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FILE: [REDACTED]  
SRC 06 142 53331

Office: TEXAS SERVICE CENTER Date: **NOV 28 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 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 argues that the petitioner meets at least three of the regulatory criteria at 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on March 29, 2006, seeks to classify the petitioner as an alien with extraordinary ability as an 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, 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.*

As an actress with the Barrington Theatre Group of London, the petitioner earned the company’s “Best Newcomer Award” in 2004. A July 24, 2006 letter from Penelope Chambers, Senior Director, The Barrington Theatre Group, states that the petitioner was recognized “for her consistently outstanding performances and contribution to the community through her volunteer work.” This award from the petitioner’s theater company reflects institutional recognition rather than national or international recognition for excellence in the field.

The petitioner also submitted a certificate indicating that she received a “Best Supporting Actress” award at the “West London Arts Community Stanford-Le-Hope Film Festival Awards.” This award from the “West London Arts & Film Commission” reflects local recognition rather than national or international recognition for excellence in the 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 her burden to establish every element of this criterion. In this case, the petitioner has not submitted supporting evidence showing that her awards had a significant level of recognition outside of the presenting organizations.

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

*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 regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. 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). For example, judging a national competition for experienced professionals is of far greater probative value than judging a local competition for students or novices.

In response to the director's request for evidence, the petitioner submitted an October 14, 2005 letter from ██████████ to the petitioner stating:

On behalf of the 2005 Sir Montgomery Hawthorne Actor's Workshop Competition, we would like to once again thank you for generously donating your time and expertise by serving on the Board of Judges for this years' [sic] competition at the Stratford Open Art Exhibition. Your knowledge and delightful demeanor made this year even better than the last, and a huge hit in the Arts Community.

The record includes no further information or evidence regarding this workshop competition. There is no evidence showing the names of the individuals evaluated by the petitioner, their level of acting expertise, the specific work she judged, or any other documentation of her assessments. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. See section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). Further, the commentary for the proposed regulations implementing this statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

The petitioner's response also included material from the 2000 Fujifilm Scholarship Awards handbook stating:

The Fujifilm Scholarship was set up in 1981 by Fujifilm and Colin Voisey of HTV to give some practical assistance to young filmmakers at under-financed film colleges. Since then thousands have participated in the scheme and over 270 short films have been made.

Organised in the form of a competition and in conjunction with a whole host of other industry sponsors, film colleges throughout the United Kingdom and Ireland will be given the facilities and resources to make a short film.

\* \* \*

Colleges are asked to submit one script for selection in January. Those colleges chosen will be asked to produce their film between March and July each year and in August each film is judged by a panel of industry professionals for best film, camera work, editing, sound, script, art direction and publicity.

The scholarship culminates in a gala award ceremony held at The British Academy of Film and Television Arts where winning students will receive a collection of trophies, cheques, and certificates.

\* \* \*

The scheme is managed by ██████████ who should be contacted at the Fujifilm Scholarship Office...

A statement prepared by the petitioner accompanying this material states:

The Fujifilm Scholarship Awards, staged annual at BAFTA [British Academy of Film and Television Arts] in London, is the UK's premier student film competition, with students from all over the UK vying for the chance to enter and attend the prestigious screening and award ceremony.

\* \* \*

I was . . . invited to judge the competition entries with the sponsors as part of the assessment leading to the awards. Something I was happy to do for several years.

The record, however, includes no evidence to corroborate the petitioner's assertion that she judged student entries for this scholarship competition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). There is no evidence of the petitioner's participation, either individually or on a panel, as a judge for the Fujifilm Scholarship Awards. For example, there is no correspondence from the Fujifilm Scholarship Office acknowledging the petitioner's participation as a judge. Nor is there documentary evidence showing the names of the individuals evaluated by the petitioner, the specific work she judged, or any other documentation of her assessments. Even if the petitioner were to adequately document her participation, she has not established that evaluating student filmmakers from under-financed film colleges is indicative of sustained national or international acclaim at the very top of her field.

Without substantive evidence of the petitioner's actual participation as a judge of the work of others in her or an allied field that is consistent with sustained national or international acclaim, we cannot conclude that she meets this criterion.

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

In a September 6, 2006 letter submitted in response to the director's request for evidence, counsel argues that the petitioner's work as a casting director for [REDACTED] meets this regulatory criterion. The petitioner submitted an August 28, 2005 contractual agreement and a letter from the movie's producer, [REDACTED] confirming her involvement as the film's casting director. On appeal, counsel states: "Being a casting director is a great contribution for the film if the film received great acclaim. . . . If that movie brings in good money than [sic] yes [the petitioner] has demonstrated great business related contributions." The record, however, includes no evidence showing that Alexander Fodor's *Hamlet* had been released 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, 49 (Regl. Commr. 1971). Nor is there evidence that this film has been commercially successful or the subject of national or international acclaim. There is no evidence to establish that the petitioner's work for this film is an original artistic or business-related contribution of major significance in her field.

