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[Redacted]

FILE: [Redacted] WAC 03 195 54015

Office: CALIFORNIA SERVICE CENTER

Date: JUL 05 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, 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. 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.

On appeal, prior counsel asserted that the director failed to give sufficient weight to the reference letters submitted and failed to address relevant evidence submitted. These assertions will be addressed below. Prior counsel also indicated that a supplemental brief would be submitted within 120 days. Prior to the expiration of that time period, the petitioner obtained new counsel. As of this date, Citizenship and Immigration Services (CIS) has received nothing further from prior counsel. Current counsel submitted a brief relating to a separate petition but CIS has not received a brief from current counsel relating to the instant petition. The appeal will be adjudicated on the record of proceedings.

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 seeks to classify the petitioner as an alien with extraordinary ability as a TV and Film Development and Publicity Consultant. The petitioner provides the following nontechnical description of the job: "publicity and development consultant for TV and film, independent producer/writer." 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.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The director concluded that while the petitioner had demonstrated her association with award winning projects, she had not demonstrated that she was individually recognized or the recipient of any awards personally. Prior counsel does not challenge that conclusion on appeal and we concur with the director's analysis on this issue.

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 union and professional memberships were not the type of exclusive memberships contemplated by this criterion. Prior counsel does not challenge this conclusion on appeal and we concur with the director's analysis. None of the materials regarding the associations of which the petitioner is a member suggest that they require outstanding achievements of their members as judged by recognized national or international experts in their field.

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 her and did not appear in major trade publications or other major media. Prior counsel does not challenge this conclusion on appeal. We concur with the director's analysis on this issue. The only article primarily about the petitioner appears in the *Sunday Mail* in 1988. The record contains no evidence that this publication has a national distribution. Moreover, a newspaper article from 1988 is not evidence of the petitioner's sustained acclaim as of June 17, 2003, the date the petitioner filed the instant petition.

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 director concluded that the petitioner's status as a voting member of associations in her field and her supervisory duties were inherent to her occupation and not indicative of national or international acclaim. Counsel does not challenge this conclusion on appeal and we concur with the director's analysis. The supervisory duties inherent to a managerial position cannot serve to meet this criterion. We will consider the nature of the petitioner's role and the reputation of her employer below. Moreover, more persuasive than the voting privileges granted to all members of the Australian Film Institute would be selection for the exclusive committee that chooses the award nominees.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Finally, while the director did not discuss the petitioner's participation as a judge in the Screen Producers Association of Australia's emerging producer pitching competitions, the record includes little information regarding the significance of this competition, how many judges participate and the selection process for the judges. As such, we cannot determine whether this participation is indicative of or consistent with national or international acclaim. Moreover, it is not clear that judging the pitches is judging the work others *in her field of promotion*. Thus, this participation cannot serve to meet this criterion.

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

The petitioner relies on reference letters attesting to her development of successful programming as Head of Development at Network 10 in Australia. Noting that most of the references had worked with the petitioner, the director concluded that the letters were not sufficiently supported by evidence corroborating the significance of the petitioner's contributions. The director further concluded that the record did not reflect that the petitioner's work "has led to changes in the field, or that it has been used as a training tool by others in the field."

On appeal, prior counsel asserted that the director erred in suggesting that references who have worked with the petitioner are biased. Counsel asserts that the letters are from renowned members of the field and their familiarity with the petitioner allows them to assess her contributions to the field.

In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] an Australian correspondent in the entertainment industry for 15 years, discussing the petitioner's accomplishments as Head of Development at the South Australian Film Corporation and as Head of Development at Network 10. According to Ms. [REDACTED] the petitioner's "aggressive approach in terms of marking the studios, seeking and developing project ideas, offering incentives to the production community and entering into co-venture deals with local and international partners, turned the industry around." Specifically, the industry, previously in a major recession, began working at full capacity. Ms. [REDACTED] further explains that prior to the petitioner's arrival, Network 10 had experienced a takeover and the new individuals in charge found no projects in development. The petitioner had to aggressively commission and develop programs, including the groundbreaking *Heartbreak High* followed by other bold programming decisions that achieved high ratings in both Australia and, in some cases, internationally. Many shows developed by the petitioner are still production after 10 years. Other letters from members of the entertainment industry provide similar information.

We find that the record satisfactorily demonstrates the petitioner's influence on Australian television. The record contains less persuasive evidence of the petitioner's influence after 1996 when she left Network 10. The petitioner's U.S. projects, "The Joy House," "Imagine" and "Breaking the Walls of Silence: A Journey in Human Fertility," were not complete as of the date of filing and, as such, we cannot gauge their impact. As such, the evidence relating to this criterion is not evidence of sustained acclaim as of the date of filing.

