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

[redacted]

File: EAC 00 052 53681 Office: Vermont Service Center Date: 07 JAN 2002

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:
This is the decision 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 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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.

On his Form I-140 petition, the petitioner left blank the section labeled "Job Title." In a statement accompanying the petition, the petitioner states:

> I've been in a film production business for 30 years and I worked for Alliance Communications, CBC and Universal Pictures. My partners were Dan Aykroyd, John Goodman, Willem Dafoe and Dolph Lundgren. I've got my Master's degree in Fine Arts and performed in more than 40 movies. . . . I wrote a Hollywood style screenplay. . . . All I want is to go to Los Angeles, create a production company and produce a Great American Movie.

The petitioner's statement indicates that he has worked as an actor, and seeks to work as a screenwriter and producer.

The petitioner's reference to his "partners" appears to refer to major stars with whom he has appeared on film and television. The petitioner appeared in Blues Brothers 2000 starring Dan Aykroyd and John Goodman; The Boondock Saints featuring Willem Dafoe; and Jill Rips (also known by several other titles, including Jill the Ripper) with Dolph Lundgren. The record contains no evidence that the petitioner has entered into any formal business partnerships with any of these actors, or that his work with them has extended in any way beyond appearing in one film with each of them.

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 is a member of the Alliance of Canadian Cinema, Television and Radio Artists ("ACTRA"). This association appears to be a trade union or guild, rather than a highly exclusive association. The petitioner has submitted nothing to show the group's minimum membership requirements. If an actor must be an ACTRA member to secure paid work in the field (as is the case with some unions and guilds), then ACTRA membership does not elevate the petitioner above other paid actors working in Canada.

> *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 chaired the Awards Committee at the National Festival of Environmental Films held in Yalta in 1992. Acting as a judge at a national film festival appears to satisfy this criterion. We note that this evidence pertains to the petitioner's work in Ukraine, whereas the rest of the record regards his more recent work in Canada (where he now resides).

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

The petitioner submits copies of contracts and call sheets (itinerary/schedules) documenting his involvement in various films and television projects. The petitioner does not explain how these roles represent artistic contributions of major significance. The very act of appearing on television or film does not represent a major original contribution.

The petitioner states that he has written a screenplay, but there is no evidence that the screenplay has been sold, much less made into a major motion picture or television program.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

ACTRA documentation shows that the petitioner was originally slated to receive $38.25 (presumably Canadian) per hour while working on the film Blues Brothers 2000. Other ACTRA documentation indicates that the petitioner was "upgraded to principal" (although credit and billing remained "at producer's discretion") and received an hourly fee of $56.75 per hour. His work as a principal on the film Jill Rips earned him $58.00 per hour, and other documentation shows him as a "stunt actor" in the same film, earning $86.75 hourly. The petitioner's television work earned him hourly rates between $34 and $40.

The petitioner has not shown that the above rates establish him as one of the highest-paid actors in Canada (the country where the above film and television productions took place).

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

The petitioner submits no documentary evidence regarding the commercial success of any of his ventures. The regulation calls for "box office receipts or . . . sales"; simply documenting his participation in various projects cannot meet the plain wording of the regulation.

The best-known of the petitioner's ventures is probably Blues Brothers 2000, the 1998 sequel to the 1980 film The Blues Brothers. We cannot ignore that, long before the sequel was shot, the original Blues Brothers film had earned something of a "cult" following, and therefore another film featuring the Blues Brothers would likely draw a substantial audience regardless of its supporting cast.

The original Blues Brothers were Dan Aykroyd and the late John Belushi. In the sequel, Aykroyd returned, finding a new counterpart in John Goodman. Aykroyd and Goodman are both well-established stars of film and television, and the film featured an array of well-known musicians in "cameo" roles, including Aretha Franklin, James Brown, B.B. King, and Eric Clapton. The petitioner has not shown that he was, at any time, billed as a star of the film. Regardless of ACTRA documentation referring to the petitioner as a "principal," there is no indication that the petitioner was a central performer in the film or even that his name appeared in any advertising or promotional materials related to the film.

