

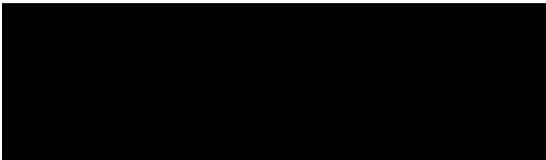
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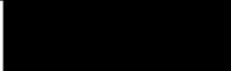
U.S. Citizenship  
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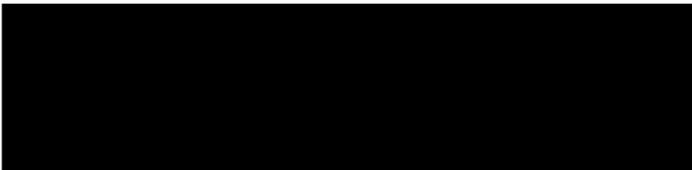
Petitioner:

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition and reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the performing arts, 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and additional evidence, some of which relates to achievements after the date of filing. We note that the petitioner must demonstrate her eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l. Comm’r. 1971). For the reasons discussed below, we uphold the director’s conclusion that he petitioner has not established eligibility for the exclusive classification sought. Specifically, much of the evidence either does not relate to the regulatory criteria for which it is submitted or falls far short of the requirements to meet those criteria.

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, 60898-9 (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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an actress. Much of the evidence revolves around the petitioner's selection to play the role of [REDACTED] in the Broadway musical '[REDACTED]'. We recognize the significance of performing on Broadway. As noted by the director, however, the commentary to the final rule, published at 56 Fed. Reg. 60899 (Nov. 29, 1991), states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Similarly, we are not persuaded that every actor or actress cast in a leading or critical role in a Broadway production qualifies for classification pursuant to section 203(b)(1)(A) of the Act. Rather, such evidence relates to only one of the regulatory criteria, 8 C.F.R. § 204.5(h)(3)(viii), of which an alien must meet at least three.

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. Counsel has not consistently explained which criteria the petitioner is alleged to meet. The criteria follow:

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

At the outset, it is necessary to emphasize the precise wording of the regulation at 8 C.F.R. § 204.5(h)(3)(i), which requires evidence of the alien's "receipt" of qualifying awards. The plain language is clear; the alien must actually be the named recipient of the award.

Counsel, relying on the AAO's past acceptance of athletic team awards, asserts that the petitioner should be credited with Tony awards won by '[REDACTED]' prior to her association with this production. Specifically, '[REDACTED]' was nominated for [REDACTED] at the 2002 Tony Awards. The named nominees were the producers, not the cast. The petitioner signed her contract to perform in this musical in 2003.

First, counsel relies on unpublished decisions by the AAO that have not been designated as precedents. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS

employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, the broad assertion that any alien associated with an award-winning entity meets this criterion does not logically follow from the very limited proposition that an athlete competing in a team sport who receives a nationally or internationally recognized prize or award as a member of her team could meet this criterion.

While a song writing award issued to a team of named songwriters and an acting award issued to a named actress would warrant consideration under this criterion, a generic "[REDACTED]" award cannot be credited to every writer, composer, songwriter, musician, actor, actress and crew member working on the show. The assertion that an actress who was not even associated with the show when it was nominated can be credited with the award is even less persuasive.

On appeal, counsel asserts that it is actually more persuasive that the petitioner became associated with the show after it won an award because an award-winning show is more selective. Such a consideration may be warranted when considering the reputation of an organization for which the petitioner claims to have performed in a leading or critical role, but has no merit under this criterion. It simply cannot be credibly asserted that the petitioner has presented evidence of her "receipt" of a nationally or internationally recognized prize or award. Thus, the petitioner has not established that she 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.*

Counsel asserts for the first time on appeal that the petitioner meet this criterion through her membership in the Canadian Actors Equity Association, the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) and the Actors Equity Association. The petitioner submits evidence of her membership in these associations and evidence that they are professional memberships akin to unions. Specifically, the associations negotiate and administer collective agreements and working conditions, provide benefit plans, information and support and act as an advocate for their members. While [REDACTED] asserts that the petitioner's membership "is based upon merit and her achievements within the industry," the petitioner did not provide the official membership requirements for any of these associations.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership in an associations that *require* outstanding achievements as judged by recognized national or international experts. Professional associations or unions that merely require a specific amount of experience in the field, even a competitive field, cannot serve to meet this criterion. The record contains no evidence that any of these professional associations have nationally or internationally recognized experts in the field of theater judging the performances and accomplishments of prospective members.

In light of the above, the petitioner's new claim on appeal to meet this criterion is not supported by the record.

