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U.S. Citizenship and Immigration Services

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APR 23 2004

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) 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. The petitioner's motion to reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 March 19, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an 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.

Counsel asserts that the director incorrectly stated that the petitioner must establish sustained national and international acclaim, thus imposing a higher standard than that required by the statute. Counsel misreads the

director's decision. The director states that on her petition, the petitioner indicated she is seeking visa classification preference as an actress of extraordinary ability who has sustained national or international acclaim. Although the director indicated that acting is an international field of endeavor, his decision analyzed the petitioner's evidence to determine whether she had established national *or* international acclaim. We concur with the director's determination that the petitioner's evidence does not establish that she has met at least three of the regulatory criteria indicating sustained national or international acclaim.

Through counsel, the petitioner submitted evidence that, 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.*

The petitioner claims to meet this criterion based upon her receipt of a Daytime Emmy honor, as a semi-finalist in the YTV Achievement Awards, and two nominations for a Young Artist Award.

The petitioner submitted a certificate from the National Academy of Television Arts & Sciences and the Academy of Television Arts & Sciences stating that the "1998-1999 DAYTIME EMMY AWARDS Honors the petitioner for her contribution to the "Emmy Award-winning program Arthur." Although the certificate indicates that the television program *Arthur* won an Emmy, the evidence does not indicate that the petitioner won an Emmy award. The evidence also does not establish that a certificate of honor by the Daytime Emmy Awards is a nationally or internationally recognized award.

The petitioner also submitted a 1999 letter from "Yaa! Achievement Awards" informing her that she has been chosen as a semi-finalist in the acting category at the 11th Annual YTV Achievement Awards.[1] The petitioner does not submit evidence that she won in the acting category, as required by the criterion.

The evidence shows that the petitioner was nominated for a "Young Artist Award" in 2003 for her performance as part of an ensemble cast on *American Dreams*. She was also nominated for a "Young Artist Award" in 2001 for best performance in a TV movie (comedy). In neither case did the petitioner win the award and her nominations do not constitute receipt of an award as required by this criterion. The petitioner was submitted for consideration of a nomination for a Gemini Award in 1999 and 2000. Consideration for nomination for an award also does not satisfy the requirements of this criterion.

The petitioner submitted a letter from Mr. Paul Ward, Senior Vice President of Communications at TV Land, stating that the show in which the petitioner co-starred was named a recipient of the 2002 TV Land Future Classic Award. Although the petitioner and her fellow co-stars received the tokens of the award, the winner of the award was the TV show, and not the petitioner. Further, the evidence does not establish that the TV Land award is a nationally or internationally recognized award for excellence.

A letter from Helen Harris, President and Founder of The Vision Awards, notifying the petitioner that she has been selected as a recipient of 2003 Vision Award "to celebrate [her] own very special vision and [her] participation in the wonderful TV show ***American Dreams***" was submitted as evidence of this criterion. The

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[1] YTV is described in its website, www.YTV.com, as a Canadian specialty network not available outside of Canada.

letter from Ms. Harris indicates that the Vision Awards have existed for approximately 25 years and "concentrates its appreciation on individuals and companies who have used their sight, foresight and insight to further the development of the creative arts for the benefit and enrichment of humankind." Despite this, however, there is no further evidence regarding this award, such as the selection criteria, the number of individuals chosen to receive the award in any given year or any other indication that this is a nationally or internationally recognized award for excellence in the field.

On appeal, the petitioner submits a letter from Mr. Barry Adelman, Producer and writer of the "Fifth Annual Family Television Awards," stating that the petitioner and her co-star were "honored" as "Favorite Girlfriends" on the awards show broadcast on August 22, 2003. As this award was subsequent to the filing of the petition for visa classification preference, it cannot be used to establish visa classification eligibility. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Additionally, the record does not establish that the Family Television Awards are nationally or internationally recognized awards for excellence.

No evidence establishes that the petitioner has received a nationally or internationally recognized award for excellence for acting.

