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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC 01 290 57186 Office: California Service Center Date: MAR 19 2003

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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.

Elizabeth Heyman

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 sustained and the petition will be approved.

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.

This petition, filed on September 20, 2001, seeks to classify the petitioner as an alien with extraordinary ability as an actor. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, 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.

The petitioner submitted a "Certificate of Honor" awarded by the Soviet Association of Historic and Political Scientists Memorial Organization for "Best Male Role" in the First All-Union Festival of Political Theaters in Moscow (1989). The petitioner provided the translation of an article appearing in *Vechernii Leningrad*, an evening newspaper, which devoted less than three sentences to the petitioner's receipt of the award. While the wording on the certificate suggests that the award might be national in scope, the petitioner has provided no further documentary evidence to show that this award enjoys significant national recognition.

The petitioner also submitted a certificate stating that he received a 1996 Israel Film Institute Award for "Actor of the Year" in the "Short Film Competition." Information from the *Jerusalem Post* web site and various newspaper articles demonstrate the national significance of this award. Therefore, we find that the petitioner has satisfied this criterion.

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 provides evidence of his membership in the Israeli Screen Actors Guild.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. Further, it is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner provided two letters from officials of the Israeli Screen Actor's Guild. A letter from [redacted] Executive Manager of the Israeli Screen Actors Guild, states:

> The Israeli Screen Actors Guild was established on March 17, 2000… It was established after a long term of screen actors cynical abuse by producers & broadcasters, in order to fight for the position & working conditions of Israeli screen actors and in order to promote Israeli original film & television creation.

A letter from [redacted] Chairman of the Guild, states:

> The rules of admission to the guild require the applicant to have proved professional screen acting experience or to be a party to a service agreement for professional appearance on screen. Applicants shall be required to present the guild with a membership application form.

The rules of admission, based on experience or the receipt of an employment contract, do not meet the threshold for "outstanding achievement" in acting. Furthermore, the petitioner has not provided evidence showing that his admission to membership in the guild was evaluated by experts at the national or international level.

On appeal, the petitioner challenges the director's assertion that "[t]he rules and procedures of admission to the Israeli Screen Actors Guild state that merely being a party to a service agreement for professional appearance on screen is sufficient to qualify for membership." The petitioner states: "We welcome you to point out to us where you get the above information regarding membership as it certainly did not come from us." The record, however, clearly shows that this evidence was provided in the letter submitted from Moshe Azoullay, the Chairman of the Israeli Screen Actors Guild.

> *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.*

We concur with the director that the petitioner's evidence satisfies this criterion. The petitioner has been the subject of several articles featured in major Israeli media from 1995 to the petition's filing date.

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

The director found the petitioner to have satisfied this criterion, but we withdraw that finding.

The petitioner submitted several witness letters as evidence under this criterion. We discuss representative examples here. [redacted] owner of Barad Entertainment (Beverly Hills, CA), and former Senior Vice President of Paramount Pictures, states:

> Every once in a while, I encounter someone whom I think is truly unique and whom I believe will find an important niche in the entertainment business. [The petitioner] is one of those artists. He possesses unique talents in performing, acting, singing and dancing. On stage he reaches the most restrained heart, and on film he touches the soul. And he can do it in at least four languages.

[redacted] owner and Chief Executive Officer, Connect Productions (Jerusalem) states:

> The petitioner has performed in productions put together by my company that have been

> staged on three continents... I have also produced video films that have featured [the petitioner] as the main character and his acting talent transferred extremely well to that media.
>
> [The petitioner] excelled both in legitimate theater and on prime time television programming. I have attended a number of plays where he has had a central role and watched all of his television appearances. He is undoubtedly one of the most talented young actors that I have seen.

[redacted] an acclaimed Israeli theatrical performer, states that the petitioner is "one of the most talented, serious, disciplined and professional young actors that have performed in Israel."

