

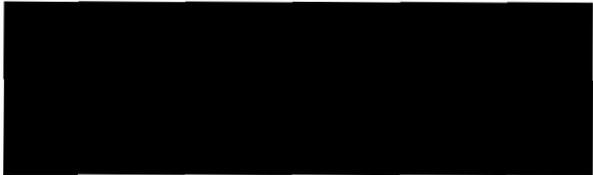
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FILE: LIN 07 165 53106 Office: NEBRASKA SERVICE CENTER Date: **MAR 05 2009**

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:

SELF-REPRESENTED

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. The petition 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. – An alien is described in this subparagraph if –

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who has 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 seeks to classify the petitioner as an alien with extraordinary ability as an actor. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, 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.

The petitioner has submitted evidence that he claims meets 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.

The petitioner states that he has won or been nominated for the following nationally recognized awards: two nominations for the [REDACTED]

The petitioner submitted copies of two certificates of nomination dated June 23, 2003, reflecting that he was nominated for outstanding performance by a male and outstanding new play or musical for independent theater at the [REDACTED]. We note first that a nomination alone is insufficient to meet this criterion. Second, the petitioner submitted no documentation to corroborate the significance of this award, which he states is the equivalent of the Tony Award in the United States. 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 petitioner also submitted:

- A March 14, 2002 press release from the [REDACTED] announcing that the petitioner had been chosen for the "\$5,000 Emerging Artist Award in theatre." The press release indicated that the award, funded by an anonymous donor, "was for an emerging artist who has exhibited 'artistic excellence which is matched by innovation, experimentation, and a willingness to take risks.'" The press release indicated that the petitioner was the unanimous choice from a pool of 34 applicants.
- A May 15, 2002 letter from the [REDACTED], indicating that the petitioner was selected to receive a \$9,000 Fox Training Fellowship, "based on the strength of [his] proposal and the Foundation's appraisal of [his] potential for future contributions to the theatre." The petitioner was advised that the fellowship was to be used for the work described in his proposal.
- A copy of an undated article whose source is not identified, indicating that the petitioner had been awarded the Infinite Award for best performance in a production. The article indicates that the "In Awards were designed to be an informal and fun way to celebrate works produced and presented by infinitheatre, and to acknowledge talent and hard work." The article indicates that the petitioner was chosen by ballots sent to "all members."

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

- A copy of an undated newspaper article from the *Gazette*, indicating that the petitioner had been selected as one of the two “Best New Face” awards sponsored by Telescene and Elite Productions at the Montreal Fringe Festival. The article indicated that the awards were the first ever for the festival and that the “Best New Face” awards were restricted to “performers in Quebec-produced plays.”
- A copy of a September 16, 2006 news release, indicating that the petitioner had received a grant by the Stratford Festival of Canada in 2005. According to the press release, the Tyrone Guthrie Awards were created “to provide financial assistance for training, development and special projects” and to “allow recipients to pursue a variety of projects.”

The petitioner submitted no documentation that any of these awards was a nationally or internationally recognized award. In response to the director’s request for additional evidence dated May 23, 2007, the petitioner stated:

Elite Casting is an internationally recognized casting company. They have cast internationally released productions such as *John Q* with Denzel Washington, *The Score* with Robert de Niro and Marlon Brando, and *The Boys of St. Vincent* with Henry Czerny of *Mission Impossible* fame. Considering that they have had the opportunity to work with some of the world’s top talent, they can be considered experts in the field and seeing and acknowledging talent of national and international caliber. I have provided evidence of their prestige in this response. Given Elite’s status in the industry, I contend that their granting of The Best New Face award is equivalent to what you see with the Grammy’s in the Best New Artist Award. Both awards recognize excellence in the field at an early career stage.