> *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.*

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, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner claims to meet this criterion based on her membership in the Screen Actors Guild (SAG). The petitioner submits no evidence of her membership in the SAG, but submits a statement from the General Counsel stating that the petitioner is an experienced television performer and that the SAG has no objection to the petitioner receiving permanent residence status. It is noted that the SAG is a well-known labor union for performers, and does not require outstanding achievement of its members.

The petitioner has submitted no evidence of meeting this criterion.

> *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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted articles from several different media sources, including *Entertainment Weekly*, the *Denver Post*, the *Boston Globe*, the *Los Angeles Times* and *TV Guide*. All of these articles are reviews or schedule announcements of the petitioner's TV show, *American Dreams*. They all name the petitioner as part of the ensemble cast of the show, but none mention her in more than a passing reference to the character she plays. Similar articles about the TV show *Popular Mechanics for Kids* in other print media, such as the *Leader Post*, and the (Montreal) *Gazette*, also discuss the petitioner as part of an ensemble cast. These articles are not primarily about the petitioner and do not satisfy the requirements of this criterion.

An article about the petitioner and her work on *Popular Mechanics for Kids* appears in the August 25, 1999 editions of several Canadian newspapers, including the *Nanaimo Daily News*, the *Journal-Pioneer*, and the *Winnipeg Sun*. The article was repeated in later editions of other newspapers, including the August 26, 1999 edition of the *Prince Albert Daily Herald*, and the August 29, 1999 edition of the *Times-Colonist*. Although this article is about the petitioner, no evidence was submitted to show that the newspapers in which it appeared constitute major media. The petitioner failed to submit evidence that these publications enjoy significant national distribution in Canada. An article that features the petitioner and her role on *Popular Mechanics for Kids* also appears in an undated edition of the *Telegram*. Again no evidence establishes the article as appearing in major media, or major trade or professional media.

An article about the petitioner and her role in a new television show appeared in the September 16, 1998 edition of the *Hudson Gazette*, and an article about the petitioner and another local actress appeared in the June 3, 2002 edition of the (Montreal) *Gazette*. While these articles are also about the petitioner, no evidence is submitted to establish these newspapers have significant national distribution, or constitute major media, or major or professional trade media.

The petitioner submitted copies of DKNY Jeans advertisements in which she was featured with other cast members of the *American Dreams* TV show. These ads appeared in the November 2002 edition of *Teen People*. The advertisements are not published material about the alien and do not satisfy the requirements of this criterion. Announcements of the petitioner's appearances at the William S. Paley Television Festival or the Teddy Bear Ball are not published materials about the petitioner that appeared in major media, or major trade or professional media.

The evidence does not establish that the petitioner meets this criterion.

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

As evidence that she meets this criterion, the petitioner submits letters from various members of the entertainment community who attest to the petitioner's acting skills and talents. Mr. Kurt B. Ford, Vice

President of Production Services at the National Broadcasting Company, Inc. (NBC), states that the petitioner is one of the stars who plays a "major role" in the success of the *American Dreams* TV show. The letter from the SAG also states that the petitioner contributed "significantly" to the show's success. Dick Clark writes that her contribution to the program is "invaluable."

Others in the entertainment industry describe her as "an extraordinary talent," one whose talent is "rare and unique," and someone "very special." These accolades do not, however, establish that the petitioner has made a contribution of major significance to acting.

Counsel asserts that the petitioner's participation as a panelist at the William S. Paley Television Festival is also evidence that she meets this criterion. Counsel submitted information about the Paley Festival and the petitioner's appearance at the 2003 festival. The festival recognized the history and development of television and its entertainment features. Counsel did not submit evidence that the festival or the petitioner's participation in it constitutes a contribution of major significance to acting or entertainment.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner claims to meet this criterion based on a column she was asked to write for *Seventeen Magazine*. As evidence, she submits two pages from the seventeen.com website. In them, the petitioner states she is acting as the "backstage pass" to the *American Dreams* TV show, and interviews a guest star and her co-star of the show. The petitioner also indicates that she gets to write for her "favorite magazine" and tells readers to "check out [redacted] in the [redacted] issue." There is no evidence of an article or column written by the petitioner for *Seventeen Magazine*, and the evidence of her "backstage pass" to her television show does not constitute a "scholarly article" as required by this criterion.

