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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 24 2004

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:

SELF-REPRESENTED

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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. Specifically, the director concluded that the petitioner did not meet any of the ten regulatory criteria, at least three of which must be met to establish eligibility.

On appeal, the petitioner simply reaffirms that she meets at least five of the regulatory criteria and submits more testimonials providing general praise of her abilities.

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 Citizenship and Immigration Services (CIS) 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 seeks to classify the petitioner as an alien with extraordinary ability as a vocalist and 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 that, she 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 director concluded that the petitioner's memberships were not qualifying as they did not require outstanding achievements of their members. On appeal, the petitioner simply asserts that she submitted evidence to meet this criterion. The petitioner submitted evidence of her membership in the Alliance of Canadian Cinema Television and Radio Artists (ACTRA). As evidence of ACTRA's membership requirements, the petitioner submitted information that provides:

> Membership in ACTRA is open to any performer who has enrolled in the Apprentice Membership Program and has attained six professional engagements under ACTRA jurisdiction, or has, in recognition of the barriers confronting the disabled and members of visible minorities, three professional engagements under ACTRA jurisdiction, or has membership in a sister organization.
>
> Performers who have assembled a recognized body of work, may also apply for membership based on professional reputation.

The petitioner also submitted evidence of her membership in the Canadian Actors' Equity Association. The materials regarding the association reveal that membership can be obtained by being offered an Equity contract or by performing in a set number of shows through their apprenticeship program.

Being offered a contract by an employer simply demonstrates an ability to work in the acting field. It is not an outstanding achievement in one's field. Moreover, actors can also obtain membership in both entities through an apprenticeship program. Again, taking part in an apprenticeship program is not an outstanding achievement. Professional union membership that is required to be successful in the field cannot serve to meet 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.

The director concluded that the published materials submitted were not primarily about the petitioner. On appeal, the petitioner simply asserts that she has submitted press articles.

The petitioner submitted several reviews of her performances in various Canadian newspapers. While the one or two lines of the reviews devoted to the petitioner's performances are always quite favorable, the reviews are primarily about the shows themselves, and not the petitioner. Moreover, many of the articles appear to have been published in local papers. Thus, they cannot serve to meet this criterion.

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.

The petitioner submitted a letter from Nathen Shandler, head of the production team for Tong Louie Orchestra in Vancouver. Mr. Shandler asserts that the petitioner was a featured soloist for their shows and subsequently served on a two-day panel evaluating the auditions of prospective performers for the orchestra. In addition, the

petitioner submitted evidence that she taught music to young children, ages three to eight at the Carillon Music Academy.

The director questioned the significance of the letter from Mr. Shandler and concluded that the review of student work inherent to teaching cannot serve to meet this criterion. On appeal, the petitioner simply reiterates that she submitted evidence relating to this criterion.

A single local request from a former employer to assist with auditions is not indicative of national or international acclaim. Moreover, we concur with the director that instructing young children is not the type of judging the work of others in the field contemplated by the regulation.

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

The petitioner no longer claims to meet this criterion on appeal. We note that initially the petitioner submitted several letters from respected members of the field who all provide high praise of the petitioner's abilities. The authors include Kristen Reichert, a "V.J." for MTV Italy/Europe who was introduced to the petitioner during a trip home to Canada; Krista Sutton, who cast the petitioner in Canada's revival of *Godspell*, Warren Helms, Voice Faculty at Julliard, Canadian talk radio hosts who have had the petitioner on as their musical guest, and others who have worked with the petitioner as collaborators, voice coaches, and producers. While all of the letters are highly complimentary, they do not explain how the petitioner has changed the industry or otherwise made a contribution of major significance. Thus, we concur with the director that the petitioner does not meet this criterion.

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

The petitioner submitted several publicity photographs and posters of her performances. The director concluded that this criterion relates to the visual arts. The petitioner does not contest this conclusion on appeal. We concur with the director. The petitioner has not established that stage performances are comparable to artistic exhibitions or showcases. We note that the regulations include a criterion relating to leading or critical roles and commercial success in the performing arts. We will consider those criteria below.

