U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

B2

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Massachusetts, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

FEB 02 2004

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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:

PUBLIC COPY

[redacted]

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for Mari Johnson
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 sustained and the petition will be approved.

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 for that visa classification.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the pertinent regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is a hair and make-up artist. The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must

meet at least three of those criteria unless the alien has received a major, internationally recognized award. The petitioner claims to have met four of the necessary criteria. Review of the evidence of record establishes that the petitioner has in fact met three of them.

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

The petitioner won an Outstanding Award for "Ladies Evening Party Make-Up" at the Asian Hair Styling & Make-Up Competition in Manila in 1989, and a similar award in Bangkok in 1996. In 1990, the petitioner won the party make-up category at the 10th National Hairstyling & Make-up Competition. Certificates from the Asia Pacific Hairdressers and Cosmetologists Association indicates that the petitioner was the "bridal make-up CHAMPION" and "evening party make-up CHAMPION" of the Hair & Make-up International Competition in Hong Kong in August 1998. The petitioner participated in several other competitions as well, receiving lower-level prizes. The record indicates that these competitions are held by major organizations, and attract media notice in the Philippines, where the petitioner resided at the time of the competitions.

On appeal, counsel correctly observes that lesser national or international awards need not rise to the significance of, for instance, Olympic medals to fulfill this criterion. Upon consideration, we find that at least some of the petitioner's awards and prizes are sufficient in this instance. At the same time, we stress that a prize does not necessarily satisfy this criterion merely because it is issued by a national or international authority, or because contestants for the prize are from a national or international pool. The petitioner must also establish that the award has a degree of recognition that is consistent with sustained national or international acclaim in the field. A "vanity" award, or a prize from a relatively insignificant organization, cannot suffice.

> *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 has documented his membership in the Hairdressers and Cosmetologists Association of the Philippines (HACAP), but initial submission does not establish that HACAP requires outstanding achievements of its members. Following a request for additional evidence, the petitioner has indicated that he has held leadership positions within HACAP and other associations, but these positions do not demonstrate that the associations require outstanding achievements of their members. The petitioner has also indicated that he served as a guest artist and speaker at trade shows and workshops, and that he submitted a winning hair care tip to Procter & Gamble Philippines (discussed further below), but none of this relates to membership in any association, let alone the membership requirements of any association.

The director again instructed the petitioner to submit evidence showing "the minimum requirements and criteria used to apply for membership" in the associations to which the petitioner belongs. In response, the petitioner has submitted letters and other documentation. According to

these documents, an applicant for membership in HACAP must meet three of the following four requirements:

- Two years of experience as a hairdresser, make-up artist, or in a similar occupation, "and/or a graduate of any vocational school approved and recognized by the government."
- Owner or "active employee" of a salon.
- Participation "in any of the National and International Educational seminar and workshop" [sic] in the field.
- Graduation from "a recognized school in Cosmetology, Hairdressing, Esthetics and Professional Make-up Artistry."

None of the above factors demonstrate outstanding ability. Rather, they establish vocational competence.

The petitioner has claimed that other evidence pertains to membership in organizations, but the arguments offered are not persuasive. Selection as a member of a small *ad hoc* group is not necessarily or automatically membership in an association. Therefore, the petitioner has not satisfied this criterion. Counsel's arguments to the contrary, on appeal, are not persuasive, as they do not address the requirements for membership, but rather the petitioner's activities as a member.

We do note, nevertheless, that the petitioner has held national leadership positions as an officer of HACAP from 1996 to 2000. This, and some of the petitioner's activities as a member, serve to generally reflect his national stature, but cannot demonstrate that HACAP requires outstanding achievements of its members.

> *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 has indicated that the petitioner has satisfied this criterion. While much of the published material in the record mentions the petitioner only in passing, often in the form of a credit for doing the hair and make-up of a model shown in a magazine article, the petitioner is the main focus of a national magazine article from 1998 and is highlighted in other articles. The director's finding is reasonable in light of the evidence submitted.

> *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.*

A certificate in the record reads "Official Judge / Asian Pacific Millennium Championships / Saturday 10th June 2000 Sydney Australia." The petitioner's name is handwritten above this printed legend. Another certificate indicates that the petitioner was among "the presiding judges of Hair & Beauty 2000" held in Manila on March 28, 2000.

The director requested evidence to show the significance of the above competitions and the criteria used to select judges. In response, the petitioner has submitted a letter from Ricky Reyes, president of the Asia Pacific hairdressers and Cosmetologists Association (APHCA), who asserts that the petitioner "was elected by us due to his exceptional proven talent and experience in the field of Make-up Artist. We trusted that he was the most qualified as part of the judge panel during the competition. Besides, he also met all the necessary qualification and criteria added to qualify as a judge." Mr. Reyes does not actually list "the necessary qualification[s] and criteria." These criteria, however, are provided in a numbered list in a separate document:

1. Must be an officer or a member of any Hairdressers and Cosmetologists Association.
2. Must have at least ten (10) years as Hairdresser and Make-up Artist.
3. Participated and won the top three (3) awards in National and International Hairstyling and Make-up Competitions.
4. Must have proven his/her artistic accomplishment in published magazines and newspapers.
5. Must have participated and competed [in] several National and International Hairstyling and Make-up Competitions.
6. Must have experience in conducting seminars and workshops in the Hairdressing and Make-up Artistry.
7. Experienced in judging National or International Hairstyling and Make-up Competitions.

The above criteria appear to be sufficiently stringent, indicating that an individual must be quite accomplished and established in the field before being called upon to judge for APHCA. Other materials in the record show that APHCA competitions, such as those where the petitioner has served as a judge, attract media notice in the Philippines. We find that the petitioner has satisfied this criterion, thereby meeting the regulatory threshold of three out of ten criteria at 8 C.F.R. § 204.5(h)(3).

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has also established that he seeks to continue working in the same field in the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.