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FILE: EAC 04 015 51495 Office: VERMONT SERVICE CENTER Date: **AUG 19 2005**

IN RE: Petitioner:
Beneficiary:

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. Wienmann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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.

The applicable regulation defines the statutory term "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h) must depend 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, mere submission of newspaper articles about the alien may relate to the criterion at 8 C.F.R. § 204.5(h)(3)(iii), but will not satisfy that criterion if the articles were published several years ago in local newspapers and hence do not reflect the requisite sustained national or international acclaim.

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts that works in various media as a performing artist and producer. The petitioner submitted supporting documents including 11

letters recommending the petitioner or thanking him for his work, excerpts from his portfolio, his resume, promotional materials for some of his productions, and numerous media articles and newspaper clippings purportedly about the petitioner and his work published in Israel. The director found the record did not demonstrate that the petitioner had achieved the requisite sustained acclaim. On appeal, counsel submits a brief, three additional recommendation letters, documentation concerning one film in which the petitioner was featured, an announcement for one performance of the petitioner's work in the United States, and information about the authors of two of the recommendation letters submitted on appeal. Counsel's claims and the additional evidence do not overcome the deficiencies of the petition and the appeal will be dismissed. We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

In counsel's initial brief, he stated that the "evidentiary support" for the petition included "Rewards [sic] of National Excellence (information included)." The record does not support this claim. The petitioner submitted a certificate purportedly from the "B.L.A. Care for Aids Organization" thanking him for his donation and support "in the ongoing fight in AIDS in Wigstock 2000." The copy of the original document appears to be in Hebrew and the petitioner submitted an uncertified English translation. All documents containing a foreign language submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English translation certified to be complete and accurate by a translator who attests to his or her competency to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Besides failing to provide a certified translation of this document, the petitioner also does not explain how this certificate constitutes a prize or award under this criterion rather than an expression of gratitude for the petitioner's contributions to a charitable endeavor.

Counsel also claims that "[i]n 2002 Diesel Clothing honored [the petitioner] for his outstanding achievement in event design and execution." The petitioner submitted an unsigned and undated letter attributed to ██████████ of Polymode 1994 Limited, which states, "This past year [the petitioner] was honored with a special award from Diesel to honor his creativity and ability to create a 'buzz.'" The record contains copies of short articles in Hebrew apparently from Israeli newspapers with handwritten notes identifying the subject of the articles as the "Diesel Fashion Show." Without certified translations of these documents, we cannot determine if they support the petitioner's eligibility under this criterion. *Id.* Most importantly, the petitioner submitted no primary evidence of his purported award from Diesel or any evidence that the award is a nationally or internationally recognized honor for excellence in his field. Accordingly, the petitioner does not meet this criterion.

(ii) 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 record contains an unsigned letter attributed to ██████████ Chairman of the Israeli Union of Performing Artists (IUPA), and dated April 28, 2002. The letter confirms that the petitioner is "an active member of the Israeli Union of Performing Artists since the year 1997. [The petitioner] is an Actor & Dancer & Choreograph [sic]." The letter also states that the petitioner "is a fully member [sic] of the I.U.P.A. affiliated of the International Federation of Actors (F.I.A.) for the year of 2002." The petitioner submitted no documentation of

the membership criteria of the IUPA and the FIA or any other evidence that outstanding achievements are prerequisite to membership in either of these associations. Accordingly, he does not meet this criterion.

(iii) 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.

