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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: [REDACTED]
LIN 07 012 50811

Office: NEBRASKA SERVICE CENTER

Date: **APR 16 2009**

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:

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).

J. M. Grissom
John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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). The director determined that the petitioner had not established the sustained national or international acclaim necessary for 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.

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)(3), or under 8 C.F.R. § 204.5(h)(4), 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).

This petition, filed on October 5, 2006, seeks to classify the petitioner as an alien with extraordinary ability as an entertainer. The petitioner submitted supporting evidence at the time of filing, in response to a Request for Evidence ("RFE") dated October 23, 2007, and on appeal. The supporting evidence consists of letters of recommendation, fan mail, conference materials, information about the petitioner's show in Las Vegas, a DVD of his performance, news articles, and information about the American Council of Hypnotist Examiners ("ACHE"). We address the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not addressed below.

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

The petitioner submitted no evidence relevant to this criterion at the time of filing or in response to the RFE. On appeal, the petitioner submitted evidence that he was to receive the Star 2008 Award from the Stage Hypnotists of the World ("SHOW") in June 2008. This award may not be considered, however, because a 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. 8 C.F.R. § 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). The petitioner submitted no evidence of other awards or prizes received.

Accordingly, the petitioner failed to establish that he meets 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 petitioner submitted a copy of his certification by ACHE as a clinical hypnotherapist. In order to demonstrate that membership in an association meets this criterion, a 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, proficiency certifications, 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.

According to the ACHE information, in order to be certified as a clinical hypnotherapist, the member must have "completed at least three hundred (300) hours of instruction in hypnosis from a school approved by the appropriate state agency and by the [ACHE]." The information about ACHE indicates that membership does not require outstanding achievement, but is instead based on completion of educational and practical requirements. In addition, the ACHE information does not indicate that membership is judged by recognized national or international experts in the field.

Accordingly, the petitioner failed to establish that he meets 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 petitioner submitted numerous published articles about himself and his work in publications such as *The Vancouver Sun*, *The Banner Post*, *Cochrane Times*, *Maple Creek News*, *The Regional Trader*, *Crownsnest Pass Herald*, *The Edmonton Sun*, *The Signal*, *the Richmond Review*, *The Peace Arch News*, *The Puyallup Herald*, *Skagit Valley Herald*, *The Quincy Valley Post-Register*, *Yorktown This Week*, *The Central Peace Signal*, *Record-Gazette*, *The World-Spectator*, *The Mitchell Advocate*, *The Okanagan*, *Capital News*, *The Morning Star*, *Mile Zero News*, *Falher Smoky River Express*, *The Cold Lake Sun*, *The Lloydminster Meridian Booster*, *The Pass Herald*, *Valley Views*, *the Bricklayer*, *Fort Macleod Gazette*, *Today in Las Vegas Magazine*, *Las Vegas Sports Magazine*, and *Las Vegas Magazine*. The petitioner also submitted a number of articles without

indicating the publication in which they appeared as required by 8 C.F.R. § 204.5(h)(3)(iii). The record contains no evidence such as the usual circulation of any of these publications or any other evidence to demonstrate that these articles were published in professional, major trade, or other major media publications. Instead, the publications indicate a local distribution either through their name, i.e. *Skagit Valley Herald* and the *Cochrane Times* or through their subtitle such as *The Record-Gazette* which states that it has been “[s]erving Peace River and [a]rea since 1914” or *The World-Spectator* which states that it is “Saskatchewan’s oldest weekly newspaper.” On appeal, the petitioner submitted a list of the “Top Ten Daily Newspapers in Canada According to Circulation September 30, 2002.” That list states that *The Globe and Mail*, a newspaper which published articles about the petitioner, enjoys a circulation of 317,138, which is the second highest circulated newspaper in Canada and *The Vancouver Sun* enjoys a circulation of 180,888, which is the seventh highest circulated newspaper in Canada. That list, however, does not identify its source or contain any other information regarding its authority or authenticity so that we are unable to conclude that *The Globe and Mail*, *The Vancouver Sun*, or any other publication which published articles about the petitioner constitutes major media. The letter from ██████████, Executive Director of Ontario Students Against Impaired Driving, states that coverage in *The Globe and Mail* is “equivalent . . . to . . . ha[ving] front page coverage in the New York Times or the Washington Post.” The petitioner submitted no evidence to support ██████████ statement or to establish ██████████ authority to make such a statement.

The articles submitted in response to the RFE that bear dates indicate that they were published in 2007, which was after this petition was filed. As previously indicated, articles appearing after the date the petition was filed evidence future eligibility instead of eligibility at the time of filing so cannot be considered in this proceeding. 8 C.F.R. § 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. at 49. In addition, we note that the magazines submitted, such as *Las Vegas Magazine*, operate more like advertising or promotional material instead of as independent media. As such, they cannot be considered professional or major trade publications or other major media under this criterion.