The director denied the petition, stating:

> You have not submitted enough evidence to show that you are one of the top actors in the world. You must be a top actor in major movies, not just an actor in a movie. There must be a salary for movies in league with the top actors, not just $463.00 a day. There must be major awards or nominations for major movie awards. You do not have any major awards. There are no movie magazines, or other major magazines which claim that you are one of the top actors in the world. The video you submitted of Blues Brothers 2000 does not even have your name included in the credits. You have not submitted any other major accomplishments in the movie industry.

On appeal, the petitioner requests oral argument. Oral argument, however, is limited to cases where cause is shown. The petitioner must show that a case involves facts or issues of law which cannot be adequately addressed in writing. In this case, the petitioner has shown no cause for oral argument; the petitioner simply offers several unsubstantiated arguments to the effect that the director's decision "is a good example of negligence and rushed judgment." Consequently, the petitioner's request for oral argument is denied.

On appeal, the petitioner argues that his name does in fact appear in the credits for Blues Brothers 2000. The videocassette of this film is no longer in the record, but we have been able to ascertain that the petitioner is the 27th artist out of nearly one hundred artists listed in the film's credits. Out of several abridged listings of the main characters in the film, we have not found any that list the petitioner. The director may have referred to the

outer packaging of the videocassette, rather than to the more complete credits that run at the end of the film. Even if the director's finding was in error, it is clear that the perceived absence of the petitioner's name from the credits was not the deciding factor in the outcome of the decision.

The petitioner argues "Blues Brothers 2000 was the biggest movie of the year." The petitioner submits no documentation of any kind to show that Blues Brothers 2000 was the most successful film of 1998 (the year of its theatrical release), or that he was regarded by the film's makers, critics, or audience as a major factor in whatever success the film has enjoyed.

The petitioner asserts that, out of 165,000 working actors, he was part of "the smallest percentage" that was "selected to perform major parts in the biggest movie of the year." The record does not establish that the petitioner had a "major part" in any film. While ACTRA documentation refers to the petitioner as a "principal," there is no documentation from ACTRA to clarify or define that term. We repeat that the petitioner has never shown that he received star billing in any promotional materials for the films, or special billing in the credits.

The petitioner cites figures from his performance contracts, and observes that he receives residual fees from his performances, and states "I have no choice but to come to Washington with a calculator and show that there is significantly high remuneration for services, in relation to others in the field." Despite the petitioner's assertions, he has not shown that his salary is significantly high in relation to others in the field. The petitioner has not submitted any information at all about the earnings of other actors in Canada (the source of almost all the evidence), and therefore the petitioner has failed to show where his remuneration stands in relation to others in the field. The petitioner cannot satisfy this criterion simply by quoting his own earning figures and declaring them to be very high.

The petitioner protests the director's observation that the beneficiary has not won any major awards. The petitioner acknowledges this point but observes, correctly, that an alien can establish eligibility without such awards. We concur that the denial should not rest on the petitioner's failure to meet optional criteria. In this instance, however, the director's comment was part of a longer passage, in which the director demonstrated the overall shortcomings of the record of proceeding. Because many well-known actors have in fact earned a variety of awards, it is relevant to point out that, in the absence of awards, the petitioner must submit equally compelling evidence under other criteria.

The petitioner asserts that he is an "actor, writer, producer and most importantly Production Company Owner," and therefore he has risen to the very top of his field. The evidence of record deals almost entirely with the petitioner's work as an actor. Regarding his work as a writer, the record contains only the title page of one apparently unproduced screenplay. Apart from establishing the existence of his company, Blue Shark Films Corp., the record is devoid of evidence regarding the petitioner's work as a producer. The record does not show that any of the petitioner's screenplays have ever been made into films, or that his production company has ever produced a film. With no discernible track record as a writer or producer, the petitioner cannot simply claim to be one of Canada's top writers and producers.

The petitioner has not established that he is at the top of his field in Canada or elsewhere. He has merely submitted proof that he has acted on film and television, and asserted without credible explanation that this evidence elevates him above almost all others in his field.

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, writer or producer 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 does not persuasively demonstrate that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.