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U. S. Citizenship and Immigration Services
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **JUN 29 2009**
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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.

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 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), as an alien of extraordinary ability in the arts. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

On appeal, counsel claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

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 February 13, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a performing artist. Initially, the petitioner submitted confirmation of his past employment, news articles, information about *Miss Saigon*, recognition for his role as a judge, certificate of recognition for being part of the Cameron Mackintosh cast, performance program, and information about his ballet roles. In response to the Request for Evidence ("RFE") dated February 25, 2008, the petitioner submitted employment contracts, news articles, letters of recommendation, and additional information about *Miss Saigon*.

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). 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. 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 under 8 C.F.R. § 204.5(h)(3). The petitioner does not claim to meet any of the criteria not discussed 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 stated that he established eligibility under this criterion by his receipt of a certificate of recognition from the Cameron Mackintosh theater production company. The certificate recognizes the petitioner as having been "part of [the] touring production" of *Miss Saigon*. The petitioner submitted no evidence showing that this certificate was issued as to recognize excellence in the field or that it was given as a result of a contest as opposed to being issued as a recognition of employment. It is not a prize or an award for excellence as an actor. On appeal, counsel states that as Cameron Mackintosh company "enjoys . . . international recognition," a certificate issued by the company "is an excellent recognition of extraordinary accomplishment." The petitioner did not submit secondary evidence, such as news articles or letters from sponsoring organizations, documenting the prestige associated with this certificate that would indicate its national or international recognition as an award for excellence in his field as required by 8 C.F.R. § 204.5(h)(3)(i). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.

At the time of filing, the petitioner made no specific claim regarding this criterion. In response to the RFE, counsel states that the petitioner demonstrates eligibility under this criterion by virtue of being a member of the cast of *Miss Saigon*. 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. The petitioner has failed to establish that the *Miss Saigon* production is an association and that his selection for a role in that production is tantamount to

membership in an association that requires outstanding achievement of its members. Instead, the evidence reflects that the petitioner went through a job application process and demonstrated suitability for a position in the cast. The petitioner's role with Cameron Mackintosh Limited and *Miss Saigon* is more applicable to the discussion under criterion 8 C.F.R. § 204.5(h)(3)(viii) and will be discussed in more depth under that criterion.

On appeal, the petitioner submitted his membership card in "Equity," also known as British Actor's Equity, which is an association "representing professional performers and other creative workers from across the spectrum of the entertainment, creative and cultural industries." The information about Equity states that "anyone who is currently working professionally in the field of entertainment" is eligible to join the association. The information submitted specifically states that membership is available to "all dancers, whether they are starting out or well-established in the profession." Counsel states that the organization requires outstanding achievement by virtue of having to audition for roles and jobs in the industry and that the difficulty in obtaining such roles keeps all but the most talented from being members of this association. The difficulty of the profession is not at issue under this criterion; the issue is the admission requirements of the organization and whether applications are reviewed by recognized national or international experts in the field. The information provided does not indicate that membership is predicated upon outstanding achievement or that membership applications are judged by recognized national or international experts in the field.

Accordingly, the petitioner has not established 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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, 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.¹

The petitioner submitted the following articles: "The Filipinos of *Miss Saigon*," published in the July 25, 2000 *Manila Bulletin*; "Perfect suspense in *Storm*" published in the *Sun Star*; "'Miss Saigon' cast unwinds at Bravo!" published in the November 8, 2000 *Sun Star*; "A must see *Miss Saigon*!!;" "*Miss* is a hit!" published in the August 26, 2005 *Evening Post*; "Here's a toast to 'Miss Saigon,'" published in the September 1, 2005 *Mansfield & Ashfield Observer*; "Long run for *Miss Saigon*" published in the August 19, 2005 *Newark Advertiser*; "Glory of love in horrors of war," published in the September 2, 2005 *Newark Advertiser*; "Military precision" published in the August 23-September 1, 2005 *Nottingham Evening Post*; "Stunning Saigon goes with a bang" published in the March 16-22, 2006 *Hampshire Chronicle*; "Exotic east heads north" published in the April 25,

¹ 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.

