U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC 01 242 52474 Office: CALIFORNIA SERVICE CENTER Date: MAR 17 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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 pertinent regulations 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 is a television and film actress. 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.*

[redacted] president of the National Union of Artists of Bulgaria, states that the petitioner has received four awards:

1986	National Film Festival Award	1st prize for a female role in a film
1988	4th Intn'l Children's Assembly Award	Performance in a film
1990	Ministry of Education and Science	Best performer in a classic play
1990	Bulg. Nat'l TV Raising High Award	Most popular young actress

[redacted] states that the first, third and fourth awards are major national awards and equivalent, respectively, to the Academy Award, the "Tony" award, and the "Emmy" award [redacted] states that the Fourth International Children's Assembly "included 64 countries from all over the world and over 15,000 participants from all areas of art and talents. . . . Among three performers in the acting field [the petitioner] was chosen [among] the top ten competing for the first prize."

The petitioner submits translated certificates from the awarding entities, but the translation of these certificates are all translated with the word "Nomination" at the top. Three possibilities come to mind: (1) the petitioner was nominated for these awards but did not actually receive them; (2) the petitioner received the awards but only obtained documentation of her nominations; or (3) the certificates document actual prizes but have been systematically mistranslated.

The translated certificate from the 1988 International Children's Assembly states, in full:

NOMINATION
The Executive Committee of the Municipality Council Awards
[THE PETITIONER]
for her active participation in the Fourth International Children's Assembly
Sofia 1988

The certificate does not refer to any prize, any "top ten," or anything else resembling an award. The certificate appears to be nothing more than an acknowledgement that the petitioner participated in the event.

> *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 the Union of Bulgarian Actors, which is part of the National Union of Artists of Bulgaria (NUAB). [redacted] identified above as NUAB's president, states:

> 1. To be a member of NUAB you have to prove at least two national nominations could be at smaller skill [sic] or prize as long as you work competing among the top five.

2. You must have credit as a lead or co-starring in no less than two movies with release in major theaters.
3. Credit on television as lead or co-starring in a pilot, show, TV movies etc.

[redacted] does not specify whether an actor must meet all three of the above requirements, or just any one of the three, to qualify. It is not an outstanding achievement to appear in a motion picture or television program. The organization appears to be a trade union or guild; [redacted] himself compares NUAB to the Screen Actors' Guild (SAG) [redacted] qualifies this comparison; his translated letter states "[e]xcept the differences of qualification in order to become a member of NUAB as suppose to get three vouchers in SAG projects or to be tough hardly to become a SAG member." The translation appears to be garbled, as the meaning of the quoted passage is not readily apparent. The available evidence is not sufficient to allow the conclusion that only top actors, selected by nationally recognized experts, are admitted as members of NUAB.

> *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 is the focus of articles in various Bulgarian publications. The petitioner is also mentioned in articles from other publications, but those articles are not "about the alien" as the regulation requires. For several of the articles, the petitioner has supplied only partial translations, making it difficult to determine how much, if at all, the untranslated portions concern the petitioner.

A subsequently-submitted letter from the Union of Bulgarian Journalists indicates that *24 Hours* and *Trud* "are the most popular and influential publications in Bulgaria," while *We, the Women* "is sought by a very wide reader's audience" and *Pulse* is a "very well respected and recognized newspaper." Because the letter is restricted to those four publications, there is no inference that the other publications that carried articles about the petitioner are major publications.

The petitioner submits several pieces from *We, the Women*. One of these articles, from October 1996, is a substantive profile of the petitioner; others mention the petitioner only briefly. Three pieces said to derive from *24 Hours* are much shorter, and all feature the same promotional photograph of the petitioner. A partial translation of a review in *Pulse* praises the petitioner's "incredible range and expression" but contains no other mention of the petitioner. The record contains nothing from any publication identified as *Trud*.