The record contains numerous media articles that appear to feature or mention the petitioner and his work. All of the documents appear to be written in Hebrew and published in Israel. Many of the documents were submitted without translation, others are accompanied by uncertified English translations and some contain handwritten notes in English. For example, one copy of a montage of photographs of various individuals (including the beneficiary) contains handwritten notes attributing the document to "Tel Aviv Times Sept. 2, 1994" and identifying the photographs as "famous people in Israel V.I.P." Because the petitioner failed to submit certified translations of any of the documents submitted under this criterion, we cannot determine whether the evidence supports the petitioner's claim. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The record is also devoid of any evidence that the sources of these documents are professional, major trade publications or other major media. On appeal, counsel maintains that he submitted "numerous articles from widely distributed Israeli newspapers" including "the most widely distributed newspapers in Israel, and therefore, the most read newspapers for the Jewish community all over the world, including the United States." Counsel then cites the websites for *MAARIV* and *Yediot Acheronot*. Although the burden of proof in visa petition proceedings remains entirely with the petitioner, Section 291 of the Act, 8 U.S.C. § 1361, counsel provides no printouts from these websites or other information regarding the national or international circulation of these newspapers or any of the other publications from which the submitted articles came. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, the petitioner submits a printout from the website of the *DanceView Times* dated April 26, 2004 that lists a performance by the petitioner and another individual in New York City under the caption "What's On This Week?" The notice simply states the title, date, time and location of the performance and does not discuss the petitioner or his work. Even if the printout featured the petitioner's work, we could not consider it because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner also submitted two website printouts concerning the Israeli film "Crows" in which the petitioner played a supporting role. The first printout is from the website of "IMDB" and simply lists basic facts about the film, contains a photograph of the petitioner and lists one other film in which he acted. The second printout is from the website of Tel-Aviv University and lists the film "Crows" as one of five winners at the "2nd International Student Film Festival" sponsored by the university and Cinematheque Tel-Aviv. Neither of these documents discusses the petitioner or his work and the record contains no evidence that the websites are professional, major trade publications or other major media.

The record contains no properly translated materials from professional, major trade publications or other major media about the petitioner and his work. Consequently, he does not meet this criterion.

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

On appeal, counsel claims the petitioner meets this criterion as evidenced by "the copy of his resume, the copies of the newspaper publications in major media, his portfolio, and the letters in support of his petition." As discussed above under the third criterion, the submitted newspaper articles are not accompanied by certified English translations and consequently cannot be considered as evidence of the petitioner's eligibility. See 8 C.F.R. § 103.2(b)(3). The petitioner's resume lists numerous performances and productions from 1986 through 2003, but the record contains no corroborative documentation of this work. Simply going on record without supporting documentary evidence is not sufficient to meet 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)). The record contains nine pages of images identified as "Part of my Portfolio Please view CD for more," but the petitioner did not submit any compact disc of his work. Four of these pages are identified as "1995 Tour 'Shick the Freek' Issey Nini & Companini," but the remaining documents contain no identification of the titles, dates, venues, or the petitioner's role in the pictured performances.

The petitioner also submitted support letters from clients or other individuals who have worked with him. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

██████████ President of Nagler Productions, explains that he has known the petitioner for one year and is currently "developing a show starring himself and centering on an idea that he brought to my attention." Mr. ██████████ states that the beneficiary's "very unique art form is a combination of western [sic] and Eastern sensibilities and is highly inspirational." The record contains no documentation of the show discussed by Mr. ██████████

The unsigned and undated letter attributed to ██████████ of Polymode 1994 Limited, (addressed above under the first criterion) states that the petitioner, through his production company Companini, has designed numerous shows and special events for Polymode and that "Companini's work stands out from the crowd. This past year [the petitioner] was honored with a special award from Diesel to honor his creativity and ability to create a 'buzz.'" The record contains no properly translated documentation of the petitioner's Diesel show or his purported award from that company, as discussed under the first criterion.

An unsigned letter attributed to ██████████ a curator and art critic in Israel, states that the petitioner is "very talented and one of our most gifted young artists in the country." ██████████ provides no examples of the petitioner's work on which she bases her opinion and also does not state that the petitioner has made major contributions to his field consistent with national acclaim in Israel or international acclaim abroad.

An unsigned and undated letter attributed to [REDACTED] states that the petitioner "has done many fashion shows for me in my former company susan lazar. His input on choreography, music, models, theme of show and accessories has been on the cutting edge and always ensures a spectacular event for my customers." Another unsigned and undated letter attributed to [REDACTED] confirms that the petitioner has done "many fashion shows and special events for" Elsrad Limited in Tel-Aviv. The letter explains that the petitioner "always takes charge and challenges us to be creative in every way, from the concepts to the designs employees [sic] and to even the food. He knows what to do, who to hire, and most important how to excite our customers about our products." The record is devoid of any evidence of the petitioner's work discussed by these two letters or documentation that other experts recognized any of this work as a major contribution to the petitioner's field. The record also contains letters written in Hebrew and accompanied by uncertified translations. Again, without certified translations, we cannot determine whether the letters support the petitioner's eligibility under this criterion. See 8 C.F.R. § 103.2(b)(3).

