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U.S. Citizenship
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 03 2006
WAC 04 261 52858

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:



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, Chief
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 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.

On appeal, counsel states:

Contrary to the findings of the Service, the petitioner was able to establish . . . extraordinary ability . . . in the field of arts by satisfying at least three of the guidelines laid down by 8 C.F.R. § 204.5(h)(3) of the regulations. In denying the instant petition, the service simply disregarded evidence to show [the petitioner's] qualifications as an extraordinary ability alien in the field of arts as defined in section 203(b)(1)(A) of the Immigration and Nationality Act.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on September 28, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a performing artist. In a letter accompanying the petition, counsel states:

The petitioner . . . has a colorful and distinguished career as an actor, comedian, singer, dancer, writer, and director.

* * *

While he was in the Philippines, [the petitioner] kept busy with his regular television shows. He is also a . . . performer for lounge acts and corporate events as a stand up comedian, singer, host, scriptwriter and director. Here in the United States, he has continued in his artistic endeavor, performing in various musical shows and concerts.

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 pertaining to 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 submitted evidence showing that he was a Gawad Urian award recipient for Best Actor in *City After Dark*. The record includes supporting documentation from the awarding entity and print media establishing that this award is a nationally recognized performing arts award. We find that the petitioner's evidence meets this criterion.

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.

In order 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 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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the Organization of Filipino Performers (OFP), Philippine Cinema and Television Actors Guild (PCTAG), Actors Workshop Foundation (AWF), and Repertory Philippines (RP). The record, however, includes no evidence of the membership bylaws or the official admission requirements for the OFP, PCTAG, AWF, or RP. There is no evidence showing that admission to membership in these organizations required outstanding achievement or that the petitioner was

evaluated by national or international experts in consideration of his admission to membership. Therefore, the evidence submitted by the petitioner does not establish that he meets 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 petitioner submitted multiple newspaper and magazine articles about him and his work dating from the 1980's to the present. The petitioner also submitted evidence showing that several of these publications had substantial national readership. We find that the petitioner's evidence meets this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the distinguished national or international reputation of the organization or establishment.

The petitioner submitted evidence showing that he appeared in a play entitled *The Romance of Magno Rubio*. A May 28, 2004 article submitted by the petitioner from www.playbill.com states:

The Romance of Magno Rubio . . . gets its Midwest premier at Victory Gardens Theater in Chicago, May 28th – July 11th.

* * *

The Romance of Magno Rubio premiered off Broadway in fall 2002 at New York's Ma-Yi Theatre Company, an Asian American troupe, and received eight Obie citations The Ma-Yi production subsequently traveled to the Cultural Center of the Philippines in Manila.

The Ma-Yi production went onto its West Coast premier in November 2003 at California's Laguna Playhouse.

For the Chicago run, Victory Gardens has assembled an all-local Asian Cast, including [redacted] as [redacted] and [the petitioner]. [redacted]

The record includes further evidence of local media publicity surrounding the Chicago production of which the petitioner was an ensemble member, but there is no evidence showing that the Chicago ensemble earned itself a distinguished reputation at the national level. We further note that the leading male role in this local theatrical production was played by [redacted]

The petitioner submitted evidence showing that he appeared in plays entitled *The Long Season* and *Voyage* at Alaska's Perseverance Theatre, but there is no evidence showing that these performances had taken place as of the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R.

§ 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). An article appearing in the July/August 2005 issue of *American Theatre* states:

The birthing process of these theatre projects has not been easy. Over the past two years, complications ensued, testing the time, resources and ambitions of Perseverance, a gutsy first-rate, yet humbly appointed rabbit warren perched on the hilly terrain of a coastal island on the frontiers edge of the continental United States. . . . Instead of a neon marquee, a parked white van sports the theatre's phoenix logo at the right side of its two-storied demesne. To a visitor, what is most impressive, in the cases of *The Long Season* and *Voyage*, is the company's profound commitment to reflect and respond to the Alaskan community – to lend authenticity and virtuosity to these locally themed projects.

While Alaska's Perseverance Theatre may enjoy a local or regional reputation within the state of Alaska, the evidence submitted by the petitioner is not adequate to show that this theatre has earned a distinguished national reputation.

On appeal, counsel states: “[The petitioner] was one of the main cast in the movie *Manila by Night*. This is where the petitioner won his Best Actor Award from the Gawad Urian.” This award has previously been addressed under a criterion that the petitioner has already met. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and a leading or critical role, Citizenship and Immigration Services (CIS) does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. Nevertheless, the plain language of this criterion requires an alien to have “performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” We do not find that a film qualifies as an “organization” or “establishment.”

