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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

File: EAC 01 103 51597

Office: VERMONT SERVICE CENTER

Date:

OCT 08 2002
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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 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, 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 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 he has sustained national or international acclaim at the very top level.

Counsel states "[f]rom the inception of his career as a **Theatrical Personality**, [the petitioner] has had a great deal of exposure from the industry, because of his multi-faceted accomplishments as an actor, a playwright, a theater director and as a producer."

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 intended to address several of these 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:

[The petitioner] demonstrated his competitive spirit even as a young actor, by vying for the title of **Young Person of the Year 1990 sponsored by the Youth Federation of Venezuela**. Then, in 1994, as a member of the **Casa del Artista**, [the petitioner] was the recipient of a **PCA (Premio de la Casa del Artista) Award, "which is considered the highest ranking award for the performance Arts in Venezuela," according to the President of the organization, Miria [sic; her actual name is Mirla] Castellanos, when he presented his show, "27 Wagons Full of Cotton."** . . . As a **winner of the Edward and Sally Van Lier Fellowship, sponsored by the New York Community Trust**, he presented his first work as a director in New York at the **Spanish Repertory** in August of 1999.

A newspaper article about the Young Person of the Year contest indicates that the petitioner was one of ten individuals competing for the title. The petitioner was one of three actors; the other contestants included a mathematician, a sculptor and a horse riding champion. The article states that the winner is to be announced in February 1990. There is no evidence that the petitioner actually won this award. Competing for an award that he did not win does not constitute a prize in any reasonable sense of the word, let alone a nationally recognized prize.

Mirla Castellanos does, as counsel asserts, state that in 1994 the petitioner received a PCA award "which is considered the highest ranking award for the performance Arts in Venezuela." We note the absence of documentary evidence from 1994 to that effect which might establish the nature of the award, as well as published articles that would corroborate the claim that PCA award is Venezuela's top performing arts award, or show that Casa del Artista's opinion of the importance of its own award is shared outside of that organization.

The petitioner has not shown that the Edward and Sally Van Lier Fellowship is a nationally or internationally recognized award. The entity offering the fellowships, the New York Community Trust, appears from its name to be a local or state organization rather than a national one. The record contains nothing from the organization that actually presented the fellowships; the only contemporaneous material discussing the fellowships is a Spanish-language newspaper article. Given that every identified recipient is a Latin American director, staging a Spanish-language play, it appears that the fellowship is limited to the Spanish-speaking community. The record contains nothing to explain the nature of the fellowship itself.

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 satisfies this criterion through memberships in the Casa del Artista, the International Playwrights Institute, and the Opera Transatlantica. The petitioner submits letters from officials of all these organizations, but none of the letters indicate that any of the organizations

require outstanding achievements of their members as judged by recognized national or international experts. The record contains nothing to establish the membership requirements of any of these organizations.

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 copies of articles and interviews from unidentified newspapers and magazines. Without knowing the source of the articles, there is no way to determine whether those publications represent major, nationally-distributed media. The articles are also undated, but the statement in one article that the petitioner is 19 years old dates the article at 1989-1990. Other articles discuss similar subject matter (the petitioner's appearance on the soap opera *Rubi Rebelde*) and thus presumably originate from roughly the same period. One of these articles states that the petitioner "has been on television for barely 9 months" and that "[f]ame is trying to win him over." Another article states that the petitioner's "real name is little known" despite the popularity of his television character. The articles portray an actor on the brink of national acclaim, owing to a supporting role on a popular soap opera, but there is no evidence that the petitioner continued to attract media coverage after 1990. At any rate, lacking titles and dates, the published materials do not meet the regulatory requirements.

Some articles identify the petitioner as the director of various plays, but the petitioner is not the focus of the articles; he is often mentioned only once in each article. For one article, the petitioner has provided a translation of only the first paragraph, followed by a note that the "remainder of the article pertains to [actress] Dora Mazzone and has been omitted."

Two articles from unidentified publications discuss the petitioner's New York debut, presenting one of eight monologues in a presentation of *90 Miles of Separation* at Lincoln Center. The petitioner submits two capsule reviews *At The End of the Century*, another New York production. Both reviews mention the petitioner, and one states that the petitioner and his co-star "are powerful actors who make even the most stilted dialogue resound with beauty."