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

The petitioner initially claimed to meet this criterion based on her performances in various television shows. In response to the director's request for evidence (RFE) dated May 13, 2003, counsel acknowledged that this criterion applied primarily to those in the visual arts, and was not applicable to the petitioner. Counsel does not further address this criterion, and we will not address it on appeal.

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

To establish that she meets this criterion, the petitioner must show not only that she has played a leading role or critical role within an organization or establishment, but also that the organization or establishment enjoys a distinguished reputation.

As evidence of this criterion, the petitioner references her television acting credits, primarily her role in the *American Dreams* television show. The petitioner has not established that the *American Dreams* television show is an organization or establishment within the meaning of this criterion. *American Dreams* is produced by Dick Clark Productions, Inc. and airs on the NBC network. The petitioner would need to establish that the

television show is a distinct and separate organization from Dick Clark Productions, Inc. and the NBC network. Additionally, she would have to show that the television show enjoys a distinguished reputation as evidenced by, for example, critical acclaim such as with an Emmy award or nomination.

The petitioner was part of an ensemble cast on *Popular Mechanics for Kids* and made appearances on various other nationally and internationally televised productions over networks such as YTV, Nickelodeon and Showtime. The petitioner would also have to establish that these shows were separate and distinct organizations, and that they had distinguished reputations as outlined above. The evidence does not establish that these productions or the petitioner's participation in them were of a leading or critical nature to the networks on which they were shown, or to the companies that produced the programs. The petitioner's evidence does not establish that she meets this criterion.

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

In order to establish that the petitioner enjoys national or international acclaim under this criterion, the petitioner must submit evidence that her salary is significantly high in relations to others in television acting.

The record reflects that at the time of her petition, the petitioner was paid $15,000 per episode for her role in *American Dreams*, with scheduled annual increases to $16,538 per episode by the broadcast year 2004/2005. The petitioner submits no evidence of how her salary compared to that of others in the field. While her salary appears to be high, it is well below the well-publicized salaries of stars of shows such as *Friends* and *Mad About You*, or in a business where salaries of $25,000 per episode are not uncommon. The petitioner submits no evidence that her salary is significantly high in relation to other high earners in the field. Her salary does not indicate that she is an actress of extraordinary ability in relation this criterion.

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

As evidence of this criterion, counsel refers to an article in the *Pittsburgh Post-Gazette* stating that *American Dreams* made a "Nielsen splash when it debuted." Counsel submitted several copies of an article that appeared in the September 29, 2002 edition of the *Pittsburgh Post-Gazette*, none of which contain the language specified by counsel. Counsel submits no evidence of the actual Nielsen ratings of the show, and the reviews by critics appear to be mixed. Counsel also submits photographs of the petitioner in her various roles. However, the photographs do not establish that she has been a commercial success. No evidence of record supports this criterion.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." [emphasis added]. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be

established by the 10 criteria specified by the regulation. However, we will briefly address other evidence the petitioner has submitted.

As noted above, the petitioner submitted letters from several individuals, including casting directors, producers and directors, attesting to her acting talents and skills. The petitioner's acting credentials were also "evaluated" by the executive director of the University of Washington, School of Drama. After reviewing the petitioner's documentation, Ms. concludes that the petitioner is an actress of extraordinary ability. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information, CIS is not required to accept the opinion or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm., 1988). We acknowledge Ms. Nash's comments, however, her interpretation of the evidence presented is not in accord with the statute, regulations or prior AAO decisions. CIS cannot defer to "expert" witnesses and abrogate its statutory responsibility to grant visa preference classification only to those who establish through extensive documentation that they are aliens of extraordinary ability as demonstrated by sustained national or international acclaim. The evidence presented by the petitioner does not establish that she meets this statutory requirement.

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 her 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 is a talented young 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.

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.