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U.S. Citizenship
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Services

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FEB 04 2005

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 01 062 51975

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. On the basis of further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on October 15, 2003. The petitioner filed an appeal, which the Administrative Appeals Office (AAO) deemed untimely.¹ The AAO remanded the case to the director for treatment as a motion. After granting the motion to reopen, the director affirmed the decision revoking the approval of the petition. The matter is now before the AAO on certification. The director's decision will be affirmed.

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 that he qualifies for classification as an alien of extraordinary ability.

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 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.

¹ The appeal was filed on November 17, 2003, 33 days after the decision was rendered. 8 C.F.R. § 205.2(d) states that revocations of approvals must be appealed within fifteen days of the notice of revocation. The notice of revocation issued by the director, however, erroneously stated that the petitioner could file an appeal within 33 days.

This petition, filed on December 15, 2000, seeks to classify the petitioner as an alien with extraordinary ability as an actor. 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 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.

In response to the director's notice of intent to revoke, the petitioner submitted certificates from *Back Stage West* indicating that he won that publication's Garland 2000 award for his performance in *Shopping and F**king* and a Garland 2001 award for his performance in *Orson's Shadow*. A letter from [REDACTED] Editor-in-Chief and Associate Publisher of *Back Stage West*, describes that publication as "a trade newspaper for Los Angeles performing artists" and a "pre-eminent theatre and casting publication on the West Coast." [REDACTED] letter notes that the petitioner was awarded his Garland 2000 for *Shopping and F**king* in January 2001 and that the petitioner was "emerging as one of L.A.'s most promising new arrivals." We note here that petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. The regulations clearly call for evidence that the petitioner already enjoys national or international acclaim as a top actor. Rob Kendt concludes his letter by stating that the petitioner "has proven himself a leading figure and fixture of the Los Angeles theatre scene," but he does not state that the petitioner is nationally or internationally recognized.

The petitioner's Garland awards from *Back Stage West* came into existence subsequent to the petition's filing date. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Subsequent developments in the alien's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. Regardless of the date that the petitioner received his Garland awards, it has not been shown that the awards are reflective of national or international recognition, rather than local or regional recognition. The record contains no evidence showing that a Garland Award is a nationally or internationally recognized performing arts award in the same manner as, for example, a Tony Award or an Oscar.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*,

nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The published materials presented by the petitioner consist almost entirely of local articles discussing theatrical productions in which the petitioner has appeared in Los Angeles or San Francisco. The petitioner provided evidence of pieces appearing in publications such as *The Metropolitan*, *Los Angeles Weekly*, *Back Stage West*, and *Frontiers* and in the local entertainment sections of newspapers such as *The San Francisco Bay Guardian*, *The Bay Area Reporter*, and *The San Francisco Chronicle*. The petitioner has not shown that advance theatrical reviews or promos of this type are unusual for actors appearing in a local theatrical production. In this case, the published reviews of the petitioner's performances are from publications serving the city where the petitioner, at that time, was residing and performing. Without evidence showing that his performances received significant media attention from outside of California, we cannot conclude that the petitioner has sustained national acclaim as an actor. Furthermore, many of the articles presented by the petitioner only briefly mention him in the context of a piece about an overall theatrical production. Involvement in an event, such as theatrical production, that, as a whole, merits some local media coverage is not adequate to demonstrate an individual actor's sustained national or international acclaim. Finally, we note that some of the material presented in response to the notice of intent to revoke, such as the pieces in *V Magazine* (June 2002), *Daily Variety* (August 29, 2001), and *The Los Angeles Times* (May 3, 2001) were published subsequent to the petition's filing date. See *Matter of Katigbak* at 49.

We note that the promo piece from *V Magazine* about the film *New Suit* devotes less than one sentence to the petitioner. The piece in *The Los Angeles Times* is a two-sentence promo listing the dates and times of upcoming performances of *Orson's Shadow* at the Black Dahlia Theatre (rather than a critical review or an article about the petitioner). The article in *Daily Variety* (which is about the overall *Orson's Shadow* production rather than the petitioner) mentions the petitioner's performance as follows: "The second scene has the elegant Tynan, performed ably by [the petitioner], convincing the master actor Olivier (Jeff Sugarman) of the directing choice. The play really takes off when Welles and Olivier begin locking horns...." This article concludes by stating: "Neither *Orson's Shadow* nor the production is perfect. If one begins to expect the artistry here to live up to its subjects, disappointment is inevitable."

