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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 29 2009
LIN 07 148 51899

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing 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 (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 that 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 she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director also determined that the petitioner had not submitted clear evidence that she would continue to work in her area of expertise in the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Counsel further states that evidence was submitted proving the petitioner's intention to continue filmmaking in the United States.

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 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 she has sustained national or international acclaim at the very top level.

This petition, filed on April 24, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a filmmaker. The director denied the petition on September 30, 2008, citing two reasons. First, the director questioned the circulation data and location of the article in the *Daily Inquirer*; and therefore, decided that the petitioner did not have published material about her in professional or major trade publications or other major media. Second, the director determined that the petitioner failed to establish her intent to continue working in the area of expertise.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[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.*

The petitioner submitted a cover page from *MOD* magazine, dated December 5, 1997, along with an article on an unidentified page from the corresponding issue. The cover page reflects a picture of the petitioner. The cover article contains a brief biography of the petitioner, including education, family background, and career ambitions. It is noted that the article was written when the petitioner was 18 years of age and seeking a bachelor's degree in production design from De La Salle University – College of St. Benilde. The only mention of filmmaking was the petitioner's desire "to pursue a

[1] The petitioner does not claim to meet any relating criteria not discussed in this decision.

career in directing theater." The cover article from *MOD* relates to the petitioner as a former model on the cover page of a magazine rather than her claimed field of endeavor as a filmmaker.

In addition, the petitioner submitted an article from the *Filipino Times & Asian Review*, dated January 6-13, 2007. The article indicates that the petitioner finished an intensive directing program at the New York Film Academy. The article further indicates that the petitioner "freelances as an actress and producer to fund her forays into creating independent films." While the article notes the diversified background of the petitioner, such as ballet, choir, modeling, and founder of a rock band, the article is not about the petitioner in her field of endeavor as a filmmaker. The single sentence which references her claimed field indicates that the petitioner "freelances as an actress and producer to fund her forays into creating independent films."

The petitioner also submitted an article from the *PiNOY Chronicle Entertainment Plus*, dated January 1-15, 2007. The article is about a music group called "Friends Duo," who performed on January 5, 2007. There are ten pictures accompanying the article; two of which are of the petitioner posing with producers and sponsors of the music performance. There is no mention of the petitioner in the article or the significance of the petitioner as it relates to the music performance. Furthermore, it is unclear how this article relates to the petitioner's area of filmmaking.

Finally, the petitioner submitted an article from *People's Insider*, dated February 14, 2007. The article indicates that the petitioner has worked on three short independent films – *Lover's Quarrel, Graveyard Shift,* and *Temporarily Blind.*

On June 12, 2008, the director requested additional evidence from the petitioner. Specifically, the director requested "tables of circulation statistics or of advertising revenue, which will confirm that the publications in which the petitioner has been mentioned can be considered to be major media outlets . . . ." In response, regarding *MOD,* the petitioner submitted information from the *MOD* Web site, dated June 19, 2008, indicating a monthly nationwide circulation of 189,600. For *PiNOY Chronicle Entertainment Plus,* evidence was submitted indicating circulation of 10,000 in seven states. For *People's Insider*, as of January, 2008, there was a weekly nationwide and overseas circulation of 158,458. There was no evidence submitted regarding *Filipino Times & Asian Review*.

In denying the petition, the director acknowledged that the articles submitted by the petitioner were published by "worthy" and "significant" newspapers. The director's concern appeared to be based upon where the article was located within the particular newspaper. In this instance, we do not share the director's concern on this issue. However, as discussed only one of the submitted articles is about the petitioner and her work as a filmmaker.

Specifically, only the article from *People's Insider* specifically mentions and contains distinct information about the petitioner's filmmaking projects. We do not find evidence that the petitioner had a single article published about her is sufficient to establish the level of acclaim required for this highly restrictive classification.

Accordingly, the petitioner has failed to establish that she 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 submitted a "Certificate of Recognition" from City College of Manila, dated March 11, 2006. Counsel claims in a letter, dated April 16, 2007, that the certificate was for "a Judge of the competition." However, the certificate only recognizes that the petitioner's "involvement and participation contributed immensely to the success of the joint project of students in Philosophy & Humanities . . . ." No other documentary evidence was submitted to support counsel's claim that the petitioner was a judge. The record is unclear as to the petitioner's exact involvement and participation in the joint project of students. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nonetheless, the regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). For example, judging a national competition involving professional artists or filmmakers is of far greater probative value than judging a local competition involving students or amateurs.

The petitioner's one-time judging of a joint project of students is not commensurate with the acclaim required by this highly restrictive classification. Accordingly, the petitioner has failed to establish that she meets this criterion.

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

The petitioner submitted an article from the *Philippines Daily Inquirer*, dated March 25, 2007, indicating that the petitioner's independent short film, *Lover's Quarrel*, made its debut in Greenwich Village theaters in 2003. The petitioner also submitted a flyer for her showing of *Graveyard Shift* on April 10th & April 15th at La Mama Etc. However, simply submitting a brochure or evidence of a debut of a film is not sufficient to meet this criterion or to establish her acclaim.

