U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 14 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]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petition 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 has 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, filed on September 6, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a screenwriter. 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.

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

The record reflects that the petitioner was the recipient of several nationally recognized awards for excellence in the field, including a 1994 second place Don Carlos Palanca Memorial Award for Literature, a 1995 First Prize in the Film Development Foundation of the Philippines, Inc. (FDFPI) Scriptwriting Contest, and a 1999 "Best Telemovie" award from the Philippine Movie Press Club. We concur with the director 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 submits evidence of membership in the Screenwriters Guild of the Philippines. The petitioner submitted no evidence of the membership requirements for the Screenwriters Guild and there is no evidence that outstanding achievement is a prerequisite for membership in the organization. Such guilds usually serve as labor unions established to protect the interests of its members. The petitioner has submitted no evidence that satisfies the requirements of 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.

In order 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 record contains a copy of an article from the September 30, 1994 edition of *Mod*, which reports on the winners of the Palanca awards. The petitioner is named as the second place winner in the Filipino screenplay division. This article is not about the petitioner. Further, although the petitioner states that this publication is a national weekly magazine, there is no evidence in the record to establish that the publication is major media, or professional or major trade media.

The 1994 Palanca winners were also listed in the September 4, 1994 edition of a newspaper indicating it is the *Sunday Chronicle*, and which the petitioner labels the *Manila Chronicle*. The same article appears in a newspaper that the petitioner identifies as the September 7, 1994 edition of *Today*, and in the *Manila Times*, identified by the petitioner as the September 3, 1994 edition of the paper. The petitioner's assertions as to the source of these articles are not evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Regardless, the article is not about the petitioner or his work. An article entitled "The death and rebirth of Philippine cinema" is also identified by the petitioner as appearing in an October 28, 1997 edition of the *Manila Chronicle*. The article is about the films that won the Mowelfund Film Institute's annual film workshop. Although the petitioner is mentioned in the article, the article is not about him as required by this criterion. Additionally, no evidence establishes that the *Manila Chronicle* is major media, or professional or major trade media.

An article that appeared in the *Philippine Daily Inquirer* reports on the winners of the FDFPI scriptwriting contest and reports that the petitioner won first prize. Although the only indication of the date of the publication is the petitioner's handwritten note, other evidence in the record indicates that the article appeared in a 1995 edition of the paper. An article in the October 1995 edition of the FRB Bulletin also identifies the winners of the scriptwriting contest. The record includes a copy of a newspaper article identifying the winner of the 7th Annual Scriptwriting Contest sponsored by the FDFPI and the National Commission for Culture and the Arts. The petitioner is identified as among the ten winners and the article notes that he is a second time winner in the contest. The petitioner identifies the article as appearing in the June 1, 2001 edition of the *Philippine Daily Inquirer*; however, there is no evidence to corroborate this statement. Further, none of these articles is about the petitioner as required by this criterion.

An article entitled "Campus Romance Dislodges Palibhasa, Lalake" discusses a new television show that outscored a veteran program in the television ratings. The article identifies the petitioner as the scriptwriter and identifies him as the television network's "prized writer." The petitioner states the article appeared in a June 2, 1998 edition of *Malaya*. However, as with other articles submitted by the petitioner, there is no evidence to substantiate the source and publication date of the article.

An article in the October 1996 edition of the *Tradesmen Noumena* is about the petitioner. However, no corroborative evidence was submitted to establish that the publication is a major trade publication as indicated by the petitioner. An article in the October 24-30, 1999 edition of the *Weekly Graphic* provides a critical review of the petitioner's telemovie *Propeta*. Although the article is about the petitioner's work, he submits no evidence to establish that the newspaper is major media, or professional or major trade media.

An article that discusses a new television show entitled *Your Honor* identifies the petitioner as one of the writing staff. The petitioner indicates the article appeared in the June 10, 2001 edition of *Malaya*. *Your Honor* was mentioned as a show to watch in a December 20, 2001 article that appeared on the *Philippine Daily Inquirer* Internet site. An article that discusses the "piracy" of behind the camera television network talent identifies the petitioner as one of the writers who switched networks. The petitioner states this article appeared in the May 2, 1999 edition of the *Malayan Herald*. These articles are not about the petitioner as required by this criterion. Additionally, the petitioner presents no evidence that the *Malayan Herald* is major media, or professional or major trade media.

