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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
SRC 06 151 51304

Office: TEXAS SERVICE CENTER Date: DEC 17 2007

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, Chief
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 (AAO) 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, counsel argues that the petitioner has “met the needed three criteria as required under 8 C.F.R. § 204.5(h)(3).”

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 April 10, 2006, seeks to classify the petitioner as an alien with extraordinary ability in advertising and as a director of television programming, films, stage shows, and video productions and commercials. On appeal, the petitioner submits a December 4, 2006 letter from the President of the Advertising Supplier Association of the Philippines stating:

This is to certify that [the petitioner] is a freelance TV Commercial Director who provides his expertise to member production houses of the Advertising Supplier Association of the Philippines (ASAP). Although not an ASP member, I know him personally and I attest to his artistic passion and production excellence as exhibited in the many television ads he directed. By doing what he does best – Directing – he forged a strong bond with our members in the Association.

The petitioner's appellate submission includes a similarly vague certification from the Commercial Production Houses Group, Philippines. Neither of the preceding letters identifies the specific production houses for which the petitioner has worked or the television commercials he has directed. Moreover, there is no evidence showing that the petitioner has worked as a director of television commercials or entertainment productions since his arrival in the United States in August 2002. This issue will be further addressed below.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 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 an Award of Recognition "as one of THE TEN BEST COMMERCIAL MODELS 1990 – 1991" issued by the Creative Guild of the Philippines, an affiliate of the Association of Accredited Advertising Agencies – Philippines, for excellence in commercial modeling. The plain language of this regulatory criterion, however, requires the petitioner's receipt of "awards for excellence in the field of endeavor." According to the documentation submitted by the petitioner (such as his resume), there is no evidence that modeling is his "field of endeavor." There is no indication that the petitioner, age 67 at the time of filing, seeks to enter the United States to continue work as a male model. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5).

The petitioner submitted evidence of his receipt of an award from the Foundation for Adolescent Development in appreciation of his "PARTICIPATION IN THE ENTER-EDUCATE VIDEO PROJECT." There is no evidence showing that this award is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of the petitioner's participation in the project.

The petitioner submitted a Certificate of Appreciation from the California-Nevada Lions, District 4, Student Speakers Program for 2002 –2003. This award reflects regional recognition for participation in a Lions Club,

District 4, Student Speakers Contest rather than a nationally or internationally recognized award for excellence in the petitioner's field.

The petitioner submitted a certificate of "Congressional Recognition" from "Congresswoman Shelley Berkley of Nevada's First Congressional District" congratulating the petitioner for being a "Participating Artist" in the 2003 International Artist Group of Nevada Filipino Art Exhibit (May 28, 2003). There is no evidence showing that this certificate is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of the petitioner's participation in the exhibit.

The petitioner submitted a plaque of appreciation for "leadership and creativity that sustained the Upsilon Sigma Phi [Alumni Association] World Reunion" in Houston, Texas (October 2004). This award reflects organizational recognition from the alumni association for petitioner's fraternity at the University of the Philippines rather than a nationally or internationally recognized award for excellence in the petitioner's field.

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, the petitioner has not submitted supporting evidence showing that his awards commanded a significant level of recognition beyond the presenting organizations.

In light of the above, the petitioner has not established that he meets this criterion.

Published material 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.

We withdraw the director's finding that the petitioner meets this criterion. The petitioner submitted articles discussing a bi-monthly lounge show directed by him at the Century Park Hotel in Manila, but the authors of these articles were not identified as required by the plain language of this regulatory criterion. These articles, dated from 1999 to 2000, appeared in the entertainment sections of publications such as the *Manila Bulletin*, the *Philippine Star*, and the *Sun Star*. Almost all of the preceding articles promote or announce the featured acts for upcoming shows rather than being primarily about the petitioner. Promotional material or paid advertisements, which are not the result of independent journalistic reportage, do not satisfy the plain language of this regulatory criterion and are simply not indicative of national or international acclaim. Moreover, there is no evidence of material about the petitioner in major publications subsequent to 2000. As such, the petitioner has not established that his national or international acclaim has been sustained.