The petitioner submitted a copy of an August 9, 2007 webpage from the Internet Movie Database (IMBD), which shows 26 films or television shows, dating from 1985 to 2002, for which Elite Productions has been involved in casting. We note first that IMBD is a user database that does not attest to 100% accuracy and relies, to some extent, on users for its content.² Further, a single page from IMBD, indicating that Elite Productions was involved in 26 casting decisions over a period of 17 years, is not an affirmation of the international repute of the company. Additionally, while the petitioner indicates that the company has “work[ed] with some of the world’s top talent,” there is no indication in the IMBD information that Elite Productions was involved in any major casting for the movie *John Q*, where it was responsible for “background casting,” or *The Score*, where it was responsible for Canadian casting. We note further that the award for which the petitioner was selected, the Best New Face, was limited only to those performers who appeared in plays produced in Quebec. Despite the credentials of the sponsor of the award, the

² See www.imbd.com/help/show_leaf?infosource, accessed on March 3, 2009 and incorporated into the record.

petitioner submitted no evidence that the Best New Face award presented at the Montreal Fringe Festival is a recognized national or international award of excellence. The petitioner submitted no documentation that would suggest that this award is the equivalent to a Grammy.

As evidence of the prestige of the Tyrone Guthrie, the petitioner submitted a copy of an August 9, 2007 webpage from the Stratford Festival of Canada describing its history. The document does not address the Tyrone Guthrie awards and the petitioner submitted no other documentation to establish the significance of an award by the Stratford Festival or that the grant he received from the festival is nationally or internationally recognized as an award of excellence in theater. The petitioner also submitted an August 9, 2007 webpage from livedesignonline.com, also purporting to announce the Tyrone Guthrie awards for 2005. We note that the names indicated are different from those shown in the press release and that the release does not mention the petitioner at all. 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).

The petitioner also claimed to meet this criterion based on winning the 2001 SummerWorks Theatre Festival Jury Prize for Outstanding Production. As evidence that he won the award, the petitioner submitted a June 5, 2007 letter from [REDACTED] who identified herself as the artistic producer of the SummerWorks Theatre Festival in Toronto, having assumed the position in 2005. The petitioner also submitted an August 9, 2007 webpage from the SummerWorks Theatre Festival webpage that described the history and vision of the organization. We note that the petitioner did not initially allege that this award meets this criterion and submitted no documentation to indicate that the award is nationally or internationally recognized.

The evidence submitted by the petitioner does not establish 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.

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 work 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. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner claims that he meets this criterion based on his membership in the Academy of Canadian Cinema and Television, which he states is the sister academy of the Academy of Motion Picture Arts and Sciences in the United States. The petitioner stated that membership in

the Academy gives him the power to vote for the Gemini and Genie Awards, “Canada’s highest honors for television and film.”

The petitioner submitted a March 13, 2007 letter from ██████████ Membership Manager of the Academy of Canadian Cinema and Television. The letter indicated that the petitioner was a voting member of the organization but did not outline the criteria for becoming a voting member. A copy of a May 15, 2007 webpage from the Academy’s website outlines four types of membership for the Academy, but does not identify the criteria for becoming a voting member.

On appeal, the petitioner alleges, “The Director clearly went outside the bounds of the criterion by requesting ‘evidence regarding criteria for selection as a voting member of the academy and the percentage of members of the [academy] who have voting privileges.’” The petitioner offers no explanation as to why he believes the director exceeded his authority in requesting the stated information. The regulation clearly requires that the petitioner must establish that membership in an association requires outstanding achievements of members as judged by recognized national or international experts in their disciplines or fields. The petitioner submitted no documentation to establish that the Academy of Canadian Cinema and Television requires outstanding achievements as a condition to being a voting member.

The evidence does not establish that the petitioner meets this criterion.

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

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner stated in his May 1, 2007 letter accompanying the petition that “[t]here are no major trade publications in Canada. There are only two nationally circulated newspapers in Canada, The Globe and Mail and The National Post.” The petitioner stated that he had received “stellar reviews in both of these publications” in addition to “rave reviews in Canada’s major cities newspapers.”

The petitioner submitted reviews from various newspapers and from *Now* magazine of theater productions in which he has appeared. The reviews of the petitioner’s performances were uniformly good; however, the articles were primarily about the productions and not about the petitioner. Two of the petitioner’s documents, however, contain his responses to interview questions and may be considered to be “about” him. The first appears in an unidentified and

undated document announcing the petitioner's award for best performance at infinitheatre. The second is a February 6, 2007 webpage from Canadian Adaptations of Shakespeare, which appears to be a project of the University of Guelph. However, the petitioner submitted no documentation to establish that either of the two publications in which his interviews appear are major media.

