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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

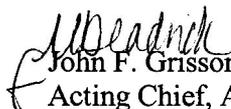
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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).


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.

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 October 2, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a performing artist. Initially, the petitioner submitted copies of his awards, an approval of a nonimmigrant visa petition (O-1), verification of his performances, internet articles, information about a television show on which he appeared, information about clubs at which he performed, and news articles. In response to the Request for Evidence ("RFE") dated July 16, 2007, the petitioner submitted information about clubs at which he performed, information about news sources, news articles, and information about his awards. On appeal, the petitioner submitted promotional posters, news articles, a letter from [REDACTED] membership certificates, and information about [REDACTED].

We note that although the record contains evidence of the petitioner's prior approval as an O-1 non-immigrant, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Finally, the regulation at 8 C.F.R. § 214.2(o)(3)(iv), relating to temporary, nonimmigrant aliens of extraordinary ability in the arts, provides different eligibility requirements than those for the permanent, immigrant classification sought in this case. Specifically, as it relates to nonimmigrant aliens, section 101(a)(46) of the Act states that the term extraordinary ability in the case of arts means, "distinction." The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states "distinction means a high level of achievement in the field or arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that the person described as prominent is renowned, leading, or well-know in the field of arts." The regulation relating to the permanent, immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines 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." While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in the nonimmigrant regulation at 8 C.F.R. § 214.2(o)(3)(iii), those criteria apply only to nonimmigrant aliens who seek extraordinary ability in the fields of science, education, business or athletics. As stated above, separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between the specified fields and the arts, which appears in 8 C.F.R. § 214.2(o) does not appear in 8 C.F.R. § 204.5(h). As such, the petitioner's approval for a nonimmigrant visa classification under this lesser standard is not evidence of his eligibility under the current immigrant classification sought. Each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply. Thus, the petitioner's eligibility will be evaluated under the ten regulatory criteria relating to the immigrant classification.

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. 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 submitted evidence that he won "Entertainer of the Year" at the 16th and 19th Golden Book Award in 2001 and 2004 and "Best Dressed" at the 13th, 14th, 15th, 16th, 17th and 18th Golden Book Award in 1998, 1999, 2000, 2001, 2002, and 2003. In response to the RFE, the petitioner submitted a press release about the Golden Book Awards which states that the awards began as "recognition for the customer who frequents [The Library, a comedy bar and restaurant], come rain or shine, flood or whatever natural disturbance happens" and that the awards morphed into recognition for "hosts" which allows them to "lands [sic] in TV appearances, even roles in the movies." The press release also states that "[e]veryone who becomes a 'family' of the establishment is also given his or her recognition" and indicates that the awards are restricted to those who are employed by and frequent The Library.

In order to qualify under this criterion, the petitioner must show that the awards are nationally or internationally recognized. According to The Library's press release, the Golden Book Awards are local in scope, being restricted to employees and patrons of The Library. The record contains no information regarding the selection criteria for these awards or any other evidence that the significance of this prize extends beyond the city in which The Library is located or that the award is nationally recognized in the Philippines. In addition, the petitioner did not submit secondary evidence, such as news articles or letters from sponsoring organizations, documenting the prestige associated with these awards that would indicate their national or international recognition as awards for excellence in his field as required by 8 C.F.R. § 204.5(h)(3)(i).

Accordingly, the petitioner does not meet 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.

With his appeal, the petitioner submitted a certificate of his membership with the Actors Guild of the Philippines and the Katipunan Porvenir Theatre Company. 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. The petitioner supplied no information as to the qualifications for membership in either of these organizations nor did he provide evidence that membership

applications are judged by recognized national or international experts in the field. Moreover, as the petitioner's membership in Katipunan appears to have ended on March 31, 2005, the petitioner has failed to establish his membership as of the filing date of the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved based on prior membership in an organization. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