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

The petitioner submitted several letters, newspaper reviews, and publicity photographs and programs evidencing her performances. Specifically, the petitioner performed in the Georgian Theatre Festival's revival of *Godspell*. We acknowledge the ensemble nature of the cast and conclude that the petitioner's role, including the solo rendition of "Day by Day" constitutes a leading or critical role. The record, however, contains little documentation regarding the national reputation of the festival or the Bathurst Street Theater at which it was performed. The petitioner also appeared as Snow White in *Snow White and the Evil Desmar* performed at Toronto's Young People's Theatre and the Brampton's Lester B. Pearson Theatre. While we do not question that this was a leading role, once again, the record contains little information regarding the theatres' national reputations or the producer, Children's Hour Productions. Further, the petitioner portrayed Orpah in *Jesus Christ Superstar* at the Theatre Under the Stars and several small parts in *A Christmas Carol* at the Harbourside

Playhouse. The record contains no information regarding these theaters and the petitioner does not appear to have had leading or critical roles in these productions.

As a student at the Vancouver Academy of Music, the petitioner performed in *Street Scene*. A review identifies the petitioner as having one of the largest roles. Nevertheless, we cannot conclude that a student production can serve to meet this criterion.

In addition to acting and singing in musicals, the petitioner has also performed as a vocalist. Specifically, the petitioner has been the featured musical guest on CFRB 1010 talk radio, performed as half of a duo at the Rotary Club of Toronto's 400-person Christmas party, and sung at the Metropolitan Community Church of Toronto and Holy Joe's. The petitioner has also sung in the Douglas College Choral Society and the Vancouver Cantata Singers. While the petitioner submitted some information regarding the local reputation of the Vancouver Cantata Singers, the petitioner was only one of several sopranos. On Christmas Eve 2001, the petitioner performed at the Roy Thomson Hall presented by the Metropolitan Community Church of Toronto. Of all of these locations, the petitioner claims only that the Roy Thomson Hall has national prestige. Nevertheless, as stated by the director, the record does not reflect that singing at one event at this location constitutes playing a leading or critical role for the theatre.

The petitioner also performed in *Thunder Baywatch* at the Tim Sims Playhouse at Second City and *Rain Dogs* at the Second City Playhouse. In response to the director's request for additional documentation, the petitioner referred the director to the Second City Theatre's website as evidence of its prestige. While it is the petitioner's burden to provide the evidence supporting her eligibility, we have reviewed that website. Our review reveals that two books have been authored about this theatre and its history of producing comedy stars. Nevertheless, the petitioner has not established that performing at this theatre is indicative of having already attained national acclaim, as opposed to being a good place to be noticed by casting directors.

In addition, at the time of filing, the petitioner was a cast member in a production of *British Invasion* at Stage West, a dinner theatre venue. Karmen Balla, Public Relations and Marketing for the company, asserts that it owns two dinner theatres, produces five shows a year, and recruits the best talent in Canada and the United States. On appeal, Howard Pechet, Executive Producer for Stage West Theatre Restaurants asserts that they "employ many U.S. theatre, movie and television personalities." The record contains no programs or other promotional materials for Stage West confirming the caliber of the actors who perform there.

While the evidence may be somewhat more persuasive regarding this criterion, even if we concluded that the petitioner minimally meets this criterion, it is only one criterion. For the reasons discussed above and below, the petitioner falls far short of meeting any other criterion.

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

Linda Googh, Vice President and Creative Producer for Rainbow Creative Concepts, asserts that the petitioner was paid $400 for a four-minute song at an event for the talent agency's clients. Ms. Googh asserts that this amount "is above and beyond what the average vocalist would make for that time period." The director noted the lack of documentation regarding the petitioner's annual earnings. The petitioner no longer claims to meet this criterion on appeal and we concur with the director. A single payment "above average" for a single one-night event is insufficient evidence to meet this criterion. Moreover, in order to meet this criterion, the remuneration

must be more than "above average," it must compare with the most experienced and acclaimed members of the field.

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

While the director acknowledged that the petitioner had appeared on compact discs, the director noted the lack of evidence of their success. On appeal, the petitioner simply reiterates that she submitted evidence relating to this criterion. We concur with the director that the record lacks evidence relating to the sales of her compact discs.

The petitioner, however, also submitted other evidence relating to this criterion. Specifically, the petitioner submitted a letter from Peter Lebuis, Executive Director of Unity Toronto. He asserts that the petitioner's reputation resulted in sold out performances for the 485-seat concerts Unity Toronto presents. In addition, Domenic Chiaromonte, owner/manager of Holy Joe's, "one of the biggest and most well-known" performance spaces in Toronto, asserts that the petitioner's performances are always sold-out. These letters cannot serve to meet this criterion without evidence establishing the national significance of these venues.

Finally, we acknowledge the numerous letters in the record. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3), however, reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. For the reasons stated above, the unsolicited materials in the record are not indicative of or uniquely consistent with national or international acclaim.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a vocalist/actress to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a vocalist/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.