One identified publication is the Spanish-language *Tiempo*, subtitled "A Record-Journal Publication" in English. The masthead bears the slogan "*Informando y educando a la comunidad hispano en Connecticut*," indicating that *Tiempo* is a local publication. Another publication, discussing the same play, is *El Diario/La Prensa*, listing its origin as "Nueva York" (i.e. New York). *Impacto*, also published in Spanish, covers "New York, New Jersey, Philadelphia, Connecticut, Boston, Miami." Most of the media coverage of the petitioner's work in New York appears to have been in Spanish-language publications. Acclaim that is limited to the Spanish-speaking community in and around New York is not national. The petitioner has participated in some English-language productions, but the record does not show that these productions have attracted any more attention than countless other stage productions in New York.

While the record contains a significant number of news articles, the record does not show that the petitioner has attracted, and continues to attract, a level of media coverage consistent with stature as one of the best-known actors or producer/directors in the United States. Because the petitioner has

performed most of his work since 1995 in the United States, it is entirely appropriate to hold the petitioner to U.S. standards when evaluating his success in the performing arts.

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

The record indicates that the petitioner played leading and/or critical roles on various Venezuelan television programs, some of which (according to witnesses) continue to be rebroadcast internationally.

We note, however, that the record does not indicate that the petitioner has performed in a similar capacity since he began working in the United States in 1995. The petitioner has shown that he has acted in, and directed, a number of stage plays in the U.S., but the petitioner has not established the distinguished reputations of the entities presenting the plays. Several of the petitioner's U.S. projects appear to be connected with university productions or internship programs.

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

Actress Carmen Julia Alvarez asserts in a letter that the petitioner is "in the highest payment bracket available for young actors in his category" and "one of the best-paid young actors in Venezuela." She does not specify the amount of the petitioner's compensation or explain how she knows that amount to be higher than what most actors earn in Venezuela. In the "category" of stage actors from South America (assuming ethnic subdivisions to represent valid categories of actor) the petitioner must be able to compare favorably with John Leguizamo, who has presented several stage shows in addition to his prolific film and television work. Ms. Alvarez also does not specify what the petitioner's "category" is. The petitioner, to meet this criterion, must be among the highest-paid in the entire field. Dividing the field into categories (such as "young actors") in order to artificially exclude higher-paid actors is not permissible in this regard.

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

Although this is the only criterion that specifically mentions the performing arts in its wording, the petitioner does not claim to have satisfied it, nor has he offered any primary documentary evidence to show that his performances and productions consistently enjoy commercial success.

Beyond the above criteria, the petitioner has submitted several witness letters. Angel Dario Lopez, contributions officer with the Department of Management at the United Nations in New York, states:

I have known [the petitioner] through the international entertainment media since the year 1988, a time during which he was at the pinnacle of his television career in his native Venezuela. [The petitioner] was then already known and recognized as an acclaimed actor and television star and his increasing success and notoriety spread not only in his home country, but also in other countries of South America. . . .

Personally, I had the chance and the honor to meet [the petitioner] in 1995 in the City of New York. . . . By that time, he had already earned a reputation as a very solid,

promising and highly talented internationally acclaimed actor and was beginning to pursue an acting career in the United States. . . . [H]e has been invited to perform at official receptions and special cultural events at the United Nations, where he received rave reviews from the international and diplomatic community of the City of New York.

Maria Eugenia Marrero, director of the Talent Department at RCTV/Coroven, states that the petitioner worked for that entity from October 1988 to February 1995 "as an actor and a TV writer." Ms. Marrero verifies the petitioner's acting work on several internationally popular Coraven programs. Joan C. Silverman, president of Multi-Ethnic Talent and Promotion, Inc., states that the petitioner's "status as an internationally recognized actor across the [S]panish market in America will allow him to positively contribute as a role model for the [L]atin community." One witness, Darko Lukic, manager and artistic director of Teatar & TD, Zagreb, Croatia, states that the petitioner directed one of his plays. Mr. Lukic characterizes the petitioner as "a very interesting young theater director." Many of the witnesses are employers, agents, and others with direct connections to the petitioner's work, and their letters, while highly complimentary toward the petitioner, do not directly establish that the petitioner continues to be well-known and highly acclaimed even among those who have not worked with him. Other witnesses maintain that the petitioner had been a famous television actor in Venezuela, but they do not indicate that the petitioner has maintained such a level of success.