The petitioner submitted a letter from [REDACTED] President and Artistic Director, Repertory Philippines, stating:

Founded in 1967, Repertory Philippines has almost single handedly developed English-language theater in the country. It has also been the foremost training ground for English-speaking Filipino actors such as [the petitioner], who began his illustrious career at the company in 1973.

Through the years, [the petitioner] has played numerous lead roles under the direction of Repertory Philippines' iconic director and co-founder, [REDACTED] and myself. . . . [The petitioner's] popularity on stage very quickly led to a highly successful career in local television and film.

[The petitioner] received praise for his work in the Philippine productions of *The King and I*, *A Chorus Line*, *La Cage Aux Folles*, and countless others.

We cannot ignore [REDACTED]'s reference to Repertory Philippines as being a “training ground for English-speaking Filipino actors.” Further, the local media coverage discussing the aforementioned

productions is not adequate to demonstrate their distinguished national reputation. For example, an article entitled “‘Chorus’: Something to see” appearing in an unnamed and undated publication states:

The lucky mortals who have been to New York and seen the original version of *A Chorus Line* have come away awed at the coming of age of the Broadway musical

Finding 17 singer-dancer-actors in support-starved Philippine theater is no easy task; thus what one saw on stage was a variety of excellent singers-who-couldn’t-dance, and vice versa.

* * *

In some numbers the orchestra was hard put to keep up with the singers (or was it the other way around?); and for want of an accent – seemingly *de rigueur* for Broadway theater – some of the best lines in the play were muffed.

Thus, the evidence submitted by the petitioner is not adequate to demonstrate that the petitioner’s productions with Repertory Philippines earned him sustained national acclaim as a top Filipino actor.

The petitioner submitted a letter from [REDACTED], Associate Artistic Director, Tanghalang Pilipino Foundation, Inc., stating that the petitioner “has performed in various productions” of his theater company, but his letter does not state that the petitioner’s role was “leading or critical.” [REDACTED] cites several productions in which the petitioner participated, but there is no supporting evidence demonstrating that the petitioner’s individual performances in the productions named were critically acclaimed. Further, the record lacks evidence demonstrating how the petitioner’s role differentiated him from the other performers of this theater company or indicating how his role was leading or critical for the organization as a whole.

The petitioner submitted an undated article in an unnamed publication entitled “Sesame Street Opens on Local TV.” A captioned photograph appearing with the article briefly identifies the petitioner as the director of *Philippine Sesame Street*, but there is no discussion of his specific role in running the show. Nor is there evidence showing the duration of petitioner’s role as the director of this series or evidence showing that the series enjoyed a distinguished national reputation.

The petitioner submitted evidence showing that he co-directed a local San Francisco production of Eve Ensler’s *The Vagina Monologues* at the Herbst Theatre, but there is no evidence showing that the petitioner’s production earned a distinguished national reputation.

In light of the above, the evidence submitted by the petitioner does not establish that he 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 petitioner submitted a July 29, 2000 article appearing in the *Philippine Daily Inquirer* stating:

That's why we were happy to catch the intimate musical-comedy revue, *Broadway, Bumps and Ballads* two Fridays ago at the Makati Sports Club, showcasing the admirable talents of just three performers – E.J. Villacorta, Stella Ignacio, and [the petitioner] (in order of performance).

We were even happier to see the 160-seat performing venue was full of people eager to have a good musical time

The petitioner also submitted two articles dated July 23, 1999 appearing in the *Bahrain Tribune* and *Gulf Daily News: The Voice of Bahrain*. These articles discuss a show given by the petitioner and singer Deesa at the Bahrain Conference Center, Holiday Inn before a crowd of “mostly Filipinos.” The latter article states that “more than 1,000 fans” were in attendance and that the Bahrain show was a “sellout” for the Filipino duo.

On appeal, counsel argues that the preceding articles demonstrate the petitioner's eligibility for this criterion. We do not find, however, that the limited attendance figures cited above (for only two engagements that involved other entertainers) are adequate to demonstrate the petitioner's commercial success in the performing arts. To satisfy this criterion, the petitioner must establish that his performances have consistently drawn larger audiences and/or higher box office grosses than most others in his field, at a national or international level. The record, however, includes no evidence of documented “sales” or “receipts” for a sustained period of time showing that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Thus, the evidence submitted by the petitioner does not establish that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished himself as a performer 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. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.