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U.S. Department of Homeland Security

Citizenship and Immigration Services

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AMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass., 3/F
425 I Street, N.W.
Washington, D.C. 20536

[redacted]

File: WAC 02 254 54529 Office: California Service Center Date: SEP 29 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:

[redacted]

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 Citizenship and Immigration Services (CIS) 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 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 she has sustained national or international acclaim at the very top level.

This petition, filed on August 9, 2002, seeks to classify the petitioner as an alien with extraordinary ability as an "actress/screenwriter for motion pictures, television, and theatres." 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, counsel claims, meets the following criteria.

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 submits letters confirming her membership in the Screen Actor's Guild ("SAG") of America and the British Academy of Film and Television Arts/Los Angeles (BAFTA/LA).

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.

According to information provided by the petitioner from SAG's website, an individual may become a member of SAG under one of the following conditions:

> Performers may join SAG upon proof of employment or prospective employment within two weeks or less by a SAG signatory company. Employment must be in a principal or speaking role in a SAG film, videotape, television program or commercial.
>
> Performers may join SAG upon proof of employment as a SAG covered background player at full SAG rates and conditions for a minimum of three workdays subsequent to March 25, 1990.
>
> Performers may join SAG if the applicant is a paid-up member of an affiliated performers' union for a period of one year and has worked at least once as a principal performer in that union's jurisdiction.

Payment of "an initiation fee of $1,310.00" is also required.

SAG's rules of admission, based on employment, prospective employment, or membership in an affiliated performers' union and payment of a fee, do not meet the threshold for outstanding achievement in acting or screenwriting. Furthermore, the petitioner has not provided evidence showing that her admission to membership in the guild was evaluated by experts at the national or international level.

According to information provided by the petitioner from BAFTA/LA's website, its membership is open to:

> Any British citizen or person born in the United Kingdom of Great Britain or the Republic of Ireland or the Commonwealth who has been engaged in the film, television or allied

> industries for a period of not less than three years and is dedicated to the purposes of this corporation, and is approved by the Board of Directors.

Payment of a "one-time administrative fee" of $75 and annual dues of $250 is also required.

The director found that BAFTA/LA's rules for admission, based on employment experience and payment of a fee, did not require outstanding achievement.

The record also contains two letters from [redacted] Executive Director of BAFTA/LA. His first letter, dated January 16, 2002, states:

> This letter is to confirm that [redacted] member #1417, has been a member of BAFTA/LA since June 1999. She was elected by our Council for her substantial creative contribution to film and television in England and the United States.

In response to the director's request for further evidence, Mr. [redacted] submitted a second letter, dated February 17, 2003, stating:

> [redacted] was invited to become a "Voting Member" of BAFTA/LA in June 1999. This invitation was due to her brilliant creative contribution, excellence and experience in both her acting and writing to film and television in England and the United States for over three years. "Voting Members" are chosen on the basis of their significant contributions to the entertainment industry. They are invited to vote for the prestigious Orange BAFTA Film Awards in the United Kingdom, the "British Oscars," equivalent to the American Academy Awards in the United States.
>
> Our Board is comprised of national and international experts in the field of film and television. Our Board recognized Jacqueline's contribution to the industry and approved her to become a voting member of BAFTA/LA.
>
> [redacted] member number is 1417. There are approximately 1,000 voting members of BAFTA/LA.

Mr. [redacted] letter does not specifically identify the petitioner's contributions that led to her selection as a "Voting Member."

On appeal, counsel states: "The denial decision recites the requirements for routine membership in BAFTA/LA. However, Mr. [redacted] letter explains in detail that [the petitioner] is not simply a routine BAFTA/LA member; she is a 'Voting Member'- something quite different from the usual membership."

It is worth noting here that BAFTA/LA's website provides no distinction between "Voting Membership" and routine membership, nor does it include any description of "Voting Membership" status. Mr. [redacted] issued his second letter only after it was determined by the

director that his first letter was insufficient to satisfy this criterion. Given that his initial letter makes no mention of the petitioner's "Voting Membership" status, we find that without first-hand documentary evidence showing the distinction between these two forms of membership, such as the BAFTA/LA's actual bylaws or its published official membership requirements, the petitioner has not provided sufficient evidence to support the assertions of Mr. [redacted] We cannot ignore the statutory demand for "extensive documentation" set forth in section 203(b)(1)(A)(i) of the Act.