The petitioner includes a copy of a June 5, 2001 press release from his television network announcing the debut of the television show *Your Honor*. As discussed above, the petitioner is listed as one of the writers of the show. However, a press release is not published material about the petitioner as required by this criterion.

The petitioner submits a copy of a web page from aratilis.com that contains a March 2003 article about him and his work. The article appears on an Internet website. However, the petitioner submits no evidence to establish that this web page receives significant visits or "hits" such as to classify it as major media. Further, as the article was published after the petitioner filed his petition, it cannot be used to establish visa preference classification. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The article also appears in the February 3-9, 2003 edition of the *Filipino Express* magazine. The masthead of the paper indicates the article appeared in the national edition of the magazine but the record contains no evidence of the magazine's distribution or that it constitutes major media, or professional or major trade media.

Two articles that appear on the *Philippine Daily Inquirer* website discuss the television show *Kabalikat*. The petitioner is not mentioned in either article, and the dates that the articles were published are unclear.

Although the petitioner submitted several articles in support of this criterion, the record reflects that the evidentiary value of many is limited as the petitioner failed to provided competent evidence as to publication source and date. The evidence as provided by the petitioner is not sufficient to 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.*

The petitioner claims to meet this criterion based on his work on "groundbreaking" television shows such as *Labs Ko si Babe*, *Katapat*, *Kabalikat*, and *Your Honor*. All of these shows were critically acclaimed and nominated for national awards. The record reflects that the petitioner was a member of the writing staff on these various television projects. The record does not reflect that he was credited with the creation of these programs or their concepts.

In his letter accompanying the RFE, counsel references the article that the petitioner states appeared in the June 10, 2001 edition of the *Malaya* newspaper. The article indicates that *Your Honor* was "arguably the first legal drama series in the Philippines." Neither counsel nor the petitioner shows that the scriptwriting of this program constitutes a contribution of major significance to the field.

Counsel also states that the show *Katapat* "broke new ground in Philippine television by becoming a public service center for people seeking justice." This statement appears to be referencing a statement by the television network that the show had "evolved into a virtual public service program by leading to real apprehension and prosecution of suspects." Regardless, there is no evidence that the show or the petitioner's work on it constituted a contribution of major significance to scriptwriting. Counsel asserts that the success of the show led to rival stations copying the format. He includes the petitioner's show *Kabalikat* as part of the

copycat formula. Counsel further asserts that the show *Labs Ko si Babe* established a "trend in evening programming by combining comedy and drama in 30-minute soap opera episodes." No evidence provided by the petitioner substantiates these statements of counsel. The assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, counsel does not show how this industry wide practice of emulating successful shows prove that the petitioner's participation on the writing staff of these shows, or that of *Kabalikat*, is a contribution of major significance to the field.

Counsel also suggests that the petitioner's critically acclaimed and award winning television movies are evidence applicable to this criterion. Again, however, there is no evidence in the record of the impact of these works on the petitioner's fellow scriptwriters or any evidence establishing that these programs were otherwise of major significance to scriptwriting. The evidence does not establish that the petitioner meets 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 his award winning short film *Si Lolo Tasyo at ang Araw* at the 11th Annual Gawad CCP Independent Short Film and Video Festival in 1997, the 1998 Cinema in the Islands Film Festival, and the 1999 Pelikula at Lipunan Film Festival. The Gawad festival, sponsored in part by the French Embassy in the Philippines, "honor[s] and promot[es] Filipino independent filmmaking by giving recognition to the year's most outstanding film and video artists." The record reflects that the petitioner's film was showcased at the 1997 festival. Although the petitioner submits a statement from the director of the Mowelfund Film Institute's 1997 workshop indicating that the film was also showcased in the 1998 Cinema in the Islands and 1999 Pelikula at Lipunan film festivals, no other evidence on or from these festivals was presented.