On appeal, the petitioner submits a second letter from [REDACTED] the text of which repeats verbatim his first letter; a letter from the artist [REDACTED] and a letter from [REDACTED] of the Bronx Academy of Arts and Dance. [REDACTED] explains that "[i]n the past few years, I have been working with [the petitioner] on some original projects. His concepts for design are uniquely fresh and inspiring. What makes [the petitioner's] work so engaging and satisfying is his innate sense of people. Because of his European and American experience, he is able to embrace the individual, and expand it to a global level that is both accessible and yet special. . . . He is the perfect entity involving projects where many people of all walks come together to complete a vision." The record contains no evidence of the collaborative work of [REDACTED] and the petitioner or that their work has been recognized for making major contributions to their field. The letter of [REDACTED] discusses the petitioner's work for "the Moving Men Series in 2004." We cannot consider this letter because the authors' opinions are based on work that was completed after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

The evidence indicates that the petitioner's work has impressed some of his clients and other artists and art professionals in Israel and the United States. Yet the record does not demonstrate that the petitioner's work has been recognized in his field (beyond these few individuals) as making major contributions in a manner consistent with sustained national or international acclaim. Accordingly, he does not meet this criterion.

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

The record shows that the petitioner played a supporting role in the Israeli film "Crows" that was released in 1987. The petitioner submitted copies of media coverage purportedly about this film, most of which are in Hebrew and were submitted without the requisite certified translations. Hence, we cannot determine whether the documents support the petitioner's eligibility under this criterion. See 8 C.F.R. § 103.2(b)(3). The only two documents regarding this film in English are the printouts discussed under the third criterion. The "IMDB" printout contains no information about the film's distribution and the Tel-Aviv University printout simply indicates that "Crows" was shown as part of a student film festival.

As discussed above under the fifth criterion, the petitioner submitted excerpts from his portfolio which appear to be images from performances of his productions. The submitted documents identify some of the images as being from the "1995 Tour 'Shick the Freek' Issey Nini & Companini," but do not state the location or venue of

any of the performances on this tour. The remaining documents contain no identification of the pictured works' titles, dates, venues, or the petitioner's role in the performances.

As discussed under the third criterion, the submitted media articles purportedly about the petitioner's performances or productions are either untranslated or were submitted with uncertified translations. Without certified translations of the articles, we cannot determine whether they support the petitioner's eligibility under this category. See 8 C.F.R. § 103.2(b)(3). Accordingly, the petitioner does not meet this criterion.

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

The petitioner's resume states that he established Companini, a production company, in 1991 and serves as the company's president and chief designer. Some of the support letters describe successful events produced by Companini, but the record contains no independent evidence that Companini has a distinguished reputation in Israel or abroad. Accordingly, the petitioner does not meet this criterion.

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

In his initial brief, counsel claimed the petitioner met this criterion because he was "paid a gross salary of \$75,000." The record contains no evidence to support this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Obaighena*, 19 I&N Dec. at 534; *Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506. Accordingly, the petitioner does not meet this criterion.

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

In his initial brief, counsel claimed the petitioner met this criterion as evidenced by "years in the business, plus press releases." On appeal, counsel maintains that the petitioner's eligibility was "evidenced by the articles in the newspapers and letters submitted in support of his petition. His commercial success has most definitely not remained in Israel, as it has been spread in Europe as well." The regulation requires evidence of commercial success to be "shown by box office receipts or record, cassette, compact disk, or video sales." 8 C.F.R. § 204.5(h)(3)(x). The record contains no such evidence of the petitioner's alleged commercial success. Consequently, he does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case shows that the petitioner is an artist who played a supporting role in one Israeli film and is well regarded by some of his clients, one curator in Israel and one artist in the United States. Yet the record does not establish that the petitioner has achieved sustained national or international acclaim as an artist placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his petition may not be approved.

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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.