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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEBRASKA SERVICE CENTER

Date: APR 02 2009

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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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Nebraska 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 that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also determined the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that he continues to work as a performing artist.

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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on July 25, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an actor and a singer.

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). In a June 27, 2007 letter accompanying the petition, counsel states that the petitioner “is part of an award-winning pop vocal group known as ‘III of a Kind’” and that “[i]n 2001, one of the songs by III of a Kind won the prestigious Awit Award for ‘Best Vocal Arrangement.’” Counsel further states:

III of a Kind’s debut album *Groove-a-pella* was first released in the Philippines by ABS-CBN’s Star Records *Groove-a-pella* featured original compositions of David Pomeranz, Jungee Marcelo, Christine Bendebel and members Annie Nepomuceno and Gelo Francisco. It contains . . . the carrier single, “Wala Pa Rin” by Dada de Pano Supnet.

The petitioner submitted a blurred photograph of a 14th Awit Awards trophy, but the inscription on the trophy is illegible. Counsel argues that this “significant one-time national award” satisfies the regulation at 8 C.F.R. § 204.5(h)(3). A notation above the trophy states that the award for “Best Vocal Arrangement” was presented to “Gelo Francisco and Annie Neopmuceno” rather than to the petitioner. On appeal, the petitioner submits a “Previous Awit Awardees” list reflecting that “Annie Nepomuceno” received the award for “Best Vocal Arrangement” in 2001 for her song “Wala Pa Rin.” There is no evidence showing that an Awit Award was presented to the petitioner or that he was a member of III of a Kind when the group released “Wala Pa Rin.” In fact, a compact disc jacket submitted by the petitioner indicates that the three original members of III of a Kind were Annie Neopmuceno, Gelo Francisco, and Edward Granadosin. Further, we cannot conclude that the Philippine music industry’s Awit Award, which counsel specifically refers to as a “national award,” constitutes a major, internationally recognized award.

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from

the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field.

The petitioner's appellate submission includes information from the Awit Awards internet site stating that the awards exist "to promote the Philippine Music industry" and that musical entries for the competition must have been "released in the Philippines." Therefore, we find that receipt of a Filipino Awit Award reflects national recognition rather than "major, international" recognition as required by the regulation at 8 C.F.R. § 204.5(h)(3).

In addressing the Awit Award, the director's decision stated that "the record lacks any evidence that the claimed award was actually given to the petitioner, or to demonstrate that he was a member of III of a Kind for the recording of the winning arrangement." We concur with the director's findings. Accordingly, the petitioner has not submitted evidence establishing that he is the recipient of a major, internationally recognized award.

Barring the alien's receipt of a major, internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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.¹

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

On appeal, counsel argues that the Awit Award for "Best Vocal Arrangement" in 2001 meets this regulatory criterion. As previously discussed, there is no evidence from the presenting organization demonstrating that the petitioner himself received an Awit Award as a member of III of a Kind in 2001. 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)). The record does not include evidence establishing that the petitioner is a 2001 Awit Award recipient. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this case, there is no evidence showing the petitioner's receipt of a nationally or internationally recognized prize or award for excellence in his field of endeavor.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

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

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

On appeal, the petitioner submits an unsigned letter dated June 4, 2008 from Doug Dixon, Membership Department, Los Angeles Office, Actors' Equity Association, stating: "This will confirm that [the petitioner] is a member of Actors' Equity Association and has been employed in our jurisdiction under an Equity contract. The above joined the Association on February 26, 2002, paid \$800 in initiation fees, and is currently paid to November 1, 2006." As the letter from Mr. Dixon was unsigned and did not provide an address, telephone number, or any other information through which he can be contacted, we cannot assign any weight to this evidence. The petitioner also submits general information about the Actors' Equity Association, but there is no evidence (such as membership bylaws or official admission requirements) showing that the Actors' Equity Association requires outstanding achievements of its members as judged by recognized national or international experts in the petitioner's field or an allied one.