*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.*

Once again, it is necessary to review the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) prior to our analysis of counsel's assertions. Specifically, the regulation requires published material "about" the alien. As noted by the director in the request for additional evidence and the final denial, brief references to the alien in articles that are primarily about another topic cannot serve to meet this criterion. Finally, it is the petitioner's burden to establish that the published materials appeared in major media.

Initially, the petitioner submitted evidence labeled as documenting the reputation of [REDACTED] and "Published Reviews of Applicant's Work." The reviews and promotions of "[REDACTED]" in the former exhibit do not even mention the petitioner by name. The latter exhibit includes:

1. A review of the [REDACTED] and the [REDACTED] that notes that the petitioner was one of two soloists with the quartet posted on the website [REDACTED]
2. Duplicate copies of the reviews of [REDACTED] that do not mention the petitioner and do not appear to relate to productions in which she was involved;
3. The inclusion of the petitioner's name on a list of the cast members of all Broadway, Las Vegas and U.S. National Tours of "[REDACTED]" appearing in an unknown publication;
4. A 2004 article in the *Toronto Star* about the success of Canadian actors and actresses in London and New York that mentions the petitioner as performing in "[REDACTED]";
5. A news article in an unidentified publication about "rising star" [REDACTED] that includes a photograph of him acting with the petitioner; and
6. A 1996 review of various shows at Newfoundland Theater naming the petitioner as a cast member in "[REDACTED]" in the *Toronto Star*.

In the director's request for additional evidence, he advised that "mere references to the alien's work" would not suffice to meet this criterion. In response, counsel asserted that the petitioner has already submitted articles in major Canadian newspapers which "evidence [the petitioner's] extraordinary achievements." In a footnote, counsel asserts that the *Toronto Star* is Canada's largest daily paper. Finally, counsel notes the previous submission of articles about "[REDACTED]." Counsel reiterates these assertions in the motion to reopen the director's first denial. In his final notice of denial, the

director concluded that the reviews of and publicity for “ [REDACTED] ” were not published materials about the petitioner and that the articles in the Canadian press, while referencing the petitioner, were not “about” her.

On appeal, counsel concedes that the materials submitted do not “feature” the petitioner but asserts that they “offer evidence of her lead and important roles in highly publicized theater productions.” While we concur with counsel that the materials are relevant to the leading role criterion at 8 C.F.R. § 204.5(h)(3)(viii) insofar as they relate to the distinguished reputation of the shows in which the petitioner has appeared, we cannot consider the published materials submitted as serving to meet this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii).

As stated above, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) clearly and unambiguously requires published material “about” the alien. We concur with the director that none of the materials submitted are “about” the petitioner. In fact, counsel does not challenge this conclusion. Thus, the petitioner has not established that she meet this criterion.

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The record contains contracts with the petitioner, although her name is misspelled, for judging the “Dance, Dance, Dance” competition in 2002 and 2003 in Niagara Falls. The petitioner did not submit any information about this competition. The evidence was not specifically submitted to meet this criterion and counsel has not raised a claim that the petitioner meets this criterion in his subsequent submissions. The director concluded that no evidence was submitted to meet this criterion.

The evidence submitted to meet a given criterion must be indicative of or at least consistent with national or international acclaim if that statutory standard is to have any meaning. Without any evidence of the significance of the “Dance, Dance, Dance” competition, we cannot evaluate the quality of this evidence. Thus, the petitioner has not established that she meets this criterion.

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

In response to the director’s request for additional evidence, counsel asserted that the letters submitted initially and with counsel’s response confirm the petitioner’s talent and, thus, serve to meet this criterion.

Initially, the petitioner submitted letters from [REDACTED], who taught the petitioner at Randolph Academy; [REDACTED] director of Disney’s Lion King on Broadway who previously cast the petitioner with the Confederation Centre Young Company; [REDACTED], a U.S. casting director who has taught the petitioner; [REDACTED] Artistic Director of Studio 407 – Toronto who taught the petitioner at the Randolph Academy; [REDACTED] t, an agent and [REDACTED], president and

founder of the [REDACTED]. The letters all praise the petitioner's talent and professionalism and assert that she has risen to the top of her field. None of the letters, however, identify an original contribution or explain how the petitioner has impacted the field.

In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] the creator of several Disney cruise shows in which the petitioner has performed. [REDACTED] asserts that she "made important contribution[s] to many Disney performances with her charismatic presentation skills." This statement does not explain exactly what the petitioner contributed or how it was original and has impacted the field of acting as a whole. Simply performing well on a cruise cannot be considered an original contribution of major significance to the field of acting. The remaining letters are similar, coming from individuals who have worked with, taught or auditioned the petitioner and who praise her talent.

