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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: EAC-02-012-52642 Office: Vermont Service Center Date: FEB - 4 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]

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

Elizabeth Hayward

for 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). On appeal, counsel argues that the director imposed too strict a standard, noting that only a minute percentage of acting school graduates are ever cast for television or film. We do not find that arguments regarding the size of the top percentage are useful. The relevant standard for this classification is whether or not the petitioner has sustained national or international acclaim. Specifically, the evidentiary requirements set forth at 8 C.F.R. 204.5(h)(3) require the petitioner to establish that the alien has sustained national or international acclaim and recognition in his or her field of expertise. 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an actress. In response to the director's request for additional documentation and on appeal, counsel notes that the petitioner has been the beneficiary of several nonimmigrant visas petitions in a related

classification. We note that 8 C.F.R. 214.2(o) includes aliens who have a demonstrated record of extraordinary achievement in the motion picture or television industry. 8 C.F.R. 214.2(o)(3)(ii) defines extraordinary achievement as "a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television industry." The regulatory criteria for meeting this definition are set forth at 8 C.F.R. 214.2(o)(3)(v) and differ from those relating to the immigration classification now sought. Accordingly, the fact that the petitioner obtained nonimmigrant status as an alien with a demonstrated record of extraordinary achievement in the motion picture or television industry is not determinative.

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, she 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.

As noted by the director, the record does not reflect, and the petitioner does not claim, that the petitioner has won any nationally recognized prizes or awards. On appeal, counsel argues that it is possible to rise to the top of acting field without winning any awards. We agree that a petitioner need not meet every criterion and, had the petitioner established that she met three other criteria, the absence of awards would not be decisive.[1] Counsel also argues that "being cast in a single nationally broadcast on-screen advertising campaign is in itself considered to be a career break for an actor." A "career break" is simply not comparable to a nationally or internationally recognized prize or award for excellence in the field.

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 claims to meet this criterion through her membership in the Screen Actors Guild, the American Federation of Television and Radio Artists, the Actors' Equity Association, and the Circum Arts Foundation. The petitioner submitted her membership cards for the Screen Actors Guild and the American Federation of Television and Radio Artists. We note that the program for "Singin' in the Rain" does not identify the petitioner as a member of the Actors' Equity

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[1] For example, the major actresses named by counsel on appeal who have not won national or international awards could easily present evidence of substantial major media coverage, leading roles, high remuneration, and the commercial success of their movies or television series attributable to their role in those movies or series.

Association. The petitioner did submit applications for access membership in Circum Arts Foundation, Inc. and the Actors' Equity Association. The applications are dated August 2001 and September 2001 respectively. The record contains no evidence that the petitioner obtained membership in either organization prior to the filing date of October 4, 2001. Regardless, the petitioner did not submit evidence of the membership requirements for these organizations. We note, however, that union membership generally requires that the member work in the field. Even in a competitive field, the ability to work in the field is not an outstanding achievement.

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.

As evidence for this criterion, the petitioner submitted an article about the petitioner in *The Record.Com*, another article in *The Record*, and reviews of productions featuring the petitioner. The petitioner did not submit any information regarding the circulation of *The Record*. The copyright information at the bottom of the article posted at *The Record.com* reveals that it is a local, Kitchener, Ontario publication covering the Kitchener-Waterloo area, the petitioner's hometown. As such, the petitioner has not established that the articles in that publication constitute published material in major media. The reviews are primarily about the production in which the petitioner appeared and are not about the petitioner personally. Productions are routinely reviewed, and it is not evidence of the petitioner's national or international acclaim that her name appeared in local reviews of her productions. Finally, the petitioner submitted the playbill for her performance of "Singin' in the Rain." A playbill, while printed, is not published material. Moreover, it is not primarily about the petitioner.

In response to the director's request for additional documentation, the petitioner submitted a cartoon and article allegedly from the Summer 2001 issue of *New York Magazine*. The article is about a mock wedding staged as a publicity stunt at a Manhattan Hotel. The record contains a letter from Tracy Trevett, a former teacher of the petitioner's, who claims to have cast the petitioner as the bride in this project. The article, however, is primarily about the mock wedding and does not mention the petitioner by name. The depiction of her character in cartoon form alone, without any reference to her personally, cannot be considered indicative of national or international acclaim.