Whatever national or international acclaim the petitioner may have garnered during his 1988-1995 television career in Venezuela, the record does not demonstrate that the petitioner has sustained that acclaim since beginning his U.S. career in 1995. As of the petition's February 2001 filing date, the petitioner had had over five years to build acclaim and recognition in the United States as an actor, director and producer. The evidence submitted fails to demonstrate that the petitioner is a nationally-known actor/producer/director with a level of acclaim comparable to top U.S. actors, directors or producers.

The director requested additional evidence to establish that the petitioner has reached and remained at the top of his field. The director specifically requested documentation of the petitioner's remuneration for 1999-2001, as well as material to allow a comparison with the compensation of other actors. Because top U.S. actors and directors are the subject of heavy media coverage, the director also instructed the petitioner to submit material published in major national publications in 2000 and 2001.

In response to the request for evidence of the petitioner's compensation, counsel states "[i]n the creative process, remuneration is not always an indication of the unique talents of a person of extraordinary ability." Certainly one need not fulfill this particular criterion to establish eligibility, if one meets three other criteria. Nevertheless, the petitioner had already submitted a letter claiming that he is "one of the best-paid young actors in Venezuela." When called upon to substantiate this claim, the petitioner has responded with counsel's vague assurance that monetary compensation is not a reliable gauge of an actor's acclaim. The petitioner has submitted no actual documentation of his earnings, nor any material to allow a reliable comparison of those earnings with the earnings of others in his field. If the petitioner makes a specific claim, or has others make such a claim on his behalf, it is not unreasonable to expect the petitioner to be able to corroborate that claim, or to consider his failure or refusal to provide such corroboration when weighing his credibility.

In response to the request for recent major media articles about the petitioner, counsel states:

Although numerous articles have been written in leading publications about [the petitioner's] outstanding achievements as a theatrical personality, more recently he has also been commissioned by *La Republica*, the leading weekly newspaper in [the] Spanish Language for the New York tri-state area with a circulation of 50,000, to use his expertise in writing theatrical reviews. Within the Hispanic Language [sic] community in America, he is a "pillar of professionalism and integrity" who brings tremendous insights to the readership about the arts.

Counsel's response, above, fails to address the director's request for evidence that the petitioner has been, and continues to be, the subject of major media coverage.¹ The petitioner's work as a film critic does not represent or contribute to acclaim as an actor, producer or director. Furthermore, a publication circulated in "the New York tri-state area" is local rather than national, and thus would not represent major media even if published in English which is the overwhelmingly predominant language in the United States. Finally, the petitioner did not begin writing reviews and articles for *La Republica* until after the petition's filing date, and thus even under the best of circumstances this work cannot retroactively establish that the petitioner was already eligible as of the filing date.

Counsel refers to the previously submitted letter from Angel Dario Lopez and asserts that the petitioner has "performed in leading and critical roles for world reknown [sic] organizations such as the United Nations. He has been invited to perform at official receptions and special cultural events at the UN." The record contains nothing from any ranking official with the standing to speak on behalf of the entire United Nations, to indicate that the petitioner has participated in those events on the basis of his national or international reputation, rather than his local reputation in the New York area. Participation in local cultural events does not constitute a leading or critical role for the United Nations as a whole.

The petitioner has submitted further letters from agents and managers, whose job it is to promote their clients and present them in the best possible light in order to further the clients' careers. Other witnesses also issue letters. Allison Astor-Vargas, special projects manager of Repertorio Espanol (the Spanish Repertory Theatre), states that the petitioner was one of ten directors given "an opportunity to mount a project using our facilities" through an Edward and Sally Van Lier Directing Fellowship in 1999. Ms. Astor-Vargas states that she has "enclosed several clippings from the Van Lier Fellowship program" but these materials are not in the record, nor does counsel refer to them or state that they have been submitted. Thus, the importance of this fellowship remains unestablished.

Romulo Villalba, cultural attache at the Venezuelan Consulate General in New York, asserts that "the PCA Awards, given by the 'Casa del Artista' Foundation, are the most important awards in the artistic field in Venezuela." Mr. Villalba states that the petitioner produced and directed performances of plays at Venezuelan consulates in New York, Paris and Madrid. The record does

¹ Internet searches for several variations of the petitioner's name, using the search engine www.google.com revealed only a few dozen "hits," all of them in Spanish; many of these consist of movie reviews written by the petitioner. Top stars can appear in tens of thousands of web pages.

not establish that performing at consulates in this manner is reserved for the highest rank of actors and producer/directors.