Accordingly, the petitioner does not meet 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 copies of "internet write ups" including "Regine holds fans' day" which states that the petitioner co-hosted a birthday party; "Manila club legend now sizzles in SF;" "What's up with [redacted]" which reads like the petitioner's biography; "TFC Presents Karaoke Night on WORLD MUSIKAHAN" listing performers on [redacted] show; "A musical tribute for Manny Pacquiao" which acknowledged the petitioner's participation at a gala; "Extra Challenge goes to MAAP" which perfunctorily listed the petitioner as one of at least nine performers; the cast list for [redacted] of Concert & Musical Shows" about how [redacted] succeeded in the Filipino entertainment industry including promoting the petitioner; [redacted]" which stated that the petitioner would be performing at a fundraiser with at least eight others; and "Library in LA" which stated that the petitioner is one of the regular performers. We are not persuaded that international accessibility via the internet is a realistic indicator of whether a given publication is "major media." The petitioner presented no information regarding the general online readership of the websites on which these articles appeared or any other indication that the websites constitute major media as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, most of these articles were not primarily about the petitioner but instead mentioned his name in a list of performers at particular events.

The petitioner also submitted a list of articles that appeared when he searched for his name using Yahoo! Search. An internet search of an alien's name does not amount to published material about the alien as it does not include the information required by the regulation including the title of the piece, the date, the author's name, or information about the publication so as to qualify it as a professional or major trade publication or other form of major media, or the date that it was published. The petitioner also submitted six articles in a foreign language. Because the petitioner failed to submit certified translations of the documents, the AAO

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.

cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In addition to the internet pieces, the petitioner also submitted articles appearing in publications in the United States and in the Philippines including the *Midweek Balita*, *FAB*, *Manila Bulletin*, *the Philippine STAR*, *HotCopy*, *Remate Tonight*, *Balita*, and *Manila Mail*. The information submitted about these publications indicates that *Balita* is a regional publication available only in Southern California. The information does not include circulation statistics or any other indication that *Balita* is a major media source. The petitioner also submitted information regarding *The Manila Bulletin* from *Wikipedia* (an online encyclopedia) stating that the newspaper is the “largest broadsheet newspaper by circulation” in the Philippines. 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. Although counsel describes various news sources in her appellate brief including their purported circulation statistics, unsupported assertions of counsel are not 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). The petitioner did not submit reliable evidence such as circulation statistics or other information about any of the publications. As such, we are unable to conclude that any of the publications submitted by the petitioner to support his claim constitute professional or major trade publications or major media.

In conjunction with his appeal, the petitioner submitted a March 15, 2008 news article that appeared in the *Tribune*, an April 13, 2007 article that appeared in *The Asian Journal*, and two untranslated articles from *Tumbok* and *Pinoy*. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Also, as previously indicated, a petitioner must establish eligibility at the time of filing. A visa petition may not be approved 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. at 45. Even if the articles had predated the petition filing date, they are not primarily about the petitioner but instead his name appears either in a list of performers or as a short blurb among discussions of other performers. In addition, the petitioner presented no information about the

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 fields.

See <http://en.wikipedia.org/wiki/Wikipedia:Disclaimers>, accessed on February 18, 2009 (and added to the record of proceeding).

Tribune or *The Asian Journal* including the usual circulation of these publications or any other evidence that either is a professional, major trade, or other major media publication.

With both his appeal and his initial application, the petitioner also submitted promotional materials on which his name appears. First, the posters submitted with the appeal are for events in 2007 and 2008, so postdate the date of the filing of this petition and cannot be considered. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I. & N. Dec. at 49. Second, the promotional materials submitted initially and with the appeal are not published material that appeared in major media as required by the regulation. Advertisements, press releases and posters do not satisfy this criterion because they are promotional materials produced by the artist or venue themselves and are not independent media coverage of the petitioner's work that reflects national or international acclaim.

For all of the above stated reasons, the petitioner does not meet this criterion.