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

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

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 or international 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 petitioner submitted several newspaper articles about the theatrical production of *Miss Saigon*; however, as noted by the director, the petitioner himself was not the primary focus of these articles. The plain language of this regulatory criterion requires that the published material be “about the alien.” In addressing the petitioner’s evidence, the director’s decision stated:

[M]uch of the published material provided was about the theatrical production “Miss Saigon” itself, not about the petitioner. In fact, many of the articles about “Miss Saigon” pre-date the petitioner’s involvement with the production by several years. Of the articles about “Miss Saigon” which do relate to the performances involving the petitioner, he is mentioned only briefly. The record contained a single article specifically about the petitioner, and that article appeared to have been published in a regional publication. Publications which are distributed at a local or regional level are not commensurate with major publications or other major media. It is further noted that this single article claims that the petitioner was born in Glendale, California, which questions whether the article was actually about him rather than a similarly named performer.

The article entitled “Performing Is A Dream Come True” in *Dateline Memphis* states:

“I am a pretty calm, quiet person and never get tired of doing the show because of this incredible release,” [the petitioner] said from his hotel room in Raleigh, N.C.”

* * *

Born in Glendale, Calif., the Filipino actor never even thought about acting until late into his 20s. “I am a licensed physical therapist. I happened to be at a medical conference in Seattle when a friend took me to see the national tour of *Miss Saigon* in 1995.”

A short time later, [the petitioner] found himself at an open audition in New York City actually trying out for the show. “The producers told me that I was a little too ripe and that I needed some formal training. So they sent me away to build my skills and about a year later I was in the Broadway company!”

He began understudying the role of the villainous Thuy and then actually took over the part for about a year before going out on the national tour.

The date of the preceding article was not provided and there is no evidence (such as circulation statistics) showing that *Dateline Memphis* qualifies as a form of major media. Another article,

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, for instance, cannot serve to spread an individual’s reputation outside of that county.

entitled “Saigon’ Actors Share World With Student Hopefuls” in *The Virginia Pilot*, states: “In real life, when not acting, [the petitioner] plays a physical therapist. The tour provides money for medical school fund, [the petitioner] said.” The article in *The Virginia Pilot* mentions the petitioner’s visit to Salem High School along with two other *Miss Saigon* touring performers, but there is no evidence showing that this local newspaper qualifies as a form of major media.

The director’s decision further stated:

Therefore, the petitioner was requested to indicate if he has been the primary subject of any published material in major media at the national or international level and, if so, to document any such material along with evidence regarding the nature of the source publication, including readership, distribution area, and circulation. The petitioner was also requested to address the discrepancy in the article regarding his birthplace, and to demonstrate that the material was actually about him.

In response, the petitioner simply provided duplicate copies of the material already submitted. No additional articles were provided, nor did the petitioner submit evidence regarding the source publication of the sole article primarily about him. The petitioner also did not address the discrepancy in the article regarding his birthplace, or demonstrate that the article actually related to him.

Further, counsel’s cover letter emphasizes articles allegedly written about the group III of a Kind. However, counsel is simply quoting snippets of articles referenced on III of a Kind’s website, <http://members.tripod.com/ilouiea/3ofakind>. No evidence of the actual articles was provided, nor is there evidence that the articles related to the group at a time in which the petitioner was actually a member.

With regard to the information in *Dateline Memphis* regarding the petitioner’s birthplace, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). On appeal, the petitioner does not address the discrepancy regarding his actual place of birth. Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Upon review, we find the director properly considered the evidence submitted, thoroughly addressed counsel’s arguments and appropriately addressed the evidence and arguments in his decision. Accordingly, we concur with the director’s finding that the petitioner does not meet this criterion.

On appeal, the petitioner submits newspaper articles from April and May of 2008 discussing the Civic Light Opera of South Bay Cities’ performance of *Miss Saigon* at the Redondo Beach Performing Arts Center. These articles are not primarily about the petitioner and only mention his name in passing. Nevertheless, the preceding articles were all published 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)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider these articles in this proceeding.

