



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 98 222 50087 Office: California Service Center Date:

AUG 10 2000

IN RE: Petitioner:  
Beneficiary:



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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

Aug 10 2000 WAC 98 222 50087

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

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

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

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

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

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

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who 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 Service 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 stage actor, director and stage manager. 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 which, he claims, meets the following criteria.

*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.*

The petitioner cites his resume under this criterion. The petitioner's resume, however, represents a statement or claim by the petitioner rather than actual evidence. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also cites "exhibit 3" of his document package under this criterion, but exhibit three contains no evidence of membership in any association. Rather, the documents therein establish the petitioner's educational and employment background.

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

The petitioner submits documentation about various theatrical groups with which he has worked, but no evidence that any of his acting, directing, or stage managing work has attracted the attention of national or international media. The petitioner must show not only that his name has appeared in print, but that the media coverage of his work has been consistently national or international in scope.

While local newspapers have reviewed or promoted various performances, such local coverage is typical of community or college theater and does not establish that the petitioner has earned a national reputation. Materials advertising these shows are produced by the theater groups themselves and do not represent media coverage.

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

The petitioner asserts that his resume documents his contributions. As noted above, a resume is the petitioner's own list of his activities, rather than corroboration of those activities.

The petitioner cites letters from children who have taken acting courses from him. Clearly the students enjoyed the lessons, but there is no indication that these lessons had lasting significance outside of the schools where the petitioner taught.

The petitioner has presented evidence regarding his participation in various productions, such as [REDACTED] and [REDACTED] but he has not established the significance of these productions or of his involvement therein. These productions appear to amount to community theater or university productions, rather than major, nationally-known productions of the type presented in major theaters or by major touring companies.

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

While the petitioner's theatrical work has been "displayed" in the sense that audiences have viewed it, this criterion appears to be intended more for the visual arts. Furthermore, the petitioner has not shown that his work has been exposed to a national or international, rather than local, audience.

The petitioner cites a demo tape of his voice-over work, but it is not clear how this constitutes display of his work at an exhibition or showcase.

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

The petitioner submits several witness letters. None of these letters indicates that the petitioner has played a major role for a nationally- or internationally-known organization; rather, the organizations are local-level entities such as the [REDACTED] Performing Arts League and various individual theaters in [REDACTED] and [REDACTED]. If the organizations with which the petitioner has worked are not, themselves, known nationally or internationally, then it is not clear how the petitioner's work with those entities could result in or demonstrate national or international acclaim. The burden is on the petitioner to establish that a given organization or establishment enjoys a distinguished reputation.

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

The petitioner has cited virtually the entire record as evidence of commercial success, but none of this evidence consists of box office receipts or sales figures. Because the term "success" can be somewhat subjective, the regulation properly demands objective evidence rather than subjective attestations that a given performance was "successful."

Some of the cited evidence, such as letters from children who have taken acting courses from the petitioner, do not have any apparent relevance to commercial success.

The director denied the petition, stating that while the petitioner has been active in college and community theater in [REDACTED] and [REDACTED] he has not demonstrated sustained success on a national or international level as the statute requires.

On appeal, counsel observes that the petitioner has, in a separate proceeding, obtained an O-1 nonimmigrant visa as an alien of extraordinary ability. Counsel states "[c]ertainly, the INS does not take the position that there are two different standards for extraordinary ability (one for [nonimmigrant visas] and another for [immigrant visas])!"

In fact, the two classifications are governed by separate regulations, so in that sense there are in fact two different standards. Furthermore, there is no statute, regulation, or case law which requires the approval of an immigrant visa petition for an alien who has received a roughly analogous nonimmigrant visa. The Administrative Appeals Unit has not reviewed the documents supporting the nonimmigrant visa petition and therefore cannot comment on any similarities or differences which may exist between those documents and the record of proceeding in the present matter.

Counsel asserts that the petitioner "has since been contracted by a major Hispanic Television Station in the United States ([REDACTED])." It is evidently this contract which led to the petitioner's O-1 visa. The nonimmigrant visa petition was filed in May 1999, several months after the immigrant visa petition's filing date of August 1998. The petitioner's lead role in a [REDACTED] series, beginning in the fall of 1999, cannot retroactively qualify the petitioner for an August 1998 priority date. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

As explained above, the petitioner's involvement in a television series which began production in late 1999 is irrelevant to whether he qualified as an alien of extraordinary ability in August 1998. Even if it were otherwise, there is no evidence that this new

series has enjoyed any success, or that the petitioner has become widely known as a result of his appearances on the series. Because the series is on a Spanish-language television network, it is not clear that the petitioner's appearances on that show could lead to a level of acclaim and recognition on a par with the most famous actors on English-language television series (which reach many more viewers). Documentation of the 1999 television series, and the petitioner's related nonimmigrant visa, constitutes the entirety of the evidence submitted on appeal. The petitioner has offered no substantive response to the director's conclusions.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as an actor, director or stage manager 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 in the theater, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. The petitioner cannot, in whole or in part, establish eligibility for an August 1998 priority date based on television work which he did not even begin until a year later. 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.