[redacted] an executive at ProdAction, Inc., describes her company as "one of the largest television and movie production companies in Israel." She states: "[The petitioner] was chosen out of many Israeli actors for one of the biggest international advertisement projects we handled and shot abroad... We cooperated with the petitioner on many other projects..."

[redacted] Manager of the Formula-Migzarim Group, which she describes as "the biggest advertising company in Israel," states:

> [The petitioner] was frequently employed by our advertising agency in commercials on television, radio, newspaper posters, multimedia posters, and billboards as one of the most talented actors we ever worked with. He was chosen for one of the most expensive campaigns our company ever handled.

The record contains some documentation to support [redacted] statement, including some promotional pieces from Cellcom, the largest cell phone company in Israel, featuring the petitioner predominantly in its advertising.

Additional witnesses from throughout the theatrical, advertising, television, and film industries in Israel detail the petitioner's past activities as a successful performer, but their letters do not indicate that the petitioner's contributions are especially important to his field. The letters submitted generally describe the petitioner as a highly talented actor and performer, but they provide no information regarding how the petitioner's contributions have already influenced the acting field. For example, the petitioner's performances have not been shown to have greatly influenced other successful Israeli actors. The issue here is not the skill level of the petitioner or his successful professional employment, but, rather, whether any of his acting accomplishments would qualify as a contribution of major significance in the acting field. In this case, the petitioner has not demonstrated that his acting performances have been significantly influential within his field. The petitioner may have won a national "Short Film Competition," but such an award does not constitute a "contribution of major significance" in the performing arts.

Despite our finding that this particular criterion has not been satisfied, we do acknowledge that the witness letters and other supporting evidence show that the petitioner has garnered a level of

national acclaim as an Israeli actor.

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

[redacted] Creative Director, Haifa Municipal Theater, states:

> We are the management of the Haifa Municipal Theater, one of the biggest and important stages in Israel. [The petitioner] has been performing in our Theater for three seasons in two plays. He has appeared in the lead role in "The Trumpet of the Valley," the play which has become a hit on all the major stages in Israel, for two years in a row, sold out tickets and storming applause due to the magnificent embodiment of the leading character by [the petitioner]. [The petitioner's] unique drama and comic talent contributed to the success of the play, creative production, and economic benefit of our Theater.
>
> [The petitioner] also appeared in another successful play, "A Hat Full of Rain," by M. Guzzo, where he created another successful character, well received by the audience and highly appreciated by theater critics.

Howard Rypp, Artistic Director, Nephesh Theater (Tel Aviv), states:

> This letter serves to confirm that [the petitioner] has been employed as an actor with our theater company for the past six years. [The petitioner] performed the leading role in Beatrice Hal's play "Tragedies and Miracles." The play was presented over 500 times through the Ministry of Education in Israel with astonishing success... [The petitioner] is one of the top actors in Israel...

[redacted] President, Nava Productions, states:

> Nava Productions is one of the biggest and successful companies for children and youth show productions in the Middle East. We have been producing about twenty shows each year. There are 250 actors, dancers, directors, choreographers, musicians, and stage workers employed in our team. Our shows participate in the important festivals in Europe.
>
> [The petitioner] starred in the leading role in our musical [redacted] and the Apple Tree," that was staged according to the well-known children's book. Right after the rehearsals we knew we had a hit show. Large audiences of children and their parents, as well as theater critics, received the show with excitement and compliments, especially toward the star of the show, [the petitioner]. The show has been running for five years, more than 500 performances, sometimes three to four times a day due to the big requests.

Additional evidence in the record, such as newspaper articles and further witness testimony, support the statements from the above witnesses. Thus, the beneficiary meets this third criterion.

In this case, the petitioner has satisfied three of the lesser regulatory criteria required for classification as an alien of extraordinary ability. Pursuant to the statute and regulations as they are currently constituted, the petitioner qualifies for the classification sought.

In review, while not all of the petitioner's evidence carries the weight imputed to it by the petitioner, the totality of the evidence establishes an overall pattern of sustained acclaim and extraordinary ability. The petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in the field of acting. The petitioner has also established that he seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.