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

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

The petitioner submitted evidence of his stage performances as the character Thuy in theatrical productions of *Miss Saigon*. The director concluded that the petitioner's supporting role in the traveling and regional productions of *Miss Saigon* and his work as an understudy in the Broadway production was not commensurate with sustained national or international acclaim. We concur with the director's finding. The petitioner also submitted material reflecting his participation in Honolulu Broadway Babies' production of "Broadway Mixed Plate 2004" at the Leeward Community College Theater and in a "community programs" benefit concert at the Ellen White Memorial Church of Seventh-day Adventists in 2004. There is no supporting evidence showing that the petitioner's performances at these two local venues were consistent with sustained national or international acclaim.

As discussed by the director, the plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. In the performing arts, it is inherent to the occupations of actor and musician to perform on stage. National or international acclaim is generally not established by the mere act of appearing in a theatrical production, but rather by attracting a substantial national or international audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's stage performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be further addressed there.

Aside from his musical performances, the petitioner submitted evidence showing that he produced a concert for the Moreno Hills Seventh-day Adventist Church entitled "A Night on Broadway." The petitioner also submitted an event program reflecting that Homebase Missions selected him to produce a benefit concert entitled "Crystal Heard 2nd Annual Awards: An Evening on Broadway" at the Riverside Convention Center in 2004. Counsel states that the latter event honored citizens of Riverside who have exemplified compassionate service to the needs of others. There is no supporting evidence showing that the preceding events produced by the petitioner at these local venues were consistent with sustained national or international acclaim. Further, the petitioner has not established that producing concerts falls within his area of expertise.

Upon review, we find the director properly considered the evidence submitted, thoroughly addressed counsel's arguments and appropriately addressed the evidence and arguments in his decision. Accordingly, we concur with the director's finding that the petitioner does not meet this criterion.

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

The petitioner submitted newspaper articles and playbills indicating that he played Thuy in touring and regional productions of *Miss Saigon*. With regard to the Cameron Mackintosh's Broadway production, there is no evidence showing that the petitioner was a cast member when the show premiered on Broadway in 1991 and won three Tony Awards. While the 1991 Broadway production certainly had a distinguished reputation, the petitioner has not established that the subsequent productions of *Miss Saigon* in which he played a role enjoyed a similar reputation. The petitioner submitted a playbill for the touring production stating:

[The petitioner] joined us direct from the Broadway company of *Miss Saigon* where he understudied and played the role of Thuy. He is a medical professional whose prior theater credits include Lun Tha in *The King and I*, Lucas in *The Student Prince* and Nanki Poo in *The Mikado*. He will miss being the unofficial masseur to the Broadway cast but is looking forward to sharing his talents with his new touring cast.

The record does not include letters from the producers or directors of the preceding productions indicating that the petitioner's role for them was leading or critical. Nor is there evidence demonstrating how the petitioner's role differentiated him from the other performers in the cast, let alone its artistic management. For example, there is no evidence showing that the petitioner's name frequently received top billing or that the popularity of the productions increased when he was known to be performing. Accordingly, the petitioner has not established that he was responsible for the productions' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim at the very top of his field.

The petitioner submitted an October 2006 article in *Celebrity Chronicle*, a Southern California Filipino American entertainment publication, indicating that he performed as member of III of a Kind in 2006. While the record includes evidence showing that III of a Kind had distinguished reputation in the Philippines in the early part of the present decade, there is no evidence showing that the petitioner was a member of the group at that time or that he has played a primary role in their past musical successes. Without evidence showing the specific dates when the petitioner performed for this group and the national success of his recordings as a member of the group, the petitioner has not established that he has sustained national or international acclaim in a leading or critical role for III of a Kind.

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

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

The petitioner submitted evidence showing that III of a Kind's album *Tanging Yaman* received a Platinum Record Award in 2000 for sales in the Philippines exceeding 40,000 units. The record, however, does not include evidence showing that the petitioner was a member of the group at that time.

The petitioner also submitted newspaper articles and a document entitled “*Miss Saigon Show Facts*” demonstrating the commercial success of Cameron Mackintosh’s *Miss Saigon*. The documentation submitted by the petitioner, however, does not establish that the commercial success of this musical production was primarily attributable to the petitioner’s stage performances.

