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U.S. Department of Justice
Immigration and Naturalization Service

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10 APR 2002

File: EAC-00-174-52484

Office: Vermont Service Center

Date: 10 APR 2002

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:



Public Copy

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 that he has earned sustained national or international acclaim.

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). These criteria will be addressed 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 musical actor. The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained national or international acclaim. The petitioner has submitted evidence which, he 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 asserts that the petitioner has received the Manhattan Association of Cabarets and Clubs (MAC) Award, the Back Stage Bistro Award from *Back Stage Performing Arts Weekly*, the CaB Magazine Award in the category of "entertainers of the year" and the Columbia Merchants Vocal Award.

██████████ a member of the Board of Directors of the Manhattan Association of Cabarets and Clubs, asserts that the MAC awards are the highest awards in the world of cabaret and that voters include ██████████. ██████████ further states that the show in which the petitioner starred, *Honky-Tonk Highway*, won "Outstanding Musical Revue" in 1995. The materials submitted in response to the director's request for additional documentation, however, reflect that MAC "promotes public awareness and advances the art and business of live entertainment in New York's comedy, jazz and cabaret clubs." As such, this appears to be a local, not a national award.

The petitioner also submitted a letter from ██████████ Editor in Chief for *Back Stage Performing Arts Weekly*, congratulating the petitioner for his receipt of the 1995 Back Stage Bistro Award for Outstanding Performance in a Revue. ██████████ indicates the Bistro awards are for outstanding excellence and achievement in cabaret. The materials submitted in response to the director's request for additional documentation reveal that the Bistro awards are a one-time honor, mostly recognizing newcomers to cabaret. An award that excludes the most talented individuals in one's field cannot be considered evidence that one is at the top of one's field. It also appears from the record that the award is limited to cabaret performers in New York. On appeal, the petitioner submitted letters from several important personalities in New York theater vouching for the importance and prestige of this award, referring to it as the Tony of New York cabaret. These opinions cannot overcome the fact that the award is a local one limited to a certain level of talent, cabaret, and, for the most part, limited to newcomers.

The record includes a letter from ██████████ Managing Editor of *CaB Magazine*, congratulating the petitioner for being selected as the magazine's "entertainer of the year" for 1994-1995 based on his performance in *Honky-Tonk Highway*. ██████████ indicates a panel of cabaret critics selects the winners. The record does not establish the reputation of this award. Finally, the record contains no information about the Columbia Merchants Vocal Award.

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 is a member of Canadian Actors' Equity and the Alliance of Canadian Cinema Television and Radio Artists (ACTRA). In the letter verifying the petitioner's membership in Canadian Actors' Equity, the membership administrator indicates that he is enclosing the requirements for membership. Those requirements do not appear in the record. Counsel asserts that the union requires being offered an Equity contract by a management operating under Equity's jurisdiction or through an Equity Apprenticeship. Being offered a contract by an

employer simply demonstrates an ability to work in the acting field. It is not an outstanding achievement in one's field. Moreover, actors can also obtain membership through an apprenticeship program. Again, taking part in an apprenticeship program is not an outstanding achievement. The requirements for ACTRA are similar. Membership in these professional organizations, in which membership is required to be successful in the field, cannot serve to meet this criterion.

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 submitted several newspaper articles. Specifically, he submitted an article in the "People" section of *The Toronto Star* about he and his brothers, all performing artists, and several reviews in local papers of *Honky-Tonk Highway*. One such review, published in the *Norwich Bulletin*, indicates that, on occasion, the petitioner stole the show with his portrayal of several characters. All the reviews of this show discuss the cast's musical ability, versatility and talent, with the four male actors (including the petitioner) all taking turns on various instruments and playing the lead character during a single performance. The petitioner also submitted reviews in local papers of other shows, such as *Pump Boys and Dinettes*, in which the reviewers also credit the petitioner with stealing "more than a few scenes."

While the reviews are favorable to the petitioner, they are primarily about the production, and not the petitioner personally. Moreover, as noted by the director, the petitioner has not submitted evidence that the publications other than the *Toronto Star* are major media. The article in the *Toronto Star* appears to be a human-interest story on the coincidence of four brothers all being involved in musical theater. The article does not focus on the petitioner's acclaim.

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 includes a letter from [REDACTED] at the Tisch School of the Arts expressing her appreciation for the petitioner's involvement in the course "The Business of the Biz." Her letter, however, does not reveal that he was involved in judging the students or that he was selected to participate in the course based on his national or international acclaim. Rather, [REDACTED] notes the importance of having "professionals in the field" address the students.

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

The petitioner was in the cast of the Broadway show, *Buddy: The Buddy Holly Story* and other off-Broadway shows. Counsel argues that the petitioner's roles in several productions and his television appearances on the Canadian series *The Beachcombers* are sufficient to meet this criterion.

The program reveals that the petitioner was only in the "ensemble" in the Broadway production of *Buddy*. This cannot be considered a leading or critical role. The petitioner also played one of Buddy Holly's Crickets in a touring production of *Buddy*. The petitioner was Nat in *Honky-Tonk Highway*, a cabaret musical revue. While this production received cabaret awards, these awards are limited to cabaret shows, and do not compare the shows with all musicals nationally, including Broadway musicals.

The record also includes a letter from [REDACTED] of Donness Productions, Ltd., verifying that the petitioner appeared in several episodes of *The Beachcombers*, a Canadian series which ran for 19 years and appeared in 32 countries. Appearing in several episodes of a series, as opposed to playing one of the permanent lead characters, cannot be considered a leading or critical role.

In addition to the evidence submitted to address the above criteria, the record includes reference letters and approval of the petitioner's visa as a non-immigrant alien of extraordinary ability. The director concluded that the letters were not from recognizable names in theater. On appeal, counsel submits new letters attesting to the importance of the petitioner's references. Regardless of the acclaim of the petitioner's references, a petitioner cannot substitute the opinions of nationally acclaimed individuals in his field for meeting three of the above criteria.

Finally, with regard to the petitioner's classification as a non-immigrant alien of extraordinary ability, the requirements for the non-immigrant classification are not the same as for the immigrant classification which the petitioner now seeks. Rather, an artist seeking a non-immigrant visa as an alien of extraordinary ability need only demonstrate "distinction."

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 himself as an actor 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 talent as an actor, but is not persuasive that the petitioner's achievements set him significantly above others in his field. 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.