The article appearing in *The Metropolitan*, "San Francisco's Journal of Arts, Society, Food and Fashion," states:

"In San Francisco, you do a show to make money," acknowledges Doba, "and in L.A. you do it as a showcase, hoping you'll be seen by someone who can give you a job."

But [the petitioner] has a somewhat blunter assessment of the Los Angeles theater scene. "It's a wankfest," he says.

* * *

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

[The petitioner] muses that the best solution for him would combine the career opportunities of Los Angeles and New York with the San Francisco lifestyle he relishes. "If I could keep a base here, while working in New York or L.A., that would be ideal," he says.

A pipe dream? Perhaps, but no more unrealistic than the long odds against succeeding in any city on the planet in the performing arts, a career path which has always attracted far more hopefuls than could ever realistically find gainful employment in the field they've chosen.

The article in *The Metropolitan* is about local San Francisco actors aspiring for a "career upswing" rather than those who already enjoy national acclaim in the field of acting. This article indicates that the petitioner "is finding enough work to keep [himself] busy," but the article certainly does not state or imply that the petitioner has reached the very top of the acting field.

The petitioner also appeared in what counsel describes as a "fashion spread" in two separate editions of *San Francisco Magazine*. The petitioner, however, seeks classification not as an extraordinary male fashion model, but rather as an extraordinary actor. Nonetheless, the fashion spreads in *San Francisco Magazine* were local in nature and therefore not tantamount to qualifying national media exposure.

In this case, there is no evidence showing that that the petitioner has ever been the primary subject of a published article about his acting that has had significant national or international (rather than local) distribution.

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

The petitioner submitted several witness letters, mostly from individuals who have collaborated on various productions with the petitioner or represented him at one time or another. The witness letters describe the petitioner as a talented actor, but they provide no information regarding how the petitioner's individual contributions have significantly influenced the theatrical field or the motion picture and television industries. For example, the petitioner's performances have not been shown to have greatly influenced other successful American or British actors/actresses. The issue here is not the skill level, professional experience, or dedication of the petitioner, but, rather, whether any of his past endeavors would qualify as a contribution of major significance in the performing arts. In this case, there is no evidence showing the extent of the petitioner's influence on other professionals in the entertainment industry.

Senior Vice President of Casting for Disney Pictures, states: "I believe [the petitioner] to be a very gifted and talented actor, deservedly held in high esteem by all those who have seen his work, and predict even greater triumphs in the future." does not indicate that she has ever cast the petitioner in a lead role for a Disney Production, nor does she state that the petitioner is nationally or internationally acclaimed as an actor. notes that she has cast television shows such as "Thirty Something", "China Beach", and "Growing Pains," but the record contains no evidence showing that the petitioner has ever played a lead acting role in a comparable nationally televised series. The petitioner's television roles appear mostly limited to brief "guest appearances" rather than recurring roles.

Management expresses her hope that the petitioner “will be given the opportunity to let his talent grow.” She adds: “With the connections available to him in Hollywood, [the petitioner] could easily rise to the height of his field. We all foresee great things for [the petitioner], and encourage you to give him that opportunity.” statements indicate that the petitioner has not yet reached the very top of his field.

In the same manner as Writer, Director, Producer, Founder, and President, Another B.S. Production (an “independent film production company in the Northern California Bay Area”), states that the petitioner has a “growing reputation as a remarkable actor.” Assertions from witnesses that the petitioner has a promising future do not establish eligibility under this classification, for the regulations clearly call for evidence that the petitioner already enjoys major success and acclaim.

Felicia Fasano, Casting Director in Los Angeles, states that she has “had the pleasure to cast and work with actors such as states that she “very much look[s] forward to being able to cast [the petitioner] in many future projects,” but she does not indicate that she has already cast him for a leading film or television role. Nor does she indicate that the petitioner has starred in leading roles comparable to those of simple comparison of these actors’ achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment placing him at or near the top of his field.

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

The AAO has consistently found that this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Virtually every actor “displays” his work in the sense of performing in front of an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by 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 stage and film performances are far more relevant to the “commercial successes in the performing arts” criterion.