The director’s decision noted that the record lacked evidence showing the petitioner’s own commercial success. The director’s decision further stated:

First, while III of a Kind attained a platinum album in the Philippines, the record does not demonstrate that the petitioner was a member of the group for the recording of that album. Further, while *Miss Saigon* has had commercial success in the theater since its debut in 1989, well before the time that the petitioner was hired first as an understudy then as a touring cast member, the record lacks evidence of the success of the specific productions in which the petitioner was involved, and lacks evidence that such success was due to his involvement with the production.

Upon review, we find the director properly considered the evidence submitted, thoroughly addressed counsel’s arguments and appropriately addressed the evidence and arguments in his decision. Accordingly, we concur with the director’s finding that the petitioner does not meet this criterion.

On appeal, counsel argues that the newspaper articles from April and May of 2008 discussing the Civic Light Opera of South Bay Cities’ performance of *Miss Saigon* at the Redondo Beach Performing Arts Center demonstrate the petitioner’s commercial success. The petitioner’s performance as described in these articles occurred subsequent to the petition’s filing date. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding.

Nevertheless, the plain language of this regulatory criterion calls for evidence of commercial successes in the form of “sales” or “receipts.” The record does not include evidence of documented “sales” or “receipts” showing that the petitioner has achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of his field. For example, there is no evidence showing that leading performances headlined by the petitioner consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature him. Nor is there evidence showing, for example, that musical recordings made by the petitioner have generated substantial national or international sales.

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

In this case, we concur with the director’s determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the

aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The director also found that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” The director’s decision stated:

The initial record did not adequately demonstrate that the petitioner would be coming to the United States to continue work in his claimed area of expertise, acting. First, the petitioner submitted no specific information regarding how he intends to continue working in the United States. Further, several of the biographies from the programs provided as well as the regional newspaper article discussed in criterion (iii) indicate that the petitioner is a “medical professional” and that he has been performing services as a physical therapist even while on tour. Further, the petitioner’s G-325 indicates that he has recently been acting only as a “freelance” actor/singer, and the evidence of record indicates that the petitioner was most active in the field of acting in 1998, with only sporadic performances in the intervening years.

Therefore, the petitioner was requested to submit evidence that he is coming to the United States to continue work in the area of expertise.

* * *

In response, the petitioner submitted a 2008 itinerary for the Harana Men’s Chorus, a flyer for a performance of the Philippine Madrigal Singers, and a promotional flyer for a performance of the Harana Men’s Chorus. First, the petitioner submitted no objective evidence of his involvement with either the Harana Men’s Chorus or the Philippine Madrigal Singers. . . . Finally, the petitioner did not address the information regarding his work as a medical professional or otherwise provide clear evidence to demonstrate that he would be coming to the United States to continue his work as an actor.

We concur with the preceding findings. On appeal, counsel states that the petitioner continues to star as Thuy in regional productions of *Miss Saigon* with organizations such as the “Fullerton Civic Light Opera . . . and most recently the Civic Light Opera of South Bay Cities.” The petitioner’s appellate submission includes a 2005 playbill from the Fullerton Civic Light Opera (FCLO) stating: “Already a medical professional, [the petitioner] is back in school full time pursuing a degree in nursing. . . . He thanks . . . FCLO for welcoming him back with open arms.” The petitioner also submits newspaper articles from April and May of 2008 discussing the Civic Light Opera of South Bay Cities’ performance of *Miss Saigon* at the Redondo Beach Performing Arts Center. These articles briefly mention the petitioner’s role as Thuy, but they are not about him. The 2008

newspaper articles, the itinerary, and the promotional flyers do not qualify as any of the forms of evidence specified in the regulation at 8 C.F.R. § 204.5(h)(5). Further, as the newspaper articles and playbills contained in the record refer to the petitioner as a “physical therapist,” “medical professional,” and “full time” nursing student, we cannot conclude that he has submitted “clear evidence” of his employment intentions as required by the plain language of the regulation. Accordingly, the petitioner has not established that he intends to continue working in his area of expertise in the United States.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at a national or international level. Nor is there clear evidence showing that the petitioner will continue to work in his area of expertise in the United States. 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.