The statute requires the petitioner to demonstrate sustained acclaim through extensive documentation. The petitioner's evidence establishes that one of his films was exhibited at one film festival in 1997. The petitioner's evidence in this criterion does not meet the extensive documentation required by the statute to demonstrate sustained acclaim.

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

In order to meet this criterion, the petitioner must establish that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner claims to meet this criterion based on his role in assisting the Dominican Sisters of St. Catherine of Siena in their quest for beatification of their founder. The petitioner was one of the first 15 members of the "Lay Missionary Associates of Mother Francisca del Espiritu Santo (LMAMFES)" whose purpose was to assist in the beatification effort of Mother Francisca del Espiritu Santo. The petitioner wrote a biographical telemovie about Mother Francisca that served to introduce her life to the Filipino people. According to the chairperson of the Mother Francisca Commission, the petitioner also wrote another biography and eight Forums of Virtues documentations highlighting the life and virtues of Mother Francisca.

She also credited him with contributing to the video documentation of the outreach and missionary activities of the LMAMFES.

The evidence establishes that the petitioner was vigorously involved in the beatification efforts on behalf of the Dominican Sisters of St. Catherine of Siena and Mother Francisca. However, a project is not an organization or establishment within the meaning of the criterion. The evidence does not establish that the petitioner's role as a lay missionary associate was a leading or critical role for the sisters.

Counsel asserts that the petitioner's role in the Oasis of Love Foundation is also evidence of this criterion. The petitioner submits a copy of a commendation from the foundation commending his efforts on behalf of the organization. The commendation lauds the petitioner's roles in the music and education ministries of the foundation but does not establish that the roles were of a leading or critical nature. Further, the record does not establish that the foundation possesses a distinguished reputation. Counsel suggests that as the foundation is affiliated with the Catholic Church, it is inherently an organization with a distinguished reputation. However, the reputation of the church cannot, without more, be imputed to organizations associated or affiliated with the church. The petitioner must establish that the foundation enjoys a distinguished reputation separate and apart from the Catholic Church.

The petitioner also received an award from the Sacred Heart Parish Kamuning for his participation in the church's 60th Jubilee celebration. According to counsel, the petitioner wrote a chapter of a book published by the church. A copy of a document containing the words "Sanlakbay 2001," "SHP at 60," "A Journey of Faith" and another document listing a table of contents with a contribution by the petitioner was submitted as evidence. The evidence presented does not establish that the petitioner performed in a leading or critical role for the church or that his role with the church was in his field of endeavor.

The petitioner submitted evidence of having written several award winning programs for television networks in the Philippines. The evidence does not establish that these programs were organizations or establishments within the meaning of this criterion. Additionally, the petitioner submits no evidence of the nature of his position in the hierarchal structure of the networks, including whether he served as a head writer at the networks, or any other information that would establish that he performed in a leading or critical role for the networks. Additionally, he provided no evidence of the reputation of these networks in the business or entertainment industries.

The petitioner's evidence does not establish that he meets this criterion.

> *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 several of the television shows for which he wrote. The evidence indicates that one of these programs, *Campus Romance*, for which the petitioner had a role in helping to create, succeeded in dislodging a veteran program from the number one spot. The record reflects that other shows on which the petitioner served as a member of the writer's pool also scored high in the television ratings in 1999. One of the shows, *Labs Ko si Babe*, continued as a ratings success in 2000, placing third in the top multi-weekly evening programs. The record does not establish that the petitioner was

the primary writer for these shows, and does not indicate the number of writers responsible for writing the shows. The evidence does not establish the petitioner's contributions to these shows or the significance of those contributions to the success of the shows.

The evidence establishes that the petitioner wrote several critically acclaimed television programs, three of which were nominated for national awards with one winning a best telemovie award in 1999. Critical success does not always equate to commercial success. The petitioner submitted no evidence of the commercial success of the critically acclaimed telemovies that he wrote.

The evidence as presented does not establish that the petitioner 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 has risen to the very top of his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a scriptwriter 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 very talented scriptwriter, 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 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.