In his response to the RFE, the petitioner stated:

In regards to your contention that I was only briefly mentioned in the nationally distributed publications, I have submitted sample reviews from Variety Magazine, The Hollywood Reporter, and Entertainment Weekly. As you can see, these reviews follow a similar format: discuss the project, give an overview of the project, praise or disparage the project, and mention any noteworthy performances. Each of these highly touted actors only receive[s] a brief mention in the review. The fact that my performances are reviewed positively shows that my work clearly stands out from others in the production.

We concur with the petitioner's assessment of the reviews presented. However, as he noted, the reviews are about the projects and not about the stars of the project, regardless of the star's power. Each of these individuals (Claire Danes, Matt Damon, Daniel Radcliffe) has been the subject of news articles that were specifically about him or her and not about a specified project in which his or her performance was reviewed. The petitioner submitted no documentation of any similar articles about himself.

The evidence does not establish that the beneficiary meets 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 petitioner claims to meet this criterion because he is a voting member of the Academy of Canadian Cinema and Television. However, the petitioner submitted no documentation that he has ever exercised his voting rights for the Academy. Further, the regulatory criteria are established to assist the petitioner in demonstrating national or international acclaim, and must be interpreted as a whole with the statute. Not all who sit as a judge will have extraordinary ability or will qualify under this criterion. The AAO interprets this regulation to require that the selection and participation process for serving as the judge of the work of others in the field and for the work that is ultimately judged be indicative of national or international acclaim in the field. For instance, serving as a judge for a national competition of professionals or athletes, for example, is of far greater probative value than judging local competitions or amateurs. Therefore, even if the petitioner had established that he served as a judge for the Academy, which he has not, the evidence does not establish that the petitioner's membership and voting privileges in the Academy of Canadian Cinema and Television is indicative of the acclaim required by this highly restrictive classification.

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

To establish that he meets this criterion, the petitioner submitted letters of attestation and support from his representative, fellow actors, directors, casting agents, writers, and producers. Each indicated that the petitioner is a highly talented and unique actor, writer and director. However, none provided any discussion which demonstrates that the petitioner's work as an actor, writer, or director is considered to be a contribution of major significance to theater or to acting.

Accordingly, 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 did not initially claim to meet this criterion. In response to the RFE, the petitioner stated that his work "has been displayed at both the Summerworks Theatre Festival and the Montreal Fringe Festival."

On appeal, the petitioner submits a copy of a decision by the AAO, in which the AAO affirmed the decision of the director of the California Service Center regarding an actress who was found to have met this criterion. The record of proceeding does not contain a copy of the visa petition or the supporting materials relating to the previously approved petition. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Additionally, while 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

We note that the wording of this criterion strongly suggests it is for visual artists such as sculptors and painters. Given that the purpose of acting is to perform before audiences, every actor displays his or her work in this manner, and such performances are not necessarily indicative of national or international acclaim.

The evidence submitted by the petitioner does not establish that he meets this criterion.

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

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner submitted documentation indicating that he has starred in various theater productions, including T [REDACTED] at forums such as The Stratford Festival of Canada and the Shaw Festival, and that he has performed at the Avon and Neptune Theaters. However, the petitioner, while submitting the history of the festivals from the organizations websites, provided no other documentation regarding the reputation of the festivals. Additionally, the petitioner submitted no documentation to establish that the theaters at which he appeared enjoyed a distinguished reputation or that his appearance at these theaters were in a critical or leading role for the organization.

The evidence does not establish that the petitioner meets this criterion.

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 his field of endeavor.

As discussed above, the petitioner submitted letters of recommendation from several individuals who attest that he is a multi-talented, accomplished and “gifted artist,” who has “reached the top of his field in this country.” Review of the record, however, does not establish that the petitioner has distinguished himself as an actor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field. 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.