The petitioner also submitted letters of support discussing her talent as an actress and activities in the field, but these letters fail to specify her original contributions of major significance. In general, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary

ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. The letters of support include no substantive discussion as to which of the petitioner's specific achievements rise to the level of original artistic contributions of major significance in acting or filmmaking. Apart from the support letters, the petitioner submitted no other evidence to establish that she has made original artistic contributions of major significance to her field in a manner consistent with sustained national or international acclaim. For example, the record does not indicate the extent of the petitioner's influence on other actresses nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

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

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted a copy of an article she claims to have authored for the Fujifilm Scholarship Awards handbook entitled "The Good, the Bad, and the Ugly." There is no evidence (such as circulation statistics) showing that the preceding scholarship handbook qualifies as a professional or major trade publication or other form of major media. Further, the plain language of this regulatory criterion requires "authorship of scholarly articles." A single article authored by the petitioner does not meet this requirement and is not indicative of sustained national or international acclaim.

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

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

The petitioner submitted evidence showing, *inter alia*, that she has performed on stage in various theatrical productions, in an MTV television series entitled [REDACTED] in a television documentary entitled [REDACTED] the Bachelor Years," and in the film *Know Thy Self*. The petitioner also submitted two magazine pages and a letter from [REDACTED] indicating that she has modeled for the British publications *Cosmopolitan* and *New Woman Magazine*. The record, however, includes no evidence showing that the petitioner's acting and modeling roles were consistent with sustained national or international acclaim at the very top of her field. For example, there is no evidence that the petitioner garnered significant critical acclaim for her acting roles in [REDACTED] or *Know Thy Self*. Nor is there evidence establishing the commercial success of these productions.

In response to the director's request for evidence, the petitioner submitted electronic correspondence from July 2006 showing that she appeared in Learning Tree educational video courses 296, 341, and 349. The petitioner also submitted a [REDACTED] letter reflecting that Group 8 Productions selected her as its spokesperson. The petitioner was cast for the Learning Tree videos and was selected as Group 8 Productions' spokesperson subsequent to the petitioner'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. at 49. Accordingly, the AAO

will not consider this evidence in this proceeding. Nevertheless, the petitioner has not established that the preceding evidence relates to this criterion or is consistent with sustained national or international acclaim at the very top of her field.

Regarding the documentation of the petitioner's work as an actress, we find that such evidence is far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x). The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vii) 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 appearing on stage or in a film or television series is inherent to working as an actress, not every performance is an artistic exhibition or showcase indicative of national or international acclaim.

In light of the above, 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.*

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner, however, has submitted no evidence showing that the film, theatrical, and television productions for which she has worked have distinguished reputations or that she was responsible for their success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. On appeal, counsel does not address this criterion.

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

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

As discussed previously, the petitioner submitted an August 28, 2005 contractual agreement for her work as a casting director for [REDACTED]. The agreement reflects a casting director's fee of £15,000 and royalties on net receipts of 3 percent.<sup>1</sup> The plain language of this criterion, however, requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field.

In response to the director's request for evidence, the petitioner submitted a paycheck and earnings statement from June 30, 2006 reflecting that Next Productions, LLC paid her a rate of \$6.75 per hour straight time as an extra. The petitioner also submitted a July 27, 2006 paycheck and voucher from the [REDACTED] series reflecting a gross pay of [REDACTED] for eight hours of work (a rate of \$6.75 per hour). This remuneration was earned by the petitioner subsequent to 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. at 49.

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<sup>1</sup> The record includes no evidence (such as payroll records or income tax forms) showing that the petitioner actually received this remuneration.

Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, there is no evidence that the petitioner's compensation was significantly high in relation to other actors and actresses.

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

As discussed previously, the petitioner submitted evidence showing, *inter alia*, that she has performed on stage in various theatrical productions, in an MTV television series entitled "[REDACTED]" in a television documentary entitled "[REDACTED]; the Bachelor Years," and in the film *Know Thy Self*. With regard to the petitioner's role in "[REDACTED]" the January 6, 2006 letter [REDACTED] states that he cast the petitioner in the series, but he does not identify nature of her acting role (e.g., a main character versus a lesser supporting role). On appeal, counsel takes issue with the director's observation that [REDACTED] did "not state what [the petitioner's] role was in this production." We find the director's observation to be correct as [REDACTED]' letter does not provide any specifics regarding the character portrayed by the petitioner. The petitioner also submitted a letter from [REDACTED] stating that he was the director of "[REDACTED]" and that his documentary "was broadcast on Channel 4, one of the highest viewed Television Channels in the United Kingdom, and was a huge success, watched by over 2 million viewers." There is no evidence showing that the success of this documentary was specifically attributable to the petitioner, nor is there corroborative evidence (such as television ratings) to support the self-serving statements of the show's director regarding his program's viewership.

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 has worked on various productions cannot meet the plain language of this criterion. For example, the petitioner has submitted no evidence of ticket sales for the onstage productions in which she performed. The record includes no evidence of documented sales, receipts, or other similar evidence showing, for example, that the petitioner's plays were regular sell-out performances or had substantial attendance, that the MTV television series in which she was cast attracted a substantial national audience, or that the feature films in which she played a principal role grossed significant national revenue in theaters or through DVD sales and rentals, or that she otherwise achieved commercial success in a manner consistent with sustained national or international acclaim.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she 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 herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.