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

The director concluded that the typical airing of programs with which the petitioner is affiliated was insufficient to meet this criterion. Prior counsel does not challenge this conclusion on appeal and we concur with the director's analysis.

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 the petitioner meets this criterion and we concur with that conclusion, although the record contains little evidence relating to this criterion after 1996. Even if we accepted that the petitioner meets the contributions criterion and this criterion despite the lack of recent evidence relating to these criteria, for the reasons discussed above and below, the record falls far short of establishing that the petitioner meets a third criterion.

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

Initially, prior counsel asserted that the petitioner was "one of the highest paid female executives in Australia" while Head of Program Development at Network 10. In response to the director's request for additional evidence, the petitioner submitted evidence of the following gross income in Australian dollars: \$83,983 in 1995, \$82,663 in 1996. In 1994, the petitioner's taxable income was \$58,418. The director concluded that the petitioner had not established that she received a significantly high remuneration in relation to others in the same occupation.

On appeal, prior counsel asserted that the petitioner submitted statistical charts reflecting that she was one of the highest paid female TV executives in Australia. Prior counsel further asserted that the director failed to mention this evidence.

In addition to evidence of her own salary, the petitioner submitted advertisement for an AusFilm commissioner in Los Angeles at a salary of \$100,000, Chief Executive for Screen West in Australia with a salary range of \$91,299 - \$98,163 (presumably Australian dollars), Director of Production Development in Australia with a salary range of \$79,687 to \$86,553 (presumably in Australian dollars) and Children's Series Producer - Television in Australia at a salary of \$100,000 (presumably in Australian dollars). These salaries reflect that the petitioner's salary was within the normal range for her occupation. The petitioner also submitted income distribution charts for the entire television services industry. This data is simply not useful in evaluating the petitioner's remuneration for her specific occupation. More specifically, it is not useful to compare the petitioner's remuneration with those working in menial technical positions in the television industry. Thus, we uphold the director's ultimate conclusion that the petitioner has not established that she 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.

Prior counsel asserted that the petitioner meets this criterion based on the longevity of the television series she promoted or approved for development. The director concluded that other than the reference letters, the record contains no evidence that the petitioner was primarily or largely responsible for the success of the programs with which she was associated.

As discussed above, on appeal prior counsel asserted that the director should have given more weight to the reference letters. Prior counsel further asserted that the director failed to consider that the petitioner "has included in her client roster, award-winning actor [REDACTED] and that she was largely responsible for his recent commercial success."

We do not contest the commercial success of several programs with which the petitioner is affiliated. While we give the reference letters due consideration, not every individual associated with a commercially successful project can be credited with the project's success. The petitioner did not submit evidence that she is included in the credits for these projects. While promotion is important for commercial success, the main credit goes to the producers, directors and main cast members. Moreover, the most persuasive evidence of the petitioner's promotion of a commercially successful project is her work on "Beyond 2000" and "Beyond Tomorrow." The petitioner worked on these projects more than 10 years prior to filing the petition. Thus, that work is not evidence of sustained acclaim as of the date of filing.

The record does not support prior counsel's assertion that the petitioner is at all responsible for recent commercial success. The record contains a letter from Mr. [REDACTED] who asserts only that he has collaborated with the petitioner on promoting charity events. He makes no mention of the petitioner contributing to the success of his character on "West Wing." In response to the director's request for additional evidence, prior counsel references a letter purportedly from [REDACTED]. The letter provides:

I met [the petitioner] in 1999 while consulting with mutual client [REDACTED] on the successful Emmy winning show "The West Wing" for NBC. She worked as a consultant on [REDACTED] behalf and I found her to be extremely helpful and dedicated. Her insight and expertise was immeasurable to the success of the show and Rob's career.

The record contains no evidence that the petitioner is credited with any technical, executive or consulting role for any episode of "The West Wing." The record does not reveal that the petitioner ever worked as Mr. [REDACTED] agent. Rather, as stated above, Mr. [REDACTED] states only that she assisted him promoting his charity events. Regardless, the letter purportedly from Mr. [REDACTED] is unsigned and, thus, has no evidentiary value. His assertions are not supported by statements from Mr. [REDACTED] or the writers, producers or directors of "The West Wing" explaining the petitioner's role for that show.

In light of the above, the petitioner has not demonstrated the significance of her personal contribution to the commercial success of projects with which she has been affiliated other than green lighting them.

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 development and publicity consultant 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 development and publicity consultant, 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.