It is further noted that the petitioner's membership was evaluated by BAFTA's Los Angeles branch, which, according to Mr. [redacted] has "approximately 1000 voting members." Mr. [redacted] does not indicate how many of BAFTA/LA's members are non-voting or "routine" members, nor has it been explained how BAFTA's Los Angeles branch fits in with the overall BAFTA organizational structure. Furthermore, the membership statistic provided by Mr. [redacted] does not include BAFTA membership data from outside of the Los Angeles organization; therefore, the record lacks information showing the total number of BAFTA's worldwide voting members.

> *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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted a total of four articles, none of them devoting more than a single sentence to the petitioner. The plain wording of the regulation, however, requires the petitioner to submit "published materials about the alien," and articles that barely even mention the petitioner would not satisfy this criterion. Involvement in an event, such as theatrical production, that, as a whole, merits some local media coverage is not sufficient to demonstrate the petitioner's individual national or international acclaim. Finally, it has not been demonstrated that publications such as *The Tolucan Times*, *Backstage West*, and *The LA Weekly* rise to the level of major national media.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

We withdraw the director's finding that the petitioner's evidence satisfies this criterion.

The petitioner initially submitted a letter from [redacted] Chairman, Santa Monica Film Festival,

stating that the petitioner "was asked to serve as a judge in the Best Actor category" of the 2002 festival. The record, however, contains no first-hand evidence to confirm the petitioner's actual participation as a judge in the 2002 festival.

In response to the director's request for evidence, the petitioner submitted a letter from [redacted] Director of the Santa Monica Film Festival and Deep Ellum Film Festival, stating:

> Each year we invite some of the very top professionals in the entertainment industry to judge the films that we screen in competition. Past judges have included heads of studios, producers of blockbuster movies, as well as some of the biggest stars in the business. In light of Jacqueline Harris' brilliant body of work we were honored that she agreed to join our 2003 panel of judges whose responsibilities included selecting award winning films, directors, producers, screenwriters and actors for the festival.

The response also included an event program for the Santa Monica Film Festival (February 13-16, 2003) listing the petitioner as one of seventeen members on the judging committee. Neither counsel, the petitioner, nor Mr. [redacted] specifically identify who among the sixteen other members of the judging committee are "heads of studios, producers of blockbuster movies, [or] some of the biggest stars in the business." The record also contains a program from the Deep Ellum Film Festival (October 22-26, 2003), but no listing of its judges was included. The evidence from the 2003 film festivals came into existence subsequent to the petition's filing. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which CIS held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. Even if we were to consider the petitioner's participation in the Santa Monica Film Festival, the national significance of this event has not been established. For example, it has not been shown that the Santa Monica and Deep Ellum film festivals enjoy a level of national attention comparable to the Sundance Film Festival. The petitioner has offered no documentary evidence of national or international publicity surrounding the film festivals in which she served as a judge.

Also submitted was a letter from [redacted] Executive Director of the British Academy of Film and Television Arts/Los Angeles, stating:

> "Voting Members" are chosen on the basis of their significant contributions to the entertainment industry. They are invited to vote for the prestigious Orange BAFTA Film Awards in the United Kingdom, the "British Oscars," equivalent to the American Academy Awards in the United States.

The record includes two "Voting Papers" that bear the heading "The 55th Orange British Academy Film Awards." The two ballot sheets contain a checklist of nominations for various award categories such as Best Screenplay (Original) and Best Performance by an Actress in a

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[1] This individual should not be confused with the renowned British actor [redacted] who would undoubtedly qualify as an actor of extraordinary ability.

Leading Role. Review of the ballot coversheets reveals a notable discrepancy. While both coversheets bear the heading "The 55th Orange British Academy Film Awards," the due dates for returning the ballots to the independent auditor KPMG are more than a year apart. One states that the voting papers should "arrive no later than Tuesday, January 21, 2002," while the other states that the voting papers should "arrive no later than Thursday, February 6th 2003." It would be expected that the most recent voting ballot would bear a sequential heading such as "The **56th** Orange British Academy Film Awards" rather than the 55th. The petitioner has not resolved this inconsistency in her documentary evidence.

