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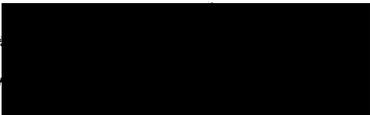


U.S. Citizenship
and Immigration
Services

B2



FILE: SRC-03-057-51651 Office: TEXAS SERVICE CENTER Date: **SEP 30 2004**

IN RE: Petitioner: 
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:



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

to Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 he 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 singer/songwriter. 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.

In response to the director's request for additional documentation, the petitioner submitted photographs of the following awards issued to the petitioner and his group, [REDACTED] the 2000 South Florida HME award for best CD presentation, a 1998 award as [REDACTED] and two plaques of unknown significance.

The petitioner also submitted a June 30, 2003 letter from Jimmy Jacques, President of the Haitian Cultural Society of the Palm Beaches (HCSPB), advising the petitioner of his selection for the HCSPB Achievement Award. This letter is dated after the date of filing. Finally, the petitioner submitted a 1994 honorable mention for the NAIRD Indie awards and evidence that the cover of one of his earlier albums one a 1997 Indie award for best cover design.

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.

Most of the evidence submitted initially related to this criterion. The petitioner submitted promotional blurbs and reviews of the petitioner's performances and festivals where the petitioner's group headlined, some of which appeared in such major publications as *Rolling Stone*. Of the dated reviews, almost none are more recent than 1996. The only exception is a November 2000 article in the *Haiti-Observateur* promoting the petitioner's new album, *Zinga*. The advertisements in this publication suggest it is a local New York paper. In response to the director's request for additional documentation, the petitioner submitted additional reviews from 1995 through 1997. Finally, the petitioner submitted articles posted at www.sobs.com/pressroom/pressroom.html. While more recent, the articles appear to have been originally published in New York publications. Moreover, the text of many of the articles is nearly illegible.

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

Initially, the petitioner submitted documentation of royalties paid to the petitioner during 1994 through 1998. In response to the director's request for additional documentation, the petitioner submitted a letter from Judith Joiner, Director of Public Relations at [REDACTED] Records, asserting that two of the petitioner's albums issued in 1995 and 1996 sold a total of 20,000 copies.

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.

The director concluded that the petitioner had not established the significance of his awards,¹ that the sale of 20,000 albums was not significant, and that the record lacked any evidence that the petitioner sustained any acclaim he may have had in the mid-1990's.

On appeal, the petitioner submitted a March 26, 1994 letter from John Jube Altino, Vice President of SOBS Records, Inc., asserting that *Zinga* was a successful album and that the petitioner performs at SOBS in New York. Supporting the letter is a contract for a two-hour performance at SOBS for \$5,000. In addition, Alex [REDACTED] in Valley Stream, New York, asserts that [REDACTED] has "endorsed" the petitioner, released one of the petitioner's songs, and "featured [the petitioner] as one of the main acts in our show 'Haiti's bicentennial celebration' in Flushing, New York." Finally, [REDACTED] asserts that the petitioner will be featured "on our upcoming compilation CD." Further, the petitioner submitted a March 29, 2000, letter from [REDACTED] Augustin, President of the Pan-African Association, asserting that a musical group registered in Illinois is

¹ The director also dismissed the Indie award as relating to the ability of the cover designer, not the petitioner.

negotiating with the petitioner to perform at the Old Town School of Music in Chicago. Finally, the petitioner submits evidence that he has been performing during the past few years.

Regarding the evidence of the petitioner's accomplishments in the mid-1990's, we concur with the director that much of that evidence is not uniquely consistent with national acclaim. While some of the earlier published material appears in prominent publications, it is mostly promotional rather than independent journalistic coverage. The *Rolling Stone* article is primarily about the festival where the petitioner headlined, as opposed to the petitioner himself. The number of albums sold and the royalties received by the petitioner have not been demonstrated to be significant.

Regardless, we also concur with the director that the record lacks evidence that any earlier acclaim was sustained at the time of filing. Even if the petitioner was still performing at the time of filing, the petitioner must provide evidence relating to the 10 criteria set forth at 8 C.F.R. § 204.5(h)(3) that is indicative of sustained national or international acclaim at the time of filing. Even if we accepted the HME award (the petitioner's most recent accomplishment prior to the date of filing) as significant, the petitioner received this award more than two years prior to the date of filing the petition.

Review of the record does not establish that the petitioner has distinguished himself as a singer/songwriter to such an extent that he may be said to have achieved *sustained* national or international acclaim or to be within the small percentage at the very top of his field at the time of filing. 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.