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**U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]
EAC 05 117 50711

Office: VERMONT SERVICE CENTER

Date: DEC 20 2005

IN RE:

Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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. The director determined the petitioner had not established that he qualifies as an alien of extraordinary ability in his field of endeavor.

On appeal, counsel submits a brief and additional evidence. While not all of counsel's assertions are persuasive, we are satisfied that the petitioner meets at least three of the regulatory criteria.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in U.S. Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary 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 Director of Operations for a Broadway-level theater. The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria

unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

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

The director concluded that the reference letters submitted were primarily from the petitioner's personal acquaintances and that the record did not demonstrate the petitioner's influence on the field to a greater degree than others involved in similar pursuits. On appeal, counsel asserts that others in the field look to the petitioner as a result of his success with the Kimmel Center in Philadelphia, which manages the Academy Theater.

It is not enough that the petitioner be successful in Philadelphia. Rather, he must demonstrate his influence on the field as a whole. The record, however, demonstrates such an influence. First, we note that, unlike the sciences, conference presentations are not inherent to the petitioner's occupation. Yet, the petitioner has served on panels at conferences in his field. [REDACTED] Chairperson of [REDACTED], asserts that the petitioner was chosen as a lecturer because of "his reputation as a highly successful business person in the industry." [REDACTED] Deputy Director of INTLX, asserts that the Association "is grateful to [the petitioner's] contributions to the success of our conferences and the Association." Such presentations are consistent with an influence in the field generally. Moreover, [REDACTED] and [REDACTED] attest to the petitioner's help in development their own production of "The Berenstain Bears On Stage" which will open in Omaha before touring nationally. [REDACTED] General Manager of the Center Theatre Group in Los Angeles affirms that the petitioner's skills are "widely known in our industry." [REDACTED] President and CEO of the TheatreDreams Group of Companies, asserts that the petitioner's "leadership and vision are also helping other independent theatres and producers keep their theatres and cities alive as well."

We concur with the director that reference letters must be supported by objective evidence independent of the preparation of the petition. We note that the record contains several articles in publications that are not local to the petitioner's area of employment that quote the petitioner's opinion on recent theater trends. The petitioner also submitted letters from the journalists affirming that they sought the petitioner's opinion based on his expertise in the field. While we concur with the director that these articles are not "about" the petitioner and, thus, cannot serve to meet the criterion set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(iii), they support the reference letters attesting to the petitioner's influence in the field.

Considering all of the above evidence in the aggregate, we are persuaded that the petitioner has established that he meets this criterion.

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

The director concluded that while the petitioner played a leading role for the Kimmel Center, the petitioner had not established the Center's distinguished reputation nationally. Rather, the director characterized the Kimmel Center as an "up-and-coming" theater. On appeal, counsel asserts that when a Broadway show tours, "only the top venues with the foremost booking executives win these highly prestigious and profitable performances." The record contains an Internet article posted at www.broadwayworld.com, a site that does not appear to have a local focus announcing the Kimmel Center's 2005-2006 season that includes four "spectacular family musicals, including two of Broadway's biggest smash hits." On appeal, the petitioner submitted evidence that in 2004,

“Peter Pan” appeared at the Academy Theater during its 36 theater tour. The Kimmel Center was one of four theaters selling 70 percent of capacity or more. [REDACTED] Vice President for Tour Marketing at Disney Theatrical Productions Ltd., asserts that Disney worked with the petitioner to book “Beauty and the Beast” at the [REDACTED] Center as the last stop on the tour, ensuring that the tour “ended on a successful note.” Mr. [REDACTED] further asserts that Disney booked “The Lion King” with the Center and characterizes the Center as “among the nation’s most prestigious venues for the performing arts.”

We are persuaded by the prestigious shows booked by the Kimmel Center and the opinions of those unaffiliated with the Center that the Center enjoys a prestigious reputation nationally. As such, we are satisfied that the petitioner meets this criterion.

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

The plain language of this criterion, set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(x), limits it to performing artists. That said, the regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence where a criterion is not “readily applicable.” When considering evidence relating to this criterion for a performing artist, it is the petitioner’s burden to demonstrate that the alien is personally responsible for the commercial success of the movie or album and to demonstrate the commercial success with quantifiable data. For example, the petitioner might demonstrate that the alien is prominently featured in the marketing of the movie or album. Thus, in order to constitute comparable evidence, the petitioner must demonstrate that he is personally responsible for the commercial success of the productions at the Kimmel Center. Moreover, the petitioner must submit specific data that supports the claim. On appeal, Janice Price, President and CEO for the Kimmel Center, asserts that the Center “had the highest actual gross sales figures for almost every world-class Broadway musical compared to other major city venues around the nation in 2004.” Ms. [REDACTED] credits the petitioner for this success, and the nature of his job supports that assertion. Specifically [REDACTED] President of [REDACTED], explains:

A presenter, such as [the petitioner], must build and maintain relationships with producers, general managers and booking agents of these shows. Presenters are constantly striving to demonstrate to the producers, managers and bookers that their efforts as presenters will result in a profitable engagement. Additionally, as in the case of the Kimmel Center, they must also show that their efforts will be far superior to their competitors. To that end, the Kimmel Center has been an extremely skillful marketer of both season subscriptions and single tickets. Few performing arts venues have matched their success in recent years.

Ms. [REDACTED] letter is supported by Mr. [REDACTED] letter and statistical evidence demonstrating that only one theater sold a higher percentage of capacity for “Peter Pan” during its 36 theater national tour and that the Kimmel Center significantly exceeded the average capacity percentages for the tour (70 percent for the Kimmel Center as compared to an average 57 percent for the entire tour).

In review, while not all of the petitioner’s evidence carries the weight imputed to it by counsel, 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 his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established 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.