Notwithstanding the above, we find that the simple act of "voting" from a nomination ballot issued to several thousand other entertainment industry professionals would not carry the same evidentiary weight as, for example, serving on the elite committees that select Oscar (Academy Award) and Orange BAFTA Award nominees. Without evidence that sets the beneficiary apart from almost all others in her industry, we cannot conclude that the beneficiary's evidence satisfies this criterion. The evidence presented here fails to demonstrate the petitioner's sustained national or international acclaim as an actress or a screenwriter.

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

The petitioner submitted several witness letters, mostly from individuals who have collaborated on various productions with the petitioner. The witness letters provided describe the petitioner as a talented actress, but they provide no information regarding how the petitioner's individual contributions have already influenced the theatrical field or the radio, film, and television industries. For example, the petitioner's performances have not been shown to have greatly influenced other successful American or British actors/actresses or screenwriters. The issue here is not the skill level, professional experience, or dedication of the petitioner, but, rather, whether any of her past endeavors would qualify as a contribution of major significance in her field. In this case, there is no evidence showing the extent of the petitioner's influence on other professionals in the entertainment or advertising industry.

[redacted] President of Darkwood Productions, states:

> [My company] produced "The Green Mile," starring Tom Hanks, which was nominated for four Academy Awards, including Best Picture. It has grossed over $350 million world-wide. I served as an Associate Producer on "The Majestic," starring [redacted] and I am also an actor and producer....
>
> I recognize in [the petitioner] an extraordinary talent. She is a remarkable actress and her willingness to go that extra mile makes her a pleasure to work with and really shows her dedication to her craft and devotion to the industry.

[redacted] letter does not identify the exact nature of the petitioner's work for her company or indicate that the petitioner starred in any leading roles comparable to those of [redacted] or

[redacted] nor does it describe how the petitioner's work has already influenced the industry.

The witnesses' general descriptions of the petitioner's acting talent fail to distinguish the petitioner's work as far superior to that of other professionals in the entertainment industry. Reputation by association cannot suffice to establish that the petitioner herself enjoys national or international acclaim. We acknowledge that the witness letters submitted by the petitioner are from impressive experts whose opinions are important in the entertainment and advertising industry. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of this petition would carry greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. While the petitioner has attracted the favorable attention of some prominent individuals in the entertainment field, a simple comparison of their achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment placing her at or near the top of her field.

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

Counsel states: "[The petitioner] has either written for, or performed in plays that have been screened and showcased in major theatres throughout the United Kingdom and the United States..."

The wording of this criterion, however, strongly suggests that it is intended for visual artists, such as sculptors and painters, rather than playwrights or actresses. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Given that the petitioner's writing and acting is closely linked with the film industry, theatrical performance, and television broadcasting, the petitioner would not satisfy this criterion simply by demonstrating that her work has been featured in a theater production, in the broadcast media, or at an arts festival. The petitioner in this case must demonstrate that her performances or screenplays have consistently been the centerpiece of major productions at prestigious venues. Such a standard must be met for the petitioner to establish that she enjoys sustained acclaim near the top of her field.

Although the petitioner has submitted evidence of ensemble performances in theaters in London and Los Angeles, as well as some non-recurring television appearances, it does not follow that she has sustained national or international acclaim at the very top level. The petitioner has not submitted evidence of any individual performances that would satisfy this standard. Should CIS accept the appearance of an artist in an ensemble performance as satisfying this criterion, then it would follow that any actress who appeared in a group performance would satisfy this criterion for extraordinary ability, regardless of her role. Eligibility for this visa classification must rest on the petitioner's individual achievements, rather than relying on the petitioner's performance as one of many castmembers in a play or some other type of production.

On appeal, counsel cites a letter from [redacted] Director and Producer of Firehead Films and the Firehead Mythological Radio Players. [redacted] states:

> I hired [the petitioner] for her phenomenal acting talent and beautifully evocative voice to narrate and perform in seven classical radio plays, which I was producing.... The success of these plays led to an invitation from the Pacifica Radio Network to air these plays every week....
>
> These plays continued to receive national acclaim, which resulted in an invitation from the prestigious Smithsonian Institute in Washington, D.C. to be part of a historic educational program for schools and the general public. These memorable performances are all available on compact disc, and are selling on popular demand at the gift shop at The Smithsonian.

