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FILE: [REDACTED]  
EAC 03 150 50912

Office: VERMONT SERVICE CENTER

Date: MAY 09 2006

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:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition and reaffirmed that decision on motion.<sup>1</sup> The matter is now before the Administrative Appeals (AAO) Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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 motion, the petitioner submitted additional evidence. The director concluded that the new evidence did not overcome the director’s initial findings. On appeal, the petitioner submits additional evidence. For the reasons discussed below, we concur with the director that the petitioner has not established any sustained national or international acclaim. While we concur with the director that the petitioner’s recognition significantly decreased after 1998, for the reasons discussed below, we further find that the petitioner has not established that she meets at least three of the ten regulatory criteria as required.

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

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<sup>1</sup> The petitioner filed an untimely appeal from the director’s initial decision, which the director treated as a motion. For clarity, the initial appeal will be referenced as a motion in this decision.

should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

According to Part 6 of the petition, the petitioner seeks to classify herself as an alien with extraordinary ability as a “singer/songwriter/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.<sup>2</sup>

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

The petitioner was a member of the British group Truce. Initially, she asserted that their album was nominated for numerous British awards. The published materials submitted reflect that in 1996, [REDACTED] was nominated for Best Newcomer and Best Group at the Black Music Awards (MBA) and a Music of Black Origin (MOMO) award in an unspecified category. The record contains no evidence that Truce won any awards for which it was nominated. As such, the petitioner has not established that she meets this criterion. Moreover, the award nominations were in 1996, seven years before the petition was filed. As such, they are not evidence of *sustained* acclaim as of that date.

*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 petitioner submitted evidence that in 1996, she was admitted as a provisional member of the [REDACTED], an association of composers, authors and publishers of music. The petitioner also submitted confirmation of her membership in the Performing Artists Media Rights Association (PAMRA) since February 1997. The petitioner initially failed to submit the membership requirements for these entities. On appeal, the petitioner submits evidence that PAMRA is a nonprofit organization “run by performers for performers.” PAMRA, whose sole purpose is to administer recorded performance rights, holds mandates for over 17,000 members. Nothing in the materials provided suggest that PAMRA is an exclusive organization that requires outstanding achievements of its members as judged by recognized national or international experts in the field. Thus, the petitioner has not established that she 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.*

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

We are persuaded that the materials from 1998 or earlier could serve to meet this criterion. While the articles are primarily about [REDACTED] was a three-member group and the petitioner is featured in the articles. We note, however, that much of the materials that are primarily about [REDACTED] as opposed to being primarily about the award shows, suggest that they were published in advance of [REDACTED] debut album. Thus, these materials appear to be primarily promoting their album as opposed to indicative of existing acclaim. While the petitioner submitted published materials about [REDACTED] from 2003, those materials mention only her vocal contributions to one of their songs. The 2003 published materials are not primarily about the petitioner. Thus, the evidence relating to this criterion is not evidence of sustained acclaim in 2003 when the petition was filed.

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

Performing on stage is inherent to the field of performing artist. Not every music performance is an artistic exhibition or showcase that sets the performers apart from others in their field. While the petitioner claims to have performed on MTV, the record does not contain evidence of that performance or its significance. Thus, the petitioner has not established that she 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 petitioner performed a critical role for Truce. The published materials and award nominations suggest that [REDACTED] enjoyed a distinguished reputation. The band, however, appears to have broken up by the end of 1998. The record contains no evidence of the petitioner's leading or critical roles after that date. Thus, the petitioner's role for [REDACTED] is not evidence of her sustained acclaim in 2003, when the petition was filed.

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

The record contains some evidence regarding remuneration the petitioner has received but no evidence that this remuneration is significantly high in the field. As such, 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.*

The record suggests that [REDACTED] enjoyed some commercial success in the 1990's but no evidence that the petitioner personally enjoyed any commercial success after 1998. The record does not reflect that the petitioner was predominantly featured in the promotional materials for the movies in which she appeared in small roles. Thus, she cannot be credited with any commercial success those films may

have enjoyed. As such, the evidence relating to this criterion is not evidence of sustained national or international acclaim in 2003, when the petition was filed.

On motion, the petitioner submitted a letter from ██████████ Chief Executive Officer of Foster Child Entertainment, asserting that the petitioner is now a Foster Child Entertainment artist. He further indicates that Foster Child Entertainment prepares artists for major deals as well as promoting and marketing them. While Mr. ██████████ asserts that the petitioner's demo compact disc is "in demand by labels such as Sony Music Group and Universal," the record contains no evidence from these labels that they are interested in releasing the petitioner's recordings. Ultimately, this letter is not indicative of any commercial success after 1998. Moreover, any future commercial success cannot be considered, as the petitioner must demonstrate eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Finally, regarding the petitioner's acting career, we note that the petitioner has submitted no evidence of her acclaim as an actress. Rather, she submits evidence of small movie roles and a letter from the T. Shreiber Studio indicating that the petitioner is enrolled in a Beginning Exercises acting class. Such enrollment is not evidence that the petitioner is already one of the few at the top of the field.

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 singer, songwriter or 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 singer and songwriter, 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.