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

Counsel claims that the petitioner is eligible under this criterion because his "perform[ance]s in clubs and television . . . are all well received." Neither the petitioner nor his counsel provides an argument as to how performances alone are considered to be a contribution of major significance to the field. In support of his claim, the petitioner submitted a letter from [REDACTED] a Philippine musician and television show host. [REDACTED] letter states that the petitioner was a "special guest" on the television show that [REDACTED] hosted and that the petitioner "is one of the best Sing-along Masters and Hosts in top comedy bars and performance halls in the Philippines" and he "bring[s] with him laughter and cheer wherever he goes." While this sort of testimonial provides relevant information about an alien's experience and accomplishments, it cannot by itself establish the alien's eligibility under this criterion because it does 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. The letter from [REDACTED] does not comment on the petitioner's impact upon his field, if any.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner's work is admired by [REDACTED], there is no evidence demonstrating that his work has had major significance in the field. For example, the record does not indicate that the petitioner's comedic style or performance influences other comedians, actors, or performance artists, nor does it show that the field has somehow changed as a result of the petitioner's work. The record contains no other evidence that the petitioner has made original and major contributions to his field.

Accordingly, the petitioner does not meet this criterion.

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

Although the record contains evidence of the petitioner's appearance in comedy clubs and on television, the petitioner has failed to demonstrate that these performances were consistent with sustained national or international acclaim at the very top of her field. The petitioner submitted evidence that he appeared on Mr.

██████████ television show, broadcast on *The Filipino Channel*; that he appeared on the popular Filipino soap opera *Pangako Sa'Yo*; and that he regularly performs at comedy clubs such as The Library, Klownz Bar, and Naughty Strings Acoustic Comedy Bar. The petitioner did not demonstrate that any of the comedy clubs are renowned within the Philippines or internationally or that performance at any of these clubs would convey some degree of national or international acclaim. The petitioner's appearance on television was in a lesser role as a supporting character and as a periodic guest of a variety show hosted by someone else. No evidence links the petitioner's role in ██████████ variety show with the awards won by that show and no other evidence in the record indicates that a non-featured role in either that show or the soap opera conveys national or international acclaim.

Regardless, 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.

Accordingly, the petitioner does not meet 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 appearance on the television show hosted by Mr. ██████████ and his appearance at a variety of comedy clubs including Naughty Strings Acoustic Comedy Bar, KLOWNZ Bar and Restaurant, Sitcom Live, Library Sing-Along Bar and Restaurant, Comic Lab Bar & Restaurant.

The petitioner submitted evidence about ██████████ and his television show from an unidentified source and an entry on *Wikipedia*. As discussed above, *Wikipedia* is not a reliable source of information as entries can be modified by any registered user and the unidentified source also is not reliable evidence. Even discounting the assertions of these articles that ██████████ television show won multiple awards, the article from *Business Wire* about the network on which the television show airs indicates that the show is "one of [the network's] most popular programs." The article does not state, however, that the television show enjoys a distinguished reputation nor does the article state that the television network enjoys a distinguished reputation. Even if the television show or station were shown to have a distinguished reputation, the petitioner did not establish that his appearances on the television show amounted to a leading or critical role. The *Business Wire* article states that ██████████ television show hosts many different types of artists including "notable Pinoy songwriters and lyricists, up-and-coming Fil-Am entertainers and even a karaoke jam night featuring renowned karaoke club legends." The petitioner provided no evidence of the frequency that he appeared on the program or how his appearance as "a featured special guest performer" led to the television show's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

The petitioner submitted information about KLOWNZ Bar through an article appearing in the *Manila Standard Today*. That article reported that the Bar planned to open another location because of the success of the original. Success as a business, without more, does not equate to a distinguished reputation. The information submitted

about “The Library” club appeared in *The Philippine Daily Inquirer*, which stated that the club “continues to draw the crowd even after 16 years.” Although the article states that The Library is popular, it does not state that the club enjoys a distinguished reputation. The petitioner did not submit evidence regarding the reputation of any of the other bars or clubs at which he performed in order to establish that they enjoy a distinguished reputation. Even if he had established their reputation, the petitioner did not submit any evidence as to how his role as a periodic performer for these clubs would amount to a leading or critical role.

For all of the above reasons, 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 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.** This decision is rendered without prejudice to the filing of a new petition under section 203(b)(1)(A) of the Act with the requisite supporting evidence.

ORDER: The appeal is dismissed.