The materials submitted on appeal are all dated after the date of filing and cannot be considered evidence of the petitioner's eligibility as of the date of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Regardless, these articles also appear in *The Record*, which the petitioner has not established to be major media.

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

The petitioner submitted several letters from casting directors for whom she has successfully auditioned, her talent agent, her teachers and coaches, theater director Kent Paul, and producers of shows featuring the petitioner. These letters provide general praise of the petitioner's talent and

some even make broad assertions of the petitioner's "contribution" to her field. The letters, however, fail to provide examples of specific contributions and how they have influenced the field. Moreover, the letters are all from the petitioner's immediate circle of colleagues. The ten regulatory criteria at 8 C.F.R. 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

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

The petitioner relies on her performances to meet this criterion. We find that this criterion is more applicable to visual artists than performing artists. As such, her performances will be considered below under the "leading role" criterion.

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

Mark Shelton, who formed the Windsor Repertory Theatre Company, asserts that the petitioner played a leading role in its first production, "The Cherry Orchard."[2] As the Windsor Repertory Theatre Company was only in its first season at that time, we cannot conclude that it had a distinguished reputation. In addition, the letter was written on April 6, 1998, in support of the petitioner's non-immigrant visa. While we do not question that information in this letter may be relevant to the instant petition, it is of some concern that the photocopy of this letter has been altered with correction fluid over the references to "O-1 non-" before "immigrant."[3] The attempt to present this letter as a letter in support of the immigrant visa instead of honestly submitting it as a letter submitted in support of the non-immigrant visa with information relevant to the immigrant petition is troubling. While this alteration does not reflect on the credibility of the unaltered portions of the letter, it does reflect on the credibility of those who prepared the petition.

The petitioner also submitted the playbill and reviews of her leading role in "Singin' in the Rain" at the Gateway Playhouse. The record contains little information about the Gateway Playhouse. As such, the petitioner has not established that the Gateway Playhouse enjoys a distinguished reputation nationally.

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[2] The program for the production reveals that the petitioner played the role of Dunyasha, the maid. While Dunyasha has lines periodically throughout the play, a review of the play in *Five Major Plays by Anton Checkhov*, (R. Hingley trans., Bantam Books 1982), suggests that Dunyasha is not the lead role.

[3] The obliterated text is clearly legible by viewing the back of the letter. As the signature is photocopied and Mr. Shelton did not initial the alteration, there is no indication that Mr. Shelton agreed to the alteration.

The petitioner also claims that her role in the national advertising campaigns for major companies meets this criterion. While the petitioner may have been featured prominently in the particular television advertisement in which she appeared, the record does not reflect that the petitioner played a leading or critical role for these major companies as a whole. While the companies may enjoy a distinguished reputation, the record contains no evidence that the national campaigns, in which the petitioner was featured, enjoyed a distinguished reputation in and of themselves.

Counsel asserts that the petitioner's role in "Film Cuts on Stage" at the Trilogy Blackbox Theatre in New York meets this criterion. The petitioner submitted an advertisement for this production, but the petitioner's name is not included. The petitioner has not established her role in this production or the reputation of the Trilogy Blackbox Theatre.

In response to the director's request for additional documentation, counsel refers the petitioner's performances at Centre in the Square in Kitchener, Ontario. The petitioner submitted information about the performance hall. The record contains a review for "Anne of Green Gables" at Centre in the Square. The review does mention the petitioner, but another actress played the title role of Anne. The petitioner has not established the nature of her role as Josie.

Counsel also refers to the petitioner's role in "Virgin Larry," an independent film that qualified for the 2000 Northampton Film Festival. The petitioner submitted a summary of the film that makes no mention of the cast and information about the festival itself. None of this documentation discusses the petitioner's role in the film.