Nevertheless, counsel argues that the petitioner’s talents “have been showcased in his leading roles for such critically acclaimed and award winning productions as *Orson’s Shadow* and *Shopping and F***ing*.” The petitioner’s regional awards resulting from these productions have already been addressed. Given that the petitioner’s acting is closely linked with the film industry, theatrical performance, and television broadcasting, the petitioner would not satisfy this criterion simply by demonstrating that his work has been featured in a theater production (such as his role in *Orson’s Shadow* at the Tiffany Theatre), in the broadcast media (such as a guest appearance on ABC’s *The Geena Davis Show*), or at an arts festival (such as the Edinburgh Festival). The petitioner in this case must demonstrate that his performances have consistently been the centerpiece of major productions at prestigious national or international venues. Such a standard must be set for the petitioner to establish that he enjoys sustained national or international acclaim at or near the top of his field. While the petitioner has submitted evidence of ensemble performances in theaters in San Francisco and Los Angeles, as well as some non-recurring television appearances, it does not follow that he has sustained

national or international acclaim at the very top level. The petitioner has not submitted evidence of any individual performances that would satisfy this standard as of the petition's filing date. For example, the petitioner does not claim to have played a leading role in a Tony Award-winning Broadway show or in an Emmy Award-winning television series. Should Citizenship and Immigration Services (CIS) accept the appearance of an artist in an ensemble performance as satisfying this criterion, then it would follow that any actor who appeared in a group performance would satisfy this criterion for extraordinary ability, regardless of his role. Eligibility for this visa classification must rest on the petitioner's individual achievements at the national or international level, rather than relying on the petitioner's performance as one of several castmembers in a local play or in a non-award-winning television series or film production.

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 he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

Counsel argues that the petitioner has played a leading or critical role in the stage play *Orson's Shadow*. Counsel cites local media coverage, Garland Awards, and a "Los Angeles Drama Critics Circle" nomination certificate as evidence of this production's distinguished reputation. We accept that *Orson's Shadow* enjoys a distinguished reputation as a stage production in Los Angeles or, to a larger extent, California, but there is no evidence showing that this production has distinguished itself at the national level.

Counsel claims that the petitioner "co-stars with Tom Hanks" in the motion picture release of *The Polar Express*. The petitioner submitted a written agreement dated March 25, 2003 and signed by the petitioner and a representative of Castle Rock Pictures, Inc. This evidence came into existence subsequent to the petition's filing date. See *Matter of Katigbak* at 49. The agreement states:

I hereby agree to render services in connection with the scanning of my appearance with the motion picture project referred to as 'The Polar Express' and any remakes or sequels thereof (the "Picture") as instructed by Castle Rock Pictures ("Producer").

* * *

I grant Producer the right to scan my likeness, and to use it in connection with the Picture, without voice or with the voice of another and/or with music and sound effects.

We do not find that the scanning of the petitioner's likeness is tantamount to "co-starring with [REDACTED] in this production. Nor is there any evidence from Castle Rock Pictures, Inc. indicating the extent to which the petitioner's image was used in the motion picture. Unlike [REDACTED] role, the petitioner's role in this movie was minor and, according to the above agreement, did not even require the petitioner to use his voice. While Tom Hanks undoubtedly enjoys sustained national and international acclaim as a top actor, the evidence presented in this matter is not adequate to support the same conclusion regarding the petitioner.

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 evidence of petitioner's tax returns for 2000, 2001, and 2002. According to his tax returns, the petitioner earned \$12,448 in 2000, \$26,171 in 2001, and \$30,061 in 2002. There is no indication that this income is "significantly high" in relation to that of other professional actors.

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

The regulation calls for commercial success in the form of "sales" or "receipts"; simply documenting the petitioner's participation in a stage play, motion picture film, or video game release cannot meet the plain wording of the regulation. The record contains no evidence of documented "sales" or "receipts" to show that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. In regard to the petitioner's television performances, the petitioner has not shown that he has played a lead recurring role in a television series with a significantly large national audience.

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. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. Nonetheless, on March 24, 2001, the California Service Center approved the petition in error. We note here that the approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

On April 9, 2003, the petitioner appeared before a CIS officer at the Los Angeles District Office regarding his Application for Adjustment of Status to Lawful Permanent Residence, Form I-485. At that time, it was determined that the petitioner did not meet the regulatory criteria for an alien of extraordinary ability and that his petition had been approved in error. The petition was then forwarded to the California Service Center for revocation of the approval of the petition.