In denying the petition, the director stated that "sustained national acclaim, in and by itself, does not automatically establish that the beneficiary is, in fact, one of those few who are at the very top of their field of endeavor." This particular assertion is untenable; a reading of the statute and regulations shows that sustained national or international acclaim is central to a finding of eligibility. That being said, the director had also determined that the petitioner had not shown *sustained* acclaim, because the petitioner's "latest significant recognition [was] in 1994," seven years before the filing of the petition. Given this finding, the director's erroneous assertion regarding the relation of sustained acclaim to eligibility does not appear to have prejudiced the decision. In other words, the director's misunderstanding of the importance of sustained acclaim does not change the director's finding that the petitioner has not shown sustained acclaim in the first place.

On appeal, counsel maintains that the petitioner has achieved sustained acclaim "by becoming well known in his native country of Venezuela, as well as in his chosen country of the United States." Counsel observes that the petitioner has submitted letters from witnesses in various other countries as well. The letters in question do not indicate that the petitioner is nationally acclaimed in each of those countries; securing witness letters from more than one country is not an automatic sign of international acclaim. With regard to the assertion that the petitioner is "well known in . . . the United States," the petitioner has submitted little evidence to establish that the petitioner has earned a significant reputation outside of the Spanish-speaking community in and around New York.

The bulk of the appeal submission consists of copies of previously submitted documents, along with arguments from counsel relating to those documents. Counsel asserts that the petitioner has submitted "letters that will attest to the fact that [the petitioner] has commanded high salaries in Venezuela, placing him in the upper payment bracket of actors in his category." The letters provide no actual figures, nor any reliable basis for comparing the petitioner's compensation to that of others in his field, nor any explanation as to what the petitioner's "category" is. The petitioner has also shown that, for one of his projects, his compensation would be partly in the form of a percentage of the box office receipts. Counsel asserts "only those who command high salaries are given this type of incentive," but offers no supporting evidence for this claim. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

It remains that, when the director requested actual first-hand documentation of the petitioner's remuneration (as opposed to vague and subjective evaluations of that compensation by persons not responsible for paying him), counsel responded by asserting that we should not rely on the petitioner's earnings to gauge his reputation. The record continues to be devoid of any first-hand documentary evidence that would show the amount of the petitioner's earnings in Venezuela or the U.S., or to establish that the petitioner continues to earn more than most other actors, producers, directors, or playwrights in the United States (the country where he has worked for the better part of the past seven years). Even if the petitioner were to submit proof that he was the highest-paid actor in Venezuela in 1988, such evidence would not establish that the petitioner's acclaim has been sustained at a level placing him consistently at the top of the field.

Counsel asserts that the petitioner has established his reputation by submitting "letters of recommendation . . . [from] those who have a solid reputation to uphold." These letters establish the opinions of the letter writers, but they do not represent objective documentary evidence of acclaim, nor can such letters suffice as a substitute for such evidence. The statute and regulations call for extensive documentation of acclaim, and it cannot suffice for the petitioner to offer third party assurances and assertions of the kind for which primary evidence ought to exist. The letters themselves do not present a consistent portrait of the petitioner as one of the top actors, producers, directors, or playwrights in the United States. Some witnesses assert that the petitioner is indeed at the top of his field, whereas others merely attest to the petitioner's personal character, or deem the petitioner to be a promising young talent.

Counsel observes that the petitioner has appeared in "several promotional campaigns in the Latin Market" for HBO Creative Services, but appearing in television commercials is not reserved for those at the pinnacle of the acting profession. There is no evidence that HBO, which produces highly successful and acclaimed programming such as *The Sopranos*, has actually engaged the petitioner's services as an actor in its original programming.

The record indicates that the petitioner was a successful Venezuelan television personality until early 1995. Whatever acclaim the petitioner may have earned during that time, the record does not lead to the conclusion that the petitioner has sustained that level of 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.

Review of the record, however, does not establish that the petitioner has distinguished himself as an actor, director, producer or playwright 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.