The articles are dated between 1988 and 1998, and all appeared in the Bulgarian press. Although the petitioner has been appearing in U.S. television programs and films since 1990, the record does not indicate that the petitioner has attracted any U.S. media attention. The most recent Bulgarian articles describe the petitioner's efforts to achieve success in the United States. One article states that the petitioner "is working on a few commercials." Another article (from *24 Hours*), referring to the movies in which the petitioner appears, states "[o]f course you will not see the names of these movies in the Academy Award nominations, but when you're a 'new talent' you don't really have

the privilege to choose your parts." Among these films are *Anthony's Desire*, *The Vampire Conspiracy*, and *Naked Contacts*.[1]

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

Counsel indicates that the petitioner satisfies this criterion through her appearances on stage, television, and cinema. Theatrical performances of this kind, however, do not automatically constitute "display." It is inherent to the field of acting that audiences will watch one's performance, whether live on stage or through recording or broadcast media, and thus every actor's work has been "displayed" in this manner. More germane to the petitioner's field is a separate criterion that pertains specifically to the performing arts:

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

Although this criterion is the only one that specifically singles out the performing arts, the petitioner does not claim to have satisfied it. The petitioner thus claims to be among the most highly acclaimed actresses despite, evidently, not having appeared in the most popular films, television shows, and stage plays.

With regard to the petitioner's film work, we note that, of the 13 films listed on the petitioner's resume, all but three were produced in the United States. The petitioner appears to have spent most of her time since the early 1990s in the United States, or making films in Bulgaria for U.S. production companies. Therefore, when evaluating the petitioner's film and television work, it is entirely appropriate to judge that work alongside the work of other actors and actresses appearing in U.S. films and television shows. A letter from filmmaker Bernhard Salzman indicates that, on a then-upcoming production, he would pay the petitioner "two thousand U.S. dollars for each week that she is required to work, as well as per diem for location work." Documents relating to other projects show half this amount, or less. In a nation where the top actors receive millions of dollars for each project, $2,000 per week plus per diem does not readily suggest that the petitioner is among the most acclaimed actresses in the country where she is now working.

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

The petitioner submits letters from various directors and filmmakers for whom she has worked. Directors in Bulgaria and the U.S. state that the petitioner acted in their productions but they do not indicate that the petitioner had leading or critical roles. The petitioner played the leading role of "Estragon" (also known as "Gogo") in Samuel Beckett's *Waiting for Godot*. The record shows that an excerpt from the play was performed before an invited audience "to help us evaluate what we've accomplished so far in an effort to launch the production of the entire play professionally." The record does not indicate, however, that a full-scale production was ever mounted. The petitioner

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[1] A review of the Internet Movie Database (http://www.imdb.com) and other Internet resources indicates that many of the petitioner's U.S. efforts have been erotic films; one online review uses the colloquial term "soft-core."

has submitted no evidence to show that the company producing the show, *Godoit Productions*, has a distinguished reputation.

Producer Roger Corman states that the petitioner "starred in my film, the sword and sorcery epic 'DEATHSTALKER.'" The record contains no documentation to show that the petitioner's role in the film was a leading or critical one; [redacted] of the term "starred" could simply refer to the fact that the petitioner appears in the film.[2] [redacted] producer of the action film *Armstrong*, shot in Bulgaria by a U.S. production company, states that he "had the wonderful experience of working with" the petitioner and that he "will gladly hire [the petitioner] again and again," but he does not indicate that the petitioner had a leading or critical role in the film. He states that the petitioner shows "star potential" but does not indicate that she is already a star. Others involved in the production of *Armstrong* likewise praise the petitioner's talent and dedication but there is no indication that hers was a leading or critical role in the film. Although both *Deathstalker IV* and *Armstrong* were produced by U.S. companies for distribution in the U.S. (and elsewhere), the record contains no documentation to show the extent of that distribution or the general reception of the films.

[redacted] vice president of Film Acquisitions for HBO, states "[w]e have aired several movies starring [the petitioner] including 'Blind Obsession,' [redacted] to name a few." Director [redacted] states that the petitioner played "the main female lead" in "a feature film for NuImage Productions . . . filmed on location in Sofia, Bulgaria." [redacted] not identify the film.

The record shows that the petitioner was offered leading parts in various then-upcoming film projects such as *Discombobulated*, but the record does not show that these films have been released or, in some cases, even shot. The petitioner also appears in the pilot episode of a sketch comedy series, *Comedy Callente*, but again there is no evidence that any network had bought the show or that any normal production episodes had been shot. The petitioner's other documented work has been in television commercials, music videos, "infomercials" and the like.

Subsequent to a request for further information, the petitioner has submitted additional letters, but like the original letters, these do not establish that the petitioner has played leading or critical roles for distinguished organizations. The available cast lists of the petitioner's films and programs do not reveal the names of any established or recognized "stars" as would be expected if the petitioner was indeed among the top acting talents in the field.

