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U.S. Citizenship and Immigration Services
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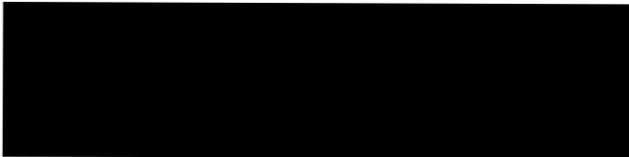
FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:



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).

Perry Rhew
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. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel for the petitioner argues that the petitioner meets the statutory requirements and 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, 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.

U.S. Citizenship and Immigration Services (USCIS) and the 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 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, filed on March 9, 2007 seeks to classify the petitioner as an alien with extraordinary ability as a musician. 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 of the criteria outlined in 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 that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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 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 submitted copies of documents that are allegedly articles about him published in magazines such as *Tele Revista*, *Viernes*, *Rock*, *Cambio 90*, and *TV y Novelas*. Although the record contains a "Certificate of Accuracy" that purportedly certifies the accuracy of all translations in the record, it is unclear which of these documents, if any, that the translator has reviewed and to which the certification actually pertains. The submission of a single translation certification that does not identify the document it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English

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

language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner alleges that the magazines listed above are major publications. The petitioner submitted a copy of a page from the website of *Tele Revista*, which he accessed on March 8, 2007. The magazine describes itself as "the # 1 unbiased Hispanic Entertainment Insider Magazine of the U.S." However, the petitioner provided no documentation to verify the self-serving statement of the publication or to otherwise establish that *Tele Revista* is a professional or major trade publication or other major media.

In a request for evidence (RFE) dated March 27, 2008, the director instructed the petitioner to "provide evidence that establishes the nature and purpose of the [publication] including its distribution/circulation and significance." The petitioner submitted no new documentation in response to the RFE to establish that the publications are professional or major trade publications or other major media. The petitioner repeated the claims of *Tele Revista* made on its website, and referred to the claim allegedly contained within the heading of *Viernes Culture* that it is "the magazine with most circulation in Columbia," and *TV y Novelas*, which claimed that its circulation included the United States, Mexico, Puerto Rico and Columbia. The petitioner again failed to provide certified translations of the articles allegedly contained in *Viernes* and *TV y Novelas* as required by 8 C.F.R. § 103.2(b)(3). Therefore the evidence relating to these documents is not probative and will not be accorded any weight in this proceeding. The petitioner provided no objective documentation to establish that any of these publications are professional or major trade publications or other major media. The petitioner submitted no additional documentation in support of this criterion on appeal.

Accordingly, the petitioner has failed to establish that he meets this criterion.

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

In his March 5, 2007 letter in support of the petition, the petitioner stated that he meets this criterion based on his work in soap operas in Colombia where he acted, sang and played musical instruments. In response to the RFE, the petitioner stated that the record reflects that he has performed as a leading actor in various productions for Caracol Television and RCN Television. The petitioner alleges that this is evidence that he has performed as a leading actor and singer of these nationally and internationally televised productions.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) reveals that this criterion applies to the visual arts. As a musician, singer and actor, the petitioner is a performing artist. It is inherent to the field of performing arts to perform. Not every performance is an artistic exhibition or showcase. Duties or activities that nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine

in the occupation itself. We find that the petitioner's performances are best considered under the leading or critical role criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii) and discussed immediately below.

The petitioner has failed to 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.

As noted above, the petitioner alleges that he performed in a leading role for Caracol Television and RCN Television, which he alleges are "the two largest television networks in Colombia." The petitioner alleged that three of the soap operas in which he appeared "were Latin American successes having been televised in several countries." He stated further that "It is important to note that all of my roles in television or musical productions were significant in nature and from organizations and establishments that have a distinguished reputation[:] [REDACTED]

The petitioner submitted what purports to be certifications of his contracts with Caracol Television and RCN Television and a history of Caracol Television retrieved from the company's website on March 8, 2007. The petitioner failed to provide certified translations of these documents as required by the regulation at 8 C.F.R. § 103.2(b)(3) and therefore they are of no probative value in this proceeding.

