

identifying data date to:
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: OCT 29 2009
LIN 07 011 51708

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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. The AAO reaffirmed that decision.

On motion, counsel submits a brief. For the reasons discussed below, we reaffirm our previous decision, incorporated by reference into this decision.

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, 60898-9 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that 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 a performing artist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

(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 photographs of trophies and award ceremonies featuring a small number of individuals sitting on the floor in a room with a drape and a handful of balloons as evidence that he won "Entertainer of the Year" at the 16th and 19th Golden Book Awards in 2001 and 2004 and "Best Dressed" at the 13th, 14th, 15th, 16th, 17th and 18th Golden Book Awards in 1998, 1999, 2000, 2001, 2002, and 2003. While the record contains a photograph of the petitioner seeming to receive the "Entertainer of the Year" trophy in 2001, the photograph of just the trophy itself appears to be enhanced with regard to the inscription, reducing the evidentiary weight of this evidence. Moreover, the July 30, 2004 article in the "Round the Biz" section of the *Manila Bulletin* submitted by the petitioner, however, indicates that the petitioner received recognition as "Entertainer of the Year" during the 17th and 19th Golden Book Awards in 2002 and 2004. While the discrepancy as to when the first "Entertainer of the Year" award was issued was not raised previously, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

In response to the director's request for additional evidence, the petitioner submitted an unsigned and unpublished document addressed to counsel's attention about the Golden Book Awards. The document appears to have been prepared by [REDACTED] identified as [REDACTED]. The document states that the awards currently recognize performers at The Library comedy club, which facilitates them in securing television and movie roles. Significantly, while the document states that the awards are a "coveted plum," it also states: "There are about twenty two awards that the owner happily gives to everyone every anniversary. Mostly, to uplift the credibility of the hosts in their acts the whole year through."

As stated in our previous decision, in order to qualify under this criterion, the petitioner must show that the awards are nationally or internationally recognized. The AAO concluded that the awards were limited to performers at a single club and, thus, were not national in scope. The AAO further

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

concluded that the record lacked supporting 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).

On motion, counsel asserts that the AAO "failed to appreciate the fact that these awards were covered by national newspapers, which were originally submitted." Counsel also states that the petitioner submitted the April 15, 2002 issue of *Time Magazine Asia* listing The Library as one of the best entertainment places to visit in Manila.

We acknowledge that The Library receives some media attention. At issue, however, is not the club's reputation but whether or not the awards it issues are nationally or internationally recognized. The record contains a single article in *Intrigue* reporting the issuance of awards by The Library. The record contains no evidence regarding the significance of this publication. Moreover, the photographs and text are by [REDACTED] identified as [REDACTED] on the abovementioned unsigned document submitted by the petitioner. Thus, this "article" appears to be a promotional press release which carries less weight than independent journalistic coverage.

First, the petitioner has not established that the "Best Dressed" awards represent recognition for excellence as a performer. Thus, we will only consider the "Entertainer of the Year" awards. We reaffirm our prior finding that an award limited to a pool of performers at a single comedy club, even a distinguished comedy club, cannot constitute a lesser nationally or internationally recognized award. The record contains evidence of other Filipino comedy clubs that also receive media attention, such as Klownz and Comic Lab, whose performers would not be eligible to compete for awards from The Library unless they also happened to perform at that venue as well.

In light of the above, we reaffirm our finding that the petitioner has not established 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.

On motion, counsel does not contest our previous finding that the petitioner has not demonstrated that his membership in the Actors Guild of the Philippines and the Katpunan Porvenir Theatre Company can serve meet this criterion and we reaffirm that finding by incorporating that analysis into this decision by reference.

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.*

As stated in our previous decision, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation at 8 C.F.R. § 204.5(h)(3)(iii), be printed in professional or major trade publications or other major media.

On motion, counsel does not contest the AAO's finding that materials postdating the filing of the petition cannot be considered as evidence of the petitioner's eligibility as of the filing date. 8 C.F.R. §§ 103.2(b)(1),(12); *Matter of Katigbak*, 14 I&N Dec. at 45. Counsel also does not contest the AAO's finding that promotional materials such as posters cannot serve to meet this criterion as they do not appear in professional or trade journals or other major media. In addition, counsel does not contest the AAO's conclusion that the Internet search results for the petitioner's name cannot serve to meet this criterion. Finally, the petitioner does not submit certified translations for the foreign language published materials, which the AAO noted was mandated under 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3) but absent from the record. We reaffirm the AAO's prior conclusions on these issues and the analysis in our previous decision, which we incorporate by reference. Regarding the Internet search results, we further note that the petitioner searched for his first and last name without quotes, allowing for results that do not relate to the petitioner at all. We will consider the remaining evidence relating to this criterion below.