The director denied the petition, citing several deficiencies in the record. For instance, the director found that the petitioner has not established the significance of the claimed award from the International Children's Assembly. The director also cited the translation of the letter from the president of NUAB, noting "[t]he quality of the translation is poor and the meaning of the letter is unclear. It is unclear if members must meet all three criteria or one only." The director stated that the translations in the record are uncertified. The director concluded that, while the

[2] A search of http://www.imdb.com and other sites shows that the film in which the petitioner appeared was not the original *Deathstalker* but rather *Deathstalker IV: Match of the Titans*. Reviews of the film, most of which are emphatically unfavorable, do not mention the petitioner's character (Lesia) and therefore it is not readily apparent that hers was a pivotal character in the film.

petitioner has been active in the field, there is no evidence that the petitioner has appeared in any "major productions."

On appeal, counsel argues that the translations were in fact certified. The translations were not certified individually; rather, a single document attested to the accuracy of all the translations in the record. The director evidently missed this document, but this error does not undermine the director's decision to a significant extent; the director's erroneous finding did not cause the denial of an otherwise approvable petition.

Regarding the poor translation of the letter from NUAC, counsel protests that the director did not mention this deficiency in its request for further evidence and "should be estopped from doing so now." Counsel offers no support for the claim that the director should have only one opportunity to analyze the evidence. Even after a petition has been approved, the director still has authority to revoke that approval if it is determined that the approval was in error.

Rather than submit a new translation of the original letter, the petitioner submits a new letter and a certified translation of the new letter, which reads in part:

> NUAB: The National union of Actors of Bulgaria is identified to some degree with SAG (The Screen Actors Guild) I in the United States with the exception that NUAB is an INVITATION ONLY society. In order to be accepted in the Union, the successful applicant is required to present the following:
> - A University Diploma with a Batchelor of Arts Degree
> - Proof of two or more National Award Nominations in film, television or theater
> - Lead or costarring credits in a major theater release movie, TV show or pilot.

(Wording and capitalization as in original.) Although not error-free, the above translation is generally clearer than the translation of the original letter. The two letters, however, differ significantly as to what the membership requirements are. The first letter made no mention of a bachelor's degree, and required "lead or co-starring" roles "in no less than two movies with release in major theaters," whereas the new letter states only "a major theater release movie." The singular "a . . . movie" contradicts "no less than two." Because of these inconsistencies, the record is even less clear as to what NUAB's requirements actually are. Translation differences alone are not sufficient to explain the differences between the two letters. Furthermore, the new letter does not resolve the confusion as to whether one must meet all three listed criteria, or only one of them. We note the absence of any objective documentation, such as NUAB's bylaws, that set forth the membership requirements in a context outside of this petition. The petitioner has submitted only letters requested specifically for the petition.

Regarding the petitioner's claimed prize from the Fourth International Children's Assembly, the petitioner submits a new letter from an official of Sofia's Ministry of Education and Science. The official indicates that, at the event, "the most prominent artists and members of the cultural elite were represented. Only three artists were selected from a total of fifty members. One of these was [the petitioner], who received the award for her talent and fame in enabling the members of the Assembly to appreciate Bulgarian culture." It remains that the only

contemporaneous documentation from the actual organizers of the event does not indicate that the petitioner received any award. The only materials the petitioner has submitted indicating that she won a prize are letters written over a decade after the fact for the express purpose of supporting the petition.

Most of the other materials submitted on appeal are copies of previously submitted documents. The petitioner also submits printouts from the Internet Movie Database (http://www.imdb.com), demonstrating the petitioner's and counsel's awareness of this resource. The petitioner has submitted these materials to show the distinguished reputations of some of the production companies that have employed her. It remains that there is no credible evidence that the petitioner had played in a leading or critical role for these companies, as opposed to minor roles. A new letter, indicating director Matthew Bright's intention to feature the petitioner in a major role in an upcoming feature for Langley Productions, carries no weight because the film had not been filmed, much less released, as of the date of the appeal. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now the Bureau) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The evidence indicates that the petitioner won some awards in her native Bulgaria in the years leading up to 1990. Since that time, the petitioner has attracted some degree of media coverage in Bulgaria as well. We cannot ignore, however, that the majority of the petitioner's recent work has been not in Bulgaria but in the United States. The majority of the petitioner's work since 1990 appears to amount to relatively small roles in obscure films, often in genres with minimal mainstream exposure. Whatever recognition the petitioner earned in her native country has not followed her to the U.S., and therefore she has not achieved sustained 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 consistently 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 is not persuasive that the petitioner's achievements 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.