Section 205 of the Act, 8 U.S.C. 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's

failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho at 582, 590 (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

In *Matter of Ho*, the Board found that because “there is no right or entitlement to be lost, the burden of proof in visa petition revocation proceedings properly rests with the petitioner, just as it does in visa petition proceedings.”

On July 7, 2003, the director of the California Service Center issued a Notice of Intent to Revoke the approval of the petition. The notice of intent to revoke informed the petitioner that the evidence presented did not satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On August 6, 2003, the Service Center received the petitioner’s response to the Notice of Intent to Revoke and it was incorporated into the record of proceeding. The evidence included in the petitioner’s submission (such as, for example, his Garland Awards and the published material from 2001) has already been addressed in our preceding discussion of the regulatory criteria.

On October 15, 2003, the director of the California Service Center properly revoked the approval of the petition. In *Matter of Ho*, the Board found that, pursuant to section 205 of the Act, CIS may revoke the approval of a petition “at any time for good cause shown.” We find that *Matter of Ho* supports CIS’ determination.

In a letter accompanying the petitioner’s appellate submission, counsel argued that section 106(c) of the American Competitiveness in the 21st Century Act renders the petitioner “entitled to permanent residence even after revocation of the I-140.” As a result of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), Public Law 106-313, the Immigration and Nationality Act was amended to include the following section:

Section 204(j) of the Act states:

Job Flexibility for Long Delayed Applicants for Adjustment of Status to Permanent Residence – A petition under subsection (a)(1)(D) [since redesignated section 204(a)(1)(F) of the Act] for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

Section 204(a)(1)(F) of the Act states: “Any employer desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) may file a petition...for such classification.”

In the present case, the petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Act, therefore, pursuant to section 204(a)(1)(F) of the Act, the provisions of AC21 do not apply to the petitioner.

In a letter responding to the Notice of Certification, counsel requests oral argument. The regulations, however, provide that the requesting party must adequately explain in writing why oral argument is necessary. Furthermore, CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). Counsel's assertion that "the initial approval was correct, the revocation was without basis, and the Service misinformed [the petitioner], in writing, of the time he had in which to file appeal" are issues that can, and in this instance have already been, adequately addressed in writing. In this case, we find that the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Counsel also states:

With respect, it is a startling waste of precious resources within the Department of Homeland Security for approved cases to be re-opened and revoked on the basis of a marginal disagreement between one immigration officer and another, particularly in the context of an extraordinary ability petition where the matter is clearly one of judgment and where [CIS] does not allege fraud or other impropriety by the applicant.

The record includes a letter from U.S. Congressman Tom Lantos of California dated June 18, 2004. In the same manner as counsel, Congressman Lantos states: "I hope you agree with me that it would be unconscionable for [the petitioner's] legitimate application, which [CIS] admits was made without fraud, to be retroactively revoked due to a difference in opinion between reviewers. It is my hope that you will overturn the CSC's decision"

We regret that more than thirty months had elapsed between the approval and the revocation (the record offers no explanation for this delay). Nevertheless, section 205 of the Act specifically allows for revocation "at any time," and the pertinent regulations are silent as to the issue of elapsed time. It should be emphasized that revocation of the approval of a petition is not limited only to instances involving fraud. By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. See *Matter of Ho* at 582, 590.

In this matter, the issue is not simply "a difference in opinion between reviewers" or "a marginal disagreement between one immigration officer and another," but, rather, the petitioner's failure to demonstrate eligibility under at least three of the regulatory criteria set forth in the regulation at 8 C.F.R. § 204.5(h)(3). This regulation outlines the specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his field of expertise. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim. In the present case, we find no indication that the petitioner enjoys a national reputation in the United States or the United Kingdom. Rather, the notoriety and publicity surrounding the petitioner is mostly limited to two regions in California (Los Angeles and San Francisco).

The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every performer who has appeared on stage, or who has received some degree of recognition at the regional level, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field. In this case, the petition should never have been approved, and the director, upon learning of this error, essentially had no choice but to revoke the erroneous approval. The director acted appropriately, albeit belatedly, and we cannot overturn a decision that is couched in the pertinent statute, binding precedent, and regulations.

In this matter, review of the record does not establish that the petitioner has distinguished himself as an actor 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. 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968), affirmed in *Matter of Esteime* and *Matter of Ho*. Here, the petitioner has not sustained that burden.

ORDER: The director's decision is affirmed and the approval of the petition remains revoked.