Accordingly, the petitioner failed to establish that he meets 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 states that the petitioner made “outstanding efforts and successes in combating DUT” by “educat[ing] thousands of young people on the dangers of driving and drinking. He has utilized hypnotherapy to save lives. No other performer on the Las Vegas stage or elsewhere can make that claim.” An October 24, 2005 letter from ██████████ and ██████████ of the Royal Canadian Mounted Police and the May 3, 2004 letter from ██████████ of the Saanich Police Department state that the petitioner is an effective speaker on alcohol awareness. The letter from ██████████ of the Edmonton Police Service also credits the petitioner with the decrease in the number of car crashes, fatalities, and drunk driving. The letter from ██████████ states that “[the petitioner’s] Road safety presentation is without a doubt the most original and effective performance I have ever seen on the issue of road safety, sober driving promotion, and teen responsibility and safe choices (emphasis in original).” The petitioner also submitted a number of letters from police departments and school representatives thanking him for his presentation and stating that his presentation made a difference. For example, the letter from ██████████ states that “[t]he attitude regarding drinking and driving in our school, particularly within the group of students I was concerned with, became completely unacceptable” and thanks the petitioner for “inspiring profound attitude change amount our youth.” The October 24, 2000 letter from ██████████ provincial coordinator of Students Against Drunk Driving, states that the petitioner’s performance is

“powerful, thought provoking, and very entertaining” and that the petitioner is ranked “as one of the best [students and teachers] had ever seen.” These letters reveal that the petitioner’s presentation is respected and appreciated by the audience members and that the authors believe that the petitioner employs unique or original methods. These letters, however, do not demonstrate how the petitioner made a contribution of major significance. For example, the letter from [REDACTED] and Stone credit the petition with a decrease in fatalities due to drunk driving in the area, but do not include any evidence supporting their statement. Nor do the letters indicate how the petitioner enjoys national or international acclaim from these presentations made to local groups.

The petitioner also submitted letters that speak highly of his overall abilities. The May 27, 2008 letter from [REDACTED] Executive Director of the American Council of Hypnotist Examiners, states that the petitioner is “one of the very best stage hypnotists” and that “he is on the forefront of educating the public about hypnosis and impacting their perception of hypnotherapy as a viable tool for growth and change.” The October 24, 2005 letter from [REDACTED] chief executive officer of Red Horse Press and the petitioner’s instructor, states that as a good stage hypnotist, the petitioner “has the ability to educate the audience, inspiring them with hope and turning them into clients for hypnotherapists working in the local area. People who would never have sought the counseling they need will see [the petitioner’s] show and find the courage to seek help.” The July 3, 2004 letter from [REDACTED] certified clinical hypnotherapist with Change Now Hypnosis, states that the petitioner has “a truly unique talent that others only dream to possess.” Although these letters are complimentary of the petitioner’s abilities, they do demonstrate how he has made an original contribution of major significance to his field. For example, none of the letters state that the petitioner is employing new or different methods or that his methods have been adopted by other hypnotists.

As the record lacks extensive documentation showing that the petitioner’s work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, the petitioner has failed to establish that he meets this criterion.

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

This criterion generally applies to the visual, not performing, arts. However, because counsel on appeal states that the petitioner “demonstrated successful performances,” we have considered the relevant materials as comparable evidence of the petitioner’s eligibility pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). It is inherent to the performing arts to perform. Therefore, not every production is a showcase or exhibition of the work of every performer. We find that the petitioner’s performance in “Mesmerized” is not a showcase of the petitioner’s work but a general commercial production for entertainment. Without evidence that the petitioner’s performance is comparable to the exclusive artistic showcases that might serve to meet this criterion for a visual artist, we cannot conclude that the petitioner meets this criterion. However, while the evidence regarding the petitioner’s performances cannot serve to meet this criterion, they are not without evidentiary value. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. As we find the petitioner’s performances are far more relevant to the “evidence of commercial success” criterion set forth at 8 C.F.R. § 204.5(h)(3)(x), they have been discussed separately within the context of that criterion.

Accordingly, the petitioner failed to establish that he meets 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.*

The petitioner submitted a program from his Las Vegas show and a DVD of his performance. The letter from [REDACTED], the company that produced the petitioner's Las Vegas show, states that the petitioner's show "produced an estimated \$20,000.00 in revenue per week." That letter is written in the past tense and does not otherwise indicate when those revenues were generated. We note that at the time of filing, the petitioner submitted no evidence regarding the existence of his show in Las Vegas. If his act did not begin until after filing, as previously indicated, evidence related to the commercial success of the act after filing cannot be considered in this proceeding. 8 C.F.R. § 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. at 49. [REDACTED] letter also gives no other substantiating details or support for the statement; the petitioner submitted no evidence to substantiate [REDACTED] assertions. 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)). Further, even if the claims were documented, the petitioner submitted no evidence to establish that \$20,000 per week is indicative of commercial success. The letter from [REDACTED], president of the SHOW, states that the petitioner performs 200 shows per year and that each show has anywhere from 200 to 1,000 audience members. [REDACTED] does not state how he came to learn of the petitioner's audience numbers nor does he give any information about the amount of revenue generated. Again, the petitioner submitted no evidence to substantiate [REDACTED] assertions.

Accordingly, the petitioner 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 indicates that the petitioner is well-known hypnotist who has worked with schools in the United States and Canada and currently works with a show in Las Vegas. However, the record does not establish that the petitioner achieved sustained national or international acclaim as a hypnotherapist or entertainer so as to place 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.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner here has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.