We cannot conclude that every actor who has ever appeared in a network television series or major motion picture has reached the very top of the field of acting.

The petitioner submits letters from various entertainment figures who attest, in general terms, to the petitioner's talent and dedication, but these individuals do not indicate that the petitioner is among Canada's best-known actors. For example, director [REDACTED] states that the petitioner has "what is referred to as 'star quality,'" and he praises the petitioner's "dedication to her craft." These letters are from directors and others who have worked directly with the petitioner; there is no indication that the petitioner has earned a truly nationwide reputation which extends beyond those who have personally worked with her.

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

At the time of filing, the petitioner played a prominent supporting role as a regular cast member of the television series F/X, co-produced by Fireworks Entertainment, Inc., and Rysler Entertainment.

Counsel claims that the petitioner has held numerous other leading or critical roles, but the record offers no support for the claim that the petitioner's earlier roles were leading or critical.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Counsel states that the petitioner's "regular rate of compensation clearly places her within the highest echelon of actresses in film, television and theater." The petitioner claims that her future work in the United States will bring her "a basic fee of no less than \$20,000.00 U.S. per week" but offers no evidence to support this claim or to establish how much she has received in the past. At no point does the record actually document the petitioner's "regular rate of compensation," nor does the record offer sufficient evidence to allow a meaningful comparison with others in the field as the regulation requires. The petitioner cannot satisfy this criterion simply by submitting letters from associates who offer the vague attestation that the petitioner is well-paid for her work.

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

Counsel asserts that the petitioner's "performances have been instrumental in several critically and financially successful film and television productions." The executive producer of F/X asserts that the syndicated series is a successful one, reaching 94 percent of American television markets, with distribution to many other countries.

Other claims by counsel are less persuasive. For instance, counsel states that the petitioner "brought financial success to 'Lonesome Dove,' the critically acclaimed series . . . by virtue of her performance as Lucy." Counsel acknowledges that the petitioner was a "guest performer" rather than a regular cast member, and the record contains no evidence that the episode(s) featuring the petitioner earned significantly higher ratings than most other episodes in the series.

The director denied the petition, stating that the evidence in the record fails to support key claims by counsel. Specifically, the director stated that the petitioner has not shown that she has won any awards, that she has attracted a level of press coverage that would place her at the top of her field, or that she is among the highest-paid actors in Canada. The director also stated that the petitioner's television roles appear to be minor or recurring roles rather than major, regular roles.

On appeal, counsel argues that the petitioner plays "*the lead female role*" in F/X. While the petitioner's character, Angie Ramirez, was not the focal character in F/X, the record does demonstrate that the petitioner was a regular cast member who played a significant supporting role.

Counsel, on appeal, repeats the claim that the petitioner has played leading roles in a number of other programs and films. As before, these claims are entirely unsubstantiated.

The petitioner submits further news clippings on appeal, including a short piece from the Victoria, British Columbia Times-Colonist, which stated that the petitioner's character on F/X is the only reason to watch "[t]his rotten series." The petitioner submits still photographs from her appearances on Entertainment Tonight and other programs. Counsel indicates that these photographs date from between January 1996 and January 1998, but there is no evidence from the shows' producers or other sources to corroborate these dates. We note that the initial petition did not mention these television appearances.

Counsel notes that the petitioner has been nominated for a 1998 Gemini Award. In a letter dated August 12, 1998, the Academy of Canadian Cinema and Television informed the petitioner that she had been nominated for a Gemini Award for "Best Performance by an

Actress in a Continuing Leading Dramatic Role," for her work on F/X.³

The Gemini Award is certainly a significant award for Canadian television actors, but the petitioner was not nominated until several months after the petition's March 1998 filing date. Similarly, new letters submitted on appeal rely on developments which occurred after the petition's filing date. We are bound by precedent decisions, including Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Counsel states that the director applied "an erroneous standard of proof" because the director "failed properly to consider [the petitioner's] qualifications and achievements in comparison with those of other Canadian actors." The petitioner offered no evidence to allow a meaningful comparison between the petitioner and other Canadian actors. 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).

Furthermore, the petitioner's reputation (according to counsel) rests largely on her role in F/X, which, while taped in Canada, was a venture largely produced by a U.S. corporation and shown on U.S. television. Similarly, the series Lonesome Dove, which counsel emphatically mentions on several occasions, was a television series produced and broadcast in the United States. Having placed so much weight on the petitioner's involvement in U.S. television projects, it is not credible for counsel to assert that the petitioner is subject to a different standard of proof because she is Canadian. Other Canadian actors have achieved massive success in the U.S. television and film markets, among the most notable being [REDACTED]

A year after filing the appeal, the petitioner submits documentation regarding her role in the film Better Than Chocolate. This film was not released until 1999, well after the filing of the appeal and longer still after the filing of the petition. There is no regulation which allows the petitioner an open-ended or indefinite period in which to supplement the appeal. Indeed, the existence of 8 C.F.R. 103.3(a)(2)(vii), which requires a petitioner to request, in writing, additional time to submit a brief, demonstrates that the late submission of supplements to the appeal is a privilege rather than a right. Any consideration at all given

³The award went to Sheila McCarthy for her role in Emily of New Moon.

to such untimely submissions, which are not preceded by timely requests for an extension, is discretionary.

We note that the petitioner's initial submission included a list of upcoming projects, which did not include Better Than Chocolate. Indeed, this film does not appear to be mentioned at all in the record prior to the appeal, and documents in the appeal refer to the film by its working title of Maggie and Lila. Therefore, this film cannot have conferred acclaim on the petitioner as of the filing date, and we cannot infer that the petitioner had even been cast in the production at the time she filed the petition. Pursuant to Matter of Katigbak, *supra*, the petitioner cannot retroactively qualify for a March 1998 priority date based on her involvement in a film which she made at a substantially later date. For the above reasons, it would serve no useful purpose to discuss in detail the substantial quantity of untimely evidence pertaining to Better Than Chocolate.

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.

Review of the record, however, does not establish that the petitioner has distinguished herself as an actor to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner has enjoyed success in her field, especially after the filing date, but is not persuasive that the petitioner's achievements as of March 1998 set her significantly above almost all others in her field at a national or international level. Therefore, 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.