In light of the above, the petitioner has not established that he meets this criterion.

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

We withdraw the director's finding that the petitioner meets this criterion. As discussed previously, the petitioner submitted published articles indicating that he directed a bi-monthly lounge show at the Century Park Hotel. The plain language of this regulatory criterion indicates that it is most applicable to visual artists (such as sculptors and painters), for whom the significance of the exhibition or showcase is indicative of their

acclaim. Because public performance is inherent to working as the director of a stage show, not every performance is an artistic exhibition or showcase indicative of national or international acclaim. In the performing arts, sustained acclaim is generally not established by the act of directing a stage production, but rather by consistently attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's work as a director of a hotel lounge show production is far more relevant to the "leading or critical role" criterion at 8 C.F.R. § 204.5(h)(3)(viii) and the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and shall be addressed under those criteria below.

In light of the above, the petitioner has not 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 petitioner submitted information about his lounge show stating:

"The Director presents..." was a bi-monthly nightclub gig which featured veteran video and film director [the petitioner] as Host. [The petitioner] also directed the two hour musical comedy show that invited international singing stars, highly popular movie and television celebrities, political figures and government officials as guests. Added feature[s] to this piano bar show were singing discoveries which the Director recommended to existing television productions.

* * *

Gifted with a wonderful crooning voice and a strong stage presence, [the petitioner] was asked by [redacted], General Manager of [redacted], a five-star plus hotel, to create a regular musical show which would attract customers to the hotel's piano bar at the [redacted]. "The Director presents..." lasted for two good years catering to the hotel's local and foreign guests and definitely adding much to the revenue and popularity of the five star plus [redacted].

We find that the articles in publications such as the *Manila Bulletin*, the *Philippine Star*, and the *Sun Star* are adequate to demonstrate that the petitioner's show had a distinguished reputation and that he served in a leading or critical role as the production's director. Nevertheless, the plain language of this regulatory criterion requires evidence that the petitioner has performed in a leading or critical role for "organizations or establishments." Serving in a leading role for a single distinguished organization does not meet the plain language of this regulatory criterion. There is no evidence showing that the other film, stage, video, and television productions or organizations for which the petitioner has worked have distinguished reputations or that he was responsible for their success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of national or international acclaim. Moreover, there is no evidence that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation subsequent to 2000. As such, the petitioner has not established that his national or international acclaim has been sustained.

In light of the above, the petitioner has not established 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 plain language of this regulatory criterion requires evidence of commercial success in the form of “sales” or “receipts”; simply submitting evidence indicating that the petitioner directed various productions cannot meet the plain language of this criterion. The record includes no evidence of documented “sales” or “receipts” showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim. For example, there is no evidence that the petitioner’s productions, such as his films, videos, or stage shows, generated significant sales revenue. As such, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). **Further, as required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained.** According to Part 3 of the Form I-140 petition and other documentation submitted by the petitioner, he has been residing in the United States since August 2002. An undated letter from [REDACTED], Charge’ d’ Affaires, Embassy of the Philippines, Washington, D.C. states: “Many of [the petitioner’s] works were daily staples on Philippine television during the 80’s and 90’s, notably commercials for Coke, Pepsi Cola, [REDACTED]’s Baby products, Philippine Airlines and many multinational consumer products.” The record, however, contains no evidence of achievements or recognition (during the five years immediately preceding the filing of the petition) showing that the petitioner has sustained national or international acclaim as a director in recent years, nor is there evidence that he has continued to work in his area of expertise after coming to the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” The record includes no such evidence.

Review of the record does not establish that the petitioner has distinguished himself 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 the national or international level. Nor is there clear evidence that the petitioner will continue working in his area of expertise. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.