The record contains no evidence to show, for instance, that the petitioner's films had a substantial audience, the specific Greenwich Village theater in which the film was displayed, that La Mama Etc. is

a distinguished film venue, or the films were otherwise circulated in such a way as to be considered exhibited or showcased and in a manner consistent with sustained national or international acclaim. In addition, no evidence was submitted showing any critical acclaim, favorable press reviews, or awards.

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

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

We acknowledge the petitioner's submission of five recommendation letters discussing her filmmaking qualifications and artistic contributions. However, assisting on films and having the potential to make films are not necessarily indicative of original contributions of major significance. The record lacks evidence showing that the petitioner has made original artistically contributions that have significantly influenced or impacted her field.

independent filmmaker, states:

> I first met , fondly known to us as more than five years ago when she was just budding as a filmmaker. At that time, we were working on a documentary entitled "WILKIE DURAN MONTE: Toxic Chemical Victim" which won the Best Documentary Film Award in the 2001 Cinemanila International Film Festival and the Sylvie Auzie Humanitarian Award in the Brussels International Film and Video Festival. She had shown keen interest in filmmaking, with great initiative and willingness to learn new things. She is very independent minded and I saw her grow into an exceptionally talented artist, above all, as a writer. With her varied creative experiences, she can at this point be considered a global artist.
>
> I am confident that she will be an asset not only to the Filipino and American communities but to whosoever and whichever group she will be associating herself with.

former vice chairman and executive producer of Videofilm and current part time professor of Film Production and Broadcast Management at the Assumption College in Makati City, Philippines, states:

>) had been a freelance Producer/Director working very closely with Videofilm on several independent projects and her passion as a filmmaker was very evident during the whole process of production. I have no doubt in my mind that is an outstanding film Director and will have great contributions to the film craft in the United States serving both the American and Filipino communities there.

performing artist, composer, singer, photographer, writer, and columnist, states:

> I am writing on behalf of , or who is applying for a visa for the extraordinary talented. I have known her for a great number of years now. Not

only have I seen her work but have also known her closely through a workshop I facilitated and I can attest to her exceptional talent as an overall artist especially in the fields of scriptwriting, and filmmaking.

I know she will be an asset to the arts and cultural community of any country and milieu she chooses to join and so I have no qualms about my recommendations.

, cinematographer, states:

I have known for quite some time. As early as 2003 she consulted me regarding her script for Lover's Quarrel. I was also slated to shoot her shorts Graveyard Shift and Temporarily Blind but was unable to do so due to prior commitments.

I have always found her writing and filmmaking to be exceptional and exciting. There is a Filipino flavor in her work but at the same time her themes are universal. She has an ability to communicate beyond the Filipino community and I think that is a rare gift. Given the right break voice as a writer and filmmaker will undoubtedly resonate in the American as well as global community.

ESC Multimedia Services, International, states:

...It was in the course of making my move The Case of Wilkie Duran Monte: Toxic Chemical Victim that I made the acquaintance of She aided me in every aspect of the production, from the shooting to the editing to the subtitling, and from then on, we have been friends due to our common interest in the medium. In particular, she has an exceptional ear for language, which aided immensely in incorporating both the Visayan dialect and Tagalog in the final English translation...

The preceding individuals credit the petitioner with being a talented artist and having the potential of being a great filmmaker, but there is no evidence demonstrating that these accomplishments are tantamount to original artistic contributions of major significance in the field of filmmaking. 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 has earned the admiration of her colleagues, there is no evidence establishing that specific work attributable to her equates to original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other filmmakers nationally or internationally, nor does it show that the filmmaking field has somehow changed as a result of her work.

The recommendation letters submitted by the petitioner are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal

contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a filmmaker who has sustained national or international acclaim at the very top of the field.

We note that although counsel argues in his appellate brief that the letters submitted on the petitioner's behalf attest to the petitioner's authorship of scholarly articles and her leading or critical roles in organizations, the letters provide no specific information regarding those claims. Moreover, the petitioner has failed to submit documentary evidence of any scholarly articles purportedly written and no evidence regarding a leading or critical role in any organization or establishment with a distinguished reputation.

We concur with the director's finding that the petitioner has failed to demonstrate her receipt of a major internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Further, there is no evidence showing that the petitioner's national or international acclaim has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The director also found that the petitioner had not submitted clear evidence that she would continue to work in her area of expertise in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how she intends to continue her work in the United States."

In response to the director's request for evidence, the petitioner submitted a "Business Certificate" from New York City, New York for Rowena Films Production, which was certified on June 23, 2008. It is noted that the petitioner applied for this certificate after the director requested additional evidence on June 12, 2008. The petitioner also submitted a "Bank Certification" for PSBank indicating a balance of $10,414.21, which was opened on March 26, 2007. In addition, the petitioner submitted a letter from [redacted] dated July 18, 2008, stating that she worked with the petitioner in March 2008 on a feature length film named *The Film You Did Not See.* [redacted] indicated that the petitioner worked as the 2nd assistant director.

We find the record is clear, when reviewing all of the evidence, that the petitioner intends to continue her work in filmmaking and therefore, that she has satisfied section 203(b)(1)(A)(ii) of the

Act and the regulation at 8 C.F.R. § 204.5(h)(5). Therefore, we withdraw the director's finding regarding this issue.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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.