Counsel also refers to the petitioner's role in Body Human 2000, a series that appears to be available only on tape based on the original television series shown on CBS. The Internet materials submitted discuss the series and the host, James Brolin, but make no mention of the petitioner's role on the series. The assertions of counsel do not constitute evidence. Matter of Ohaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has been appearing on "One Life to Live" as a recurring character. On appeal, the petitioner submits a letter from the casting director of this show asserting that the petitioner's role has increased. What is relevant is the petitioner's role with this show at the time of filing. Regardless, the petitioner also submitted Internet materials regarding "One Life to Live" including a list of "stars" and a list of "recurring roles." The petitioner's name appears under "recurring roles." In addition, the starting date of her appearances in this role is 2002. The petition was filed October 4, 2001. As such, it is not clear that this role could have resulted in any acclaim prior to the date of filing.

The remaining performance referenced by counsel in response to the director's request for additional documentation, her role in "Leaded," occurred after the date of filing and is not relevant to her eligibility at the time of filing. *See Matter of Katigbak, supra.*

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

The petitioner submitted several contracts. As the petitioner did not submit evidence of the high-end salaries in the field, we cannot determine whether these contracts represent significantly high remuneration in the field.

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

The record contains no box office receipts documenting the success of the productions in which the petitioner has appeared. While "One Life to Live" is clearly a commercially successful soap opera, it is not clear that this success is attributable to the petitioner, who plays a recurring character on the program.

Comparable evidence pursuant to 8 C.F.R. 204.5(h)(4).

Counsel asserts throughout the proceedings that the record contains comparable evidence for this classification, permitted under 8 C.F.R. 204.5(h)(4). This regulation permits comparable evidence where the criteria set forth at 8 C.F.R. 204.5(h)(3) are not applicable. We need not accept comparable evidence simply because the petitioner is unable to meet the applicable criteria. Moreover, in order to constitute comparable evidence, the evidence must be objective evidence of national or international acclaim. Initially, counsel asserted that the petitioner's AFTRA contract, publicity shots, and meeting with Steve Sendor regarding the future production of "In the Boom Boom Room," constitutes comparable evidence. The AFTRA contract demonstrates only that the petitioner is able to work in her field, not that she has national or international acclaim. Publicity shots are standard for every aspiring actor or actress and are not evidence of acclaim. Finally, meeting with an off-Broadway director regarding a possible future performance is not evidence that the petitioner has already attained national or international acclaim.

In response to the director's request for additional documentation, counsel claimed additional comparable evidence demonstrated the petitioner's eligibility. Counsel notes that the petitioner was accepted at the prestigious American Academy of the Dramatic Arts, obtained a scholarship to that school, was one of 20 out of 127 original students to not only graduate but to be accepted into the post-educational Academy company. In addition, counsel asserts that the petitioner graduated with honors from Trinity College of Music and Drama in London. The latter accomplishment is not documented in the record. The director concluded that simply attending an acting school whose graduates include famous actors is not in and of itself evidence of extraordinary ability.

Counsel does not address this concern on appeal and we concur with the director. We cannot conclude that accomplishments achieved while studying or training in one's field are evidence of national or international acclaim. There are several competitive schools in the petitioner's field. Just as obtaining a Ph.D. in science from one of the top universities and subsequently completing a competitive internship or postdoctoral training is not sufficient evidence of national acclaim in the field of science, successfully completing one's training at one of the top acting schools is not evidence of national acclaim in the field of acting.

Counsel then discusses the petitioner's recurring role on "One Life to Live" and her sketch appearances on "Late Night with Conan O'Brien" as well as her appearance on "Law & Order." These roles do not reach the level of a leading or critical role pursuant to 8 C.F.R. 204.5(h)(3)(viii). We will not consider evidence that is related to but falls short of meeting a listed criterion as comparable evidence of national or international acclaim. Similarly, counsel asserts that the petitioner's union memberships discussed above should be considered comparable evidence. As with the petitioner's non-leading roles, memberships which fail to meet the requirements of 8 C.F.R. 204.5(h)(3)(ii) cannot be considered as comparable evidence of national or international 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 herself as an actress 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 shows talent as an actress, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

Even if we accepted counsel's assertion on appeal that the petitioner's "outstanding accomplishments very early in her acting career are indicative of the extraordinary success and fame that [the petitioner] is bound to achieve in the near future," the petition was at best filed prematurely. A petitioner must already be able to demonstrate national or international acclaim at the time of filing.

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.