The director concluded that the petitioner did not create the roles in which she performed or otherwise impacted the field through original contributions. On appeal, counsel asserts that the petitioner is not seeking extraordinary ability as a writer, but a performer. Counsel notes references to the petitioner as a "triple threat" in that she can act, sing and dance. Counsel concludes that the letters demonstrate that the petitioner has made original and significant contributions to the success of many performances.

A petitioner cannot meet this criterion by "contributing" to the success of an individual show. The plain language requires that the contribution be "original" and of "major significance" to the field. Thus, in order to meet this criterion, the petitioner must demonstrate an impact beyond the shows in which she has performed. As noted by the director, the petitioner was not part of the original cast of [REDACTED]. Regardless, she has not demonstrated that her performances in that show have impacted theater in general. Similarly, the record lacks evidence that live theater has been noticeably impacted by the petitioner's performances onboard Disney cruises.

Without evidence of the petitioner's original contributions that have had a demonstrable impact on the field in general, she cannot establish that she meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The record contains no evidence relating to this criterion and counsel has never asserted that the petitioner meets it.

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

Counsel asserts that the petitioner's theatrical performances in Canada, on Disney cruises and on Broadway serve to meet this criterion. The director concluded that this criterion does not apply to the petitioner's field. On appeal, counsel asserts that the performing arts do fall under this criterion and

references a non-precedent decision by this office allowing that film festivals can fall under this criterion.

As stated above, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

We concur with the director that, in general, this criterion applies to the visual arts. That said, in situations where this criterion does not directly relate to the alien's field, we can consider "comparable" evidence. Unlike counsel's example of a film festival, however, a general theatrical performance is not an exhibition or showcase of a particular artist's work. In other words, exhibition at an exclusive film festival is more relevant than mere commercial release. [REDACTED] is not a showcase of the petitioner's work on her role but a general commercial production. Similarly, Disney cruises are not exhibiting or showcasing the work of an exclusive group of performers but providing entertainment for its customers.

It is inherent to the field of performing arts to perform. Not every production, even on Broadway, is a showcase or exhibition of the work of every performer. We do not find that the petitioner's role on Broadway has no evidentiary value, but it cannot serve to meet this criterion.

In light of the above, the petitioner has not established that she meets 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 has performed in productions with undocumented significance in Canada and on Disney cruises. While [REDACTED] asserts that the petitioner performed in "lead roles" for Disney, he does not identify any specific role. In 2003, the petitioner was cast as [REDACTED] in the Broadway production of "[REDACTED]." Counsel's assertion that the leading nature of this role is apparent from where her name is listed in the cast is not persuasive. They are listed in order of speaking, not significance to the show. We acknowledge that the program includes a group of actors and actresses in the "ensemble" and that the petitioner has a named role. Casting director [REDACTED], however, asserts only that the petitioner was selected for a "leading role in the chorus." Significantly, the reviews of the show that summarize the plot make no mention of the petitioner's character.

The director concluded that there were several productions of "[REDACTED]" and that the petitioner had not demonstrated the significance of her role. On appeal, counsel notes the significance of Broadway in the field of theater and goes over the evidence of record.

Disney's reputation is not at issue. The record, however, contains no evidence that Disney cruise productions have a nationally distinguished reputation in the theatrical world. Moreover, the record lacks evidence as to the specific roles the petitioner has played. The record, however, does contain significant evidence establishing the distinguished national reputation of the Broadway version of

██████████” The evidence of record, however, does not consistently establish that the role of ██████████ is either leading or critical beyond the obvious need to fill every role in a given musical. Without more detail regarding the role beyond the vague assertions of its leading nature, we cannot conclude that the petitioner meets this criterion.

That said, we acknowledge that the evidence relating to this criterion is the strongest of all the evidence submitted. Even if we concluded that the petitioner meets this criterion, and we do not, the petitioner would only meet one criterion. As stated above, the petitioner must meet at least three to establish eligibility. For the reasons discussed above and below, the petitioner falls far short of meeting any other criterion.

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

While the petitioner submitted evidence of her remuneration, she did not establish how her income compares with the most renowned live theater performers nationwide. Counsel has never asserted that the petitioner meets this criterion and we find no evidence that she does.

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

The record contains evidence that “██████████” is commercially successful. It appears, however, that the show was commercially successful prior to the petitioner’s involvement with the show. The petitioner does not appear on any of the promotional materials such that she can be credited with the show’s commercial success. Counsel has never asserted that the petitioner meets this criterion and we find no evidence that she does.

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.

Review of the record, however, does not establish that the petitioner has distinguished herself as an actress to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as an actress, but is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field. 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.