2006 *Aberdeen Press & Journal*; "MISS SAIGON Tours till 24 June" posted on April 7, 2006 to ReviewsGate.com; a review of *Miss Saigon* posted on December 22, 2005 to the BBC website; "'Miss Saigon' – The Final Cast" published on August 19, 2000 to emanila.com; a review posted on July 20, 2005 to www.ysolde.co.uk/ramin; "Miss Saigon Still Soars" published on December 23, 2005 to the *broadwayworld.com* website; and "Divertissements in Ballet" published in the August 27, 1999 *The Freeman's TGIF*. None of these articles are primarily about the petitioner as required by 8 C.F.R. § 204.5(h)(3)(iii) as opposed to being about the show as a whole or a number of different performers. For instance, the article entitled "The Filipinos of *Miss Saigon*" lists the previous cast members, the new cast members (of which the petitioner's name was one of five), and profiles the Filipino star of the show. The article does not focus upon the petitioner or his work or include any information about him outside of his name as a newcomer to *Miss Saigon*. As such, we cannot conclude that this article or the others like it are primarily about the petitioner.

The petitioner also submitted a number of different reviews or comment lists that appeared on various websites as well as his cast biography that appeared on the *Miss Saigon* website. We are not persuaded that international accessibility via the internet is a realistic indicator of whether a given publication is "major media." The only information about these websites was provided by counsel in the original submission, which stated that these websites are high-ranking and respected general and trade websites. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). This information is insufficient to show that the websites constitute major media as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, these reviews were not primarily about the petitioner but instead mentioned his name as one of many performers.

The petitioner submitted two articles primarily about him: "[The Petitioner]: A Dream Fulfilled" which appeared in the *Inquirer Sunday Magazine* on August 13, 2000 and "Ms. Saigon, here I come" published in the June 14, 2000 *Sun Star*. The information provided about the *Philippine Daily Inquirer* and *Sun Star* was provided from the website *Wikipedia*, which states that the *Inquirer* is "the Philippines' largest newspaper in terms of circulation" and that the *Sun Star* "is a community newspaper in Cebu City" that is "the leading newspaper in both Metro Cebu and the province of Cebu." With regard to the information posted on *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.² As such, we will not give significant weight to claims for which *Wikipedia* is the only cited source.

² Online content from *Wikipedia* is subject to the following general disclaimer:

Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant

On appeal, the petitioner submitted an article entitled "'The King and I' sure to dazzle audience" published in the November 21, 2007 *The Issaquah Press*. The name of the publication indicates that it is a local or regional newspaper and the petitioner has not established that it is a major trade publication or other major media. Although the article contains two paragraphs about the petitioner's performance, it is not primarily about the petitioner as opposed to being a general review of the show in its entirety and the actors who appear in it. In addition, this article was published after the date that the petition was filed. 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. 45, 49 (Comm. 1971).

For all of the above stated reasons, the petitioner failed to establish that he meets this criterion.

(iv) 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 petitioner submitted evidence that he served as a judge in the SongFest 2000 held by St. Theresa's College Student Council. The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). For example, judging a national competition for top artists is of far greater probative value than judging a regional, youth, or student competition. Evidence that the petitioner participated as a judge in a local school's competition, one time, nearly seven years prior to filing this petition, is insufficient to establish that the petitioner has participated as a judge in a manner consistent with this highly restrictive classification.

Consequently, the petitioner failed to establish his eligibility under this criterion.

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

The record contains numerous letters of recommendation attesting to the petitioner's experience and accomplishments. The director found these letters to be insufficient, stating "[w]hile these letters describe the

fields.

See <http://en.wikipedia.org/wiki/Wikipedia:Disclaimers>, accessed on June 26, 2009 (and added to the record of proceeding).

petitioner's acting, singing, and dancing talents, they do not present documentation that he has made significant contributions or that she [sic] has sustained acclaim."

The petitioner submitted letters of recommendation in support of his petition. While letters such as these provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim. The letter from [REDACTED] artistic director for the Village Theatre, states that the petitioner "is an outstanding performer with an exceptional work ethic. . . . Performers of [the petitioner]'s caliber are a rare find, and his skills make him a tremendous asset to the local theatre community." The letter from [REDACTED], senior pastor at Seattle Mien Foursquare Church, states that the petitioner is a valued contributor to the church's music. The letter from [REDACTED] associate producer with Cameron Mackintosh Limited, states that the petitioner "is a very gifted artist who started in the ensemble of the show and gradually worked his way up to playing one of the lead roles." The letter from [REDACTED] executive producer of *Miss Saigon* in the Philippines, stated that the petitioner "displayed great talent as an actor, singer and dancer . . . [and his] professionalism and single-minded dedication to his craft . . . ma[de] him part of a limited roster of world-class Filipino performing artists that are continually sought to perform in musical theatre both locally and internationally." These letters do not state that the petitioner made any sort of original contribution of major significance to his field as opposed to being complimentary of his skills as an actor, dancer, and singer.

Accordingly, the petitioner failed to establish eligibility under this criterion.