The petitioner submitted copies of press releases, promotional materials and articles appearing both on the Internet and in print. The AAO stated that international accessibility via the internet is not a realistic indicator of whether a given publication qualifies as a professional or trade journal or other major media. As noted in our previous decision, 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 professional or major trade journals or other major media as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Significantly, the AAO further noted that most of these articles were not primarily about the petitioner but instead mentioned his name in a list of performers at particular events.

The articles that can be said to be "about" the petitioner are: an article in the *Midweek Balita* where he appears with counsel in an article with no journalist byline, an article in *FAB* by [REDACTED] an article in the *Manila Bulletin* by [REDACTED] and an article allegedly in the *Philippine Daily Inquirer* as reprinted on The Library's website. The AAO concluded that, based on the information submitted about *Midweek Balita*, it is a regional Filipino-American publication available only in Southern California. The AAO further acknowledged the submission by the petitioner of information from *Wikipedia* (an online encyclopedia) regarding the circulation of *The Manila Bulletin*. The AAO declined to consider the information, noting that there are no assurances about the reliability of the content from this open, user-edited internet site.² The AAO acknowledged that counsel asserts that

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

the *Manila Bulletin* is national in scope, but noted that the 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). Finally, the AAO noted the lack of reliable information supporting counsel's assertions. Thus, the AAO concluded that the petitioner had not established that the *Manila Bulletin* is a professional or major trade journal or other major media.

On motion, counsel erroneously concludes that the AAO determined that the *Manila Bulletin* is not a professional or major trade journal or other major media based on a search at www.google.com. Counsel asserts that a search on this website produces results other than a description on *Wikipedia* and asserts that a search of this newspaper as well as *Balita*, the *Philippine Star* and the *Philippine Daily Inquirer* would demonstrate that they are qualifying media.

We reiterate that it was *the petitioner* who submitted materials from *Wikipedia* about the *Manila Bulletin*. For the reasons stated in our previous decision and reiterated above, these materials, submitted by the petitioner (and not through an Internet search by the AAO) will not be considered. On motion, counsel does not provide new evidence or even reference a specific website that contains the circulation data or other evidence that might establish that the above publications are professional or major trade journals or other major media.³ Rather, counsel appears to suggest that it is the AAO's responsibility at this stage in the proceeding to research the publications which have covered the petitioner on the Internet. It is the petitioner's burden, however, to submit the evidence to establish every element of a given criterion, including that the materials appeared in a professional or major trade publication or other major media.

Without reliable evidence supporting counsel's assertions regarding the media that have covered the petitioner, we cannot conclude that they constitute professional or major trade journals or other

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).

³ Counsel does reference the website of the *Manila Bulletin* but our review of that website, accessed on October 23, 2009 and incorporated into the record of proceeding) does not provide any circulation or distribution data. We will not infer the publication's major media status solely from the fact that it maintains a website.

major media. Even if we were to conclude that the *Manila Bulletin* and the *Philippine Daily Inquirer* are professional or major trade journals or other major media and that the article on The Library's website attributed to the *Philippine Daily Inquirer* actually appeared in that newspaper, the evidence falls far short of establishing that the petitioner meets any other criterion.

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

On motion, counsel does not challenge the AAO's decision that the petitioner has not established that he meets this criterion and we reaffirm our findings by incorporating our prior decision by reference.

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

On motion, counsel does not challenge the AAO's decision that the petitioner has not established that he meets this criterion and we reaffirm our findings by incorporating our prior decision by reference.

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

The petitioner initially claimed to meet this criterion by virtue of his appearance on the television show, "World Musikahan" hosted by [REDACTED] 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 AAO rejected all of these assertions. On motion, counsel only addresses the petitioner's one-time appearance on "World Musikahan." We incorporate our previous findings by reference and will address only the petitioner's appearance on "World Musikahan."

The AAO acknowledged the submission of an article allegedly from *Business Wire* reproduced on *Encyclopedia.com* about The Filipino Channel network on which "World Musikahan" airs. This article indicates that "TFC is viewed by more than one million Filipinos around the globe every day." In addition, according to the article, the show is one of TFC's most popular programs. The AAO concluded that even if the television show and/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. As noted by the AAO, the *Business Wire* article states that [REDACTED] 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." Counsel asserts that the petitioner served as a "featured special guest performer" on the show. An undated press release indicates that the petitioner appeared with two other singers on one episode of the show. As noted by the AAO, the record contains no evidence of additional appearances or evidence of how the petitioner's appearance as one of three performers 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. On motion, counsel reiterates the significance of TFC

and "World Musikahan" and concludes that an invitation to appear and perform on this show "is an honor in itself." A one-time appearance on a variety show, however, is not a leading or critical role for that variety show.

In light of the above, the petitioner has not established 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 have risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a performer 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 indicates that the petitioner shows talent as a performer, but 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of March 20, 2009 is affirmed. The petition is denied.