The petitioner also submitted information about RCN Television from *Wikipedia*, the online user-edited encyclopedia. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.² See *Lamilem Badasa*

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

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. 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. [Emphasis in the original.]

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on October 27, 2009, a copy of which is incorporated into the record of proceeding.

v. Michael Mukasey, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

The petitioner submitted several letters attesting to his work as a musician and actor. However, he submitted no documentation to establish that his work with Caracol Television or RCN Television was in a leading or critical role.

The petitioner submitted a copy of a letter, dated October 20, 2005, purportedly from [REDACTED] who certified that the petitioner was "a co-founder, singer and musician with [REDACTED]" We note that the petitioner failed to provide a certified copy of the translation of this document as required by 8 C.F.R. § 103.2(b)(3). Additionally the petitioner provided no documentation to establish that [REDACTED] was an organization with a distinguished reputation.

The petitioner failed to submit documentation to establish that any of the organizations for which he worked enjoy a distinguished reputation or that his work was in a leading or critical role. Accordingly, he has failed to establish that he meets this criterion.

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

In his letter provided with his initial submission, the petitioner stated:

I am recognized within the Latin music industry as one of the most sought out musicians. My musical credits include playing a major role for one of the most renowned Latin bands in the world, [REDACTED] " The album [REDACTED] " was an international commercial success selling millions of copies worldwide. With this band where I was a percussionist and singer, I toured the world playing for audiences of all races in Europe, USA and Latin America.

The petitioner provided a copy of his artist card indicating that he was associated with [REDACTED] and a purported copy of a February 8, 1993 letter from [REDACTED] with [REDACTED] which confirmed that the petitioner had worked for the company for the past year. Another letter, dated October 20, 2005, purportedly from [REDACTED] certified that the petitioner was "a co-founder, singer and musician with [REDACTED]".

The petitioner submitted none of the documentation required by the regulation at 8 C.F.R. § 204.5(h)(3)(x). On appeal, counsel asserts;

[The director] incorrectly used box office sales as the only indicia of commercial success with respect to an actor, singer, and musician whose talents were showcased on Latin American soap operas and television mini-series. Instead it

would have been more appropriate for the examiners to have looked at other sources of evidence for this criterion including comparable evidence.

Under 8 C.F.R. § 204.5(h)(4) an applicant may also submit comparable evidence if the above standards do not readily apply. Comparable evidence may include opinion letters attesting to the applicant's abilities. AFM at 22.2(i)(1)(F).

In the case at bar, using box office receipts or record, cassette, compact disk, or video sales is not an applicable standard for soap operas and television mini-series whose successes are measured through television ratings, and publications in media sources such as entertainment magazines and reference letters from other colleagues in the field.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." [Emphasis added]. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. In fact, counsel's argument fully supports that the criterion at 8 C.F.R. § 204.5(h)(3)(x) is applicable to the petitioner's case. The petitioner specifically claimed to meet the criterion based on his association with the band [REDACTED]. Counsel does not argue that evidence of the band's success cannot be established through the types of evidence required by this criterion. The petitioner provided no documentation of the commercial success of his band as evidenced by record, cassette, compact disk, or video sales, documentation that is clearly applicable to a musician.

While we agree that such evidence may not be applicable to the petitioner in his role as an actor in a television soap opera, we do not agree with counsel that the commercial success of a television show can be established by publications or reference letters. While such evidence may be applicable to critical success, any evidence of the commercial success of such television shows must be shown through television ratings or similar documentation. The petitioner provided no documentation of the commercial success of the soap operas in which he appeared.

The petitioner has failed to establish that he 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. Review of the record, however, does not establish that the petitioner has distinguished himself 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. 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.