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

The plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for performers such as the petitioner. 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 performances are far more relevant to the "leading or critical role" criterion at 8 C.F.R. § 204.5(h)(3)(viii) discussed below. In any event, although the record contains evidence of the petitioner's appearances on stage, frequent performances are intrinsic to professions involving performing such as actors and musicians just as display of art is inseparable from the profession of a visual artist. Yet the regulation requires that evidence under this criterion demonstrate sustained national or international acclaim, not simply document an alien's employment in his field. The petitioner has failed to demonstrate that these performances were consistent with sustained national or international acclaim at the very top of his field, for example, by submitting evidence that he was the headliner or received top billing for the performances. On appeal, counsel states that the positive reviews he received for his performances qualify him under this criterion. The reviews cited by counsel are not about the petitioner in particular as opposed to being about the *Miss Saigon* production and cast as a whole with the petitioner's performance briefly mentioned. These brief mentions are insufficient to establish that the petitioner attracted a substantial audience or otherwise demonstrated sustained national or international acclaim for his performances.

Accordingly, the petitioner did not establish that he meets this criterion.

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

The petitioner claims to meet this criterion by virtue of his participation in the *Miss Saigon* show produced by Cameron Mackintosh Limited. In order to meet this criterion, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. The evidence presented from *Wikipedia* shows that the petitioner played the role of "Thuy" and he understudied the role of "Engineer." The information provided about Cameron Mackintosh states that he produced a number of long running musicals in London and New York City and that he is credited for "transform[ing] the musical into a global, profitable brand. He has maintained tight creative control of hundreds of productions of his musicals in dozens of countries across the globe in order to ensure the consistency and quality of the production." As stated above, *Wikipedia* is a user managed site where any number of people have access to the information posted, leading to the website's inherent unreliability. The only other evidence about Cameron Mackintosh comes from his personal website which also states that he has produced a number of high profile, profitable musicals. This information is insufficient to establish the nature of Cameron Mackintosh Limited's reputation.

Even if Cameron Mackintosh Limited's reputation had been shown to be distinguished, the petitioner did not provide evidence that his role was leading or critical for the company as a whole. The petitioner presented evidence of his employment with *Miss Saigon* from 2000 to 2006, first as a member of the ensemble and then, beginning on March 30, 2005, as "Thuy." The information submitted about *Miss Saigon* states that "266 people worked on the London production at each performance and of those only 47 appeared in front of the audience." Of those 47 onstage performers, six are named (including "Thuy"). The petitioner submitted no evidence distinguishing his role either as a member of the ensemble or as Thuy, played for one year of the decades during which *Miss Saigon* appeared on stage, from that of the other six performers in named roles, the backstage and production persons, or the artistic management of Cameron Mackintosh Limited.

For all of the above reasons, the petitioner has not established that he meets this criterion.

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

The petitioner provided a copy of his contracts to appear in *Miss Saigon* from 2001 to 2006. The latest contract, for work from July 4, 2005 to August 26, 2006 states that the petitioner earned £750 per week in performance. The letter from [REDACTED] states that the petitioner earned £42,900 for the last year of the show's run. To show that his remuneration was higher than others in the field, the petitioner submitted a printout from "Career One Stop" which showed that the median hourly wage for musicians and singers ranges from \$38.61 to \$6.73 per hour depending on location in the United States. The petitioner did not present evidence with the more specific job description of stage actors or Broadway performers. The petitioner submitted no evidence regarding what kind of salary could be commanded by such performers, including other performers in *Miss Saigon*, and therefore no meaningful comparison can be made to determine that the petitioner's salary is significantly higher than others in his field.

For all of the above stated reasons, the petitioner has not demonstrated eligibility under 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.

On appeal, counsel claims that the petitioner meets this criterion by virtue of his performance as a leading actor in *Miss Saigon* and the musical's demonstrated success. Although evidence in the record establishes that *Miss Saigon* brought in £1.8 million in box office revenue when performed at the Wales Millennium Centre and was otherwise a successful show, the petitioner presented no evidence to show that he was a reason for the show's success. The statement provided by the petitioner states that *Miss Saigon* opened in London in 1989 and closed in 1999. The petitioner presented no evidence showing how his limited time as a member of the *Miss Saigon* cast in the lifetime of the show affected the show's overall box office revenue or even that his performance enhanced the revenue of the individual shows in which he performed such as the performances at the Wales Millennium Centre.

For all of the above stated reasons, the petitioner did not establish eligibility under this criterion.

Immigrant classification 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 field. The record does not establish that the petitioner had achieved sustained national or international acclaim placing him at the very top of his field at the time of filing. 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 has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.