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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 244 57524 Office: CALIFORNIA SERVICE CENTER Date: FEB 12 2004

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)

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.

for Mari Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 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 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 musical composer, arranger, and director. 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 claims to meet the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

As documentation that he has received international awards, the petitioner submits evidence of having received a Quintuple Platinum Award for a song he produced for the singer [redacted] and evidence

that two films for which he was the composer and arranger were shown at the Cannes Film Festival Awards. There is no evidence that the petitioner won an award at the Cannes Film Festival, and the Quintuple Platinum Award is more indicative of commercial success, which is the subject of another criterion discussed below.

The petitioner submitted evidence that he won the Urian Award for best musical score in 1980, 1981 and 1999.[1] The petitioner describes the Urian Award as the equivalent of an Oscar, Golden Globe of America or American Film Academy Award. Although the petitioner submitted no evidence to support this comparison, an Internet review of the award supports the fact that it is a competitive award presented by Filipino film critics based on stated criteria denoting superior national performance. Receipt of such an award is indicative of national acclaim in the Philippines. We find that the petitioner meets this criterion.

> *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.*

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership and office in the Association of Filipino Musicians Association. Membership in the organization is open to anyone who is classified as a professional musician or to students upon recommendation by a music teacher and a member of the association. The association appears to serve more as a musicians union rather than an organization that selects its members based on achievement, and thus does not satisfy this criterion.

> *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.*

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 articles about himself that appeared in the August 4, 1984 edition of *News of the World*; the July 27, 1991 and November 1, 1992 editions of the *Philippine Daily Inquirer*; and the January 3,

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[1] The documentation on the GAWAD Urian Award submitted by the petitioner was uncredited. However, the information contained in the document was verified by the website Database of Philippine Movies at www.upd.edu.ph/~film_ctr.

1992 edition of the *Chronicle*. The petitioner was also profiled in the September 11, 1997 edition of the *Manila Bulletin* and the September 18, 1997 edition of the *Philippine Star* preceding his performance as conductor of the Manila Philharmonic Orchestra on October 5, 1997. Although these articles were about the petitioner, the latest occurred several years ago and the articles are not of themselves indicative of *sustained* media attention or *sustained* acclaim. The petitioner claims to be a major figure in the Philippine music industry, a genre that receives wide attention in the entertainment media. Yet from 1997 to 2001, the year he filed the petition, there is no indication that he received national attention in major media in the Philippines. As the statute requires evidence of sustained acclaim, we do not find that the petitioner satisfied this criterion.

The petitioner was also mentioned in articles in various news media that reported on events such as the Urian Awards, or in articles about other personalities such as [redacted] and [redacted] As these articles were not primarily about the petitioner, they do not establish that he meets this criterion.

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

To establish that he meets this criterion, the petitioner submits documentation of his work as producer, arranger and director for several Grammy Award winners. As noted above, the [redacted] album achieved Quintuple Platinum status. However, commercial success does not alone establish that the petitioner has made a major contribution to his field of endeavor. On appeal, counsel asserts that the petitioner helped to "create the so-called Manila Sound which is today's OPM (Original Pilipino Music) being enjoyed by current songwriters." This seems to be supported by [redacted] a keyboardist for the Elements Band, who writes in a letter that the petitioner "created the sound of the VT & Co. . . . which changed the disco scene in Manila . . . then he created the sound of the Hagibis, whose songs are still classic as of today." However, these statements are unsupported by any other evidence in the record. The evidence does not establish that the petitioner has met this criterion.

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

The petitioner claims to meet this criterion based on the showing of films for which he wrote the music score at the Cannes Film Festival in France, the Lincoln Center in New York and the Hallamasch Festival in Austria. The evidence does not establish, however, that the films' musical scores were the focal point of the work displayed. These film festivals were, rather, showcases for the work of the directors and producers of the films. We note that the wording of this criterion strongly suggests it is for visual artists such as sculptors and painters. While music and musicians might conceivably meet this criterion, the evidence does not establish that the petitioner has showcased his musical scores within the meaning of this criterion.

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

The director determined that the petitioner met this criterion based on his designation as musical director for the 1998 and 2000 Asia Song Festivals and the 1996, and 1998 through 2001 MetroPop Music Festivals. We withdraw that determination.

We first note that the record contains no evidence of the petitioner's participation in the 2000 Asia Song Festival or the 1999 MetroPop Music Festival. The record contains a picture of a trophy naming the petitioner

as music director for the 2000 MetroPop Festival, but no other evidence of any of these events appear in the record.

Further, the record does not establish that either festival is an organization or an establishment within the meaning of this criterion. The evidence reflects that these events are sponsored by organizations within the Philippines or, as with the case of the Asia Song Festival, another country. The evidence of record indicates that GMA, the sponsor of the MetroPop Festival, may have a distinguished reputation within the Philippines. However, the evidence does not reflect that the petitioner is associated with GMA. Participation in an event sponsored by an organization with a distinguished reputation is not performing a leading role for that organization.

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

The petitioner claims to meet this criterion based on the success of the [redacted] album. The commercial success of one artist's album, although it may continue to generate sales, is not sufficient to establish sustained achievement by the petitioner as co-producer of that album. The album was released in 1999 and the petitioner submits no documentation of prior or subsequent commercial success of other artists' recordings that he has produced or arranged that would establish that he meets this criterion. The petitioner does submit evidence that he worked with several well-known Filipino recording artists and Grammy award winners, but provides no evidence of the commercial success of his association with them.

On appeal, counsel submits statements from several persons in the music and recording industries who attest to the petitioner's talent as a musician and director. Citing *Matter of T-C-F-F-C-*, 5 I&N Dec, 454, 457 (BIA 1953), counsel states that the Board of Immigration Appeals (BIA) established that "whether or no[t] a person possesses exceptional ability must, as a general rule, rest upon the opinions of person[s] who are qualified experts in the field in which the exceptional ability is claimed." In *Matter of T-C-F-F-C-*, the BIA concluded that the alien, although possessing no prior experience, was an actress of "exceptional ability" based on the expert opinion of the vice president of the company who sought to hire her and who was an expert experienced in the selection and casting of actors. Although the statements submitted by counsel are from others experienced in the music and music recording fields and attest to the petitioner's talent as a music composer and director, nothing in the record establishes their qualifications as experts in the field, or establishes their qualifications to judge the ability of the petitioner. *See Matter of Kim*, 12 I&N Dec 758 (Reg. Comm. 1967). The possible exception to this may be Mr. [redacted] Executive and Artistic Director of the San Miguel Foundation for the Performing Arts, who gives the petitioner high marks as one of the top music director-arrangers in the Philippines. However, Mr. [redacted] opinion that the petitioner has made an "immense contribution to the industry" which "includes production of top selling and award-winning songs and albums" is not supported by the evidence of record and does not establish the petitioner among the elite in his field.

Counsel also cites *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill 1995) stating that the "court suggested that the letters and affidavits from a professionals' peers are often the best evidence of the alien's extraordinary ability." The court in that case did not state that the determination of visa preference rested solely on the opinions of the petitioner's peers. CIS must look at the totality of the record to determine if the petitioner qualifies for visa preference.

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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a musical composer, arranger or director 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 is a talented music director and arranger, but is not persuasive that his 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 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.