No specific details about the "historic educational program" were provided. Nor has the petitioner submitted evidence showing how the radio plays were on "display" to the public at The Smithsonian (rather than simply being available for purchase in one of its gift shops). The record contains no statement from any Smithsonian official deeming the radio plays to be of national significance or explaining how the petitioner's performance in the plays places her at a level above almost all other professional actresses. Display of the alien's work for purposes of sale in a gift shop carries significantly less weight than does museum display, strictly for the purposes of public viewing. The petitioner has not shown the extent to which her radio plays enjoy a national reputation or that involvement in the Smithsonian's educational program was a privilege extended to only top actresses in her field. Finally, with regard to the compact disc jackets that were submitted, the petitioner offers no evidence regarding the commercial success of her radio plays in the form of documented compact disc sales.

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

In order to establish that she performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel argues that the petitioner has played a leading or critical role on NBC's television series "The West Wing" and for International Creative Management, Inc., a talent agency that represents the petitioner.

The petitioner submits a letter from [redacted] Executive Producer of "The West Wing," an Emmy Award-winning television program. He states:

> I personally cast [redacted] to appear in an episode of "The West Wing" because of her extraordinary acting talents, her originality, and history of rendering unforgettable performances.... Furthermore, I can state without hesitation that her contributions made to "The West Wing" episode she appeared in were critical and significant to the artistic integrity and success of the show.

According to the Warner Brothers Television call sheet submitted by the petitioner, the episode in which she participated was not shot until February 6, 2003. *See Matter of Katigbak, supra.* As stated earlier, new circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. Even if we were to consider the petitioner's participation in a single episode of "The West Wing," it has not been shown that the petitioner played a leading or critical role in the same manner as stars [redacted] for example. Unlike their roles, the petitioner's role in the series was minor and non-recurring. We agree with counsel that "The West Wing" enjoys a distinguished reputation, but it is immediately apparent that the important role of many of its regular cast members far exceeds the petitioner's limited contribution.

Also submitted was a letter from [redacted] Head of Animation and Voice-Over Agent, International Creative Management ("ICM"), dated April 25, 2003. He states:

> International Creative Management, Inc. is simply the single largest international agency in the world. The company is a cornerstone in the entertainment community... Our clients include actors such as [redacted] and many others. Industry publications commonly refer to ICM as "the most powerful agency in Hollywood." The fact that [the petitioner] was the only actress the Starbucks organization was willing to consider represents compelling evidence of [the petitioner's] standing at the very forefront of her field.
>
> * * *
>
> Last week, Starbucks corporate offices, one of our most important accounts, called and specifically requested that the petitioner play a lead role in an upcoming advertising campaign.

The event regarding Starbucks came into existence subsequent to the petition's filing date. *See Matter of Katigbak, supra.* Even if we were to consider the assertions in Mr. [redacted] letter, the record contains no evidence of a contract involving the petitioner and Starbucks, nor has it been shown that the petitioner commands unusually large sums of money for her services when compared to ICM's top clients.

Documentary evidence contained in the record confirms that ICM enjoys a distinguished reputation in the entertainment industry. However, we reject counsel's assertion that the petitioner, a client of ICM, plays a leading or critical role for that organization. The record contains no evidence to establish that the petitioner has ever been employed by, supervised, or overseen other individuals within ICM. Further, the record does not indicate the extent to which the petitioner has consistently exercised substantial control over creative or business decisions executed on behalf of the company. Finally, the record contains no evidence showing that the petitioner, age thirty-four at the time of filing, has achieved a level of success comparable to that of [redacted] (other actors/actresses represented by ICM).

Counsel has cited the approval of the petitioner's O-1 nonimmigrant visa petition as evidence that she has already been found to be an alien of extraordinary ability. Extraordinary ability in the arts in the non-immigrant context means distinction, which is not the same as sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes nonimmigrant O-1 criteria less restrictive for a petitioner in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel the Service to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or case law that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien already holds an O-1 nonimmigrant visa.

The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every actress who has performed on stage or in the broadcast media, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. In this case, the petitioner has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself as an actress/screenwriter 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 the 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.