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

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Administrative Appeals Office
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: WAC 03 037 55200 Office: CALIFORNIA SERVICE CENTER Date:

JUL 10 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

[Redacted]

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 CFR § 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 Bureau of Citizenship and Immigration Services (Bureau) 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 CFR § 103.7.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant 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 sustained.

The petitioner is a motion picture production company that seeks to employ the beneficiary as an actor for a period of two years. The director determined that the petitioner had not established that the beneficiary qualifies as an alien who has a demonstrated record of extraordinary achievement in motion picture or television productions.

On appeal, counsel for the petitioner argues that the beneficiary is qualified for the classification sought.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

When a petition is filed for an alien of extraordinary achievement in the motion picture and television industry, the petitioner must show that the beneficiary is a person highly accomplished with a degree of skill and recognition significantly above that ordinarily encountered. 8 C.F.R. § 214.2(o)(3)(ii) defines:

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

Under 8 C.F.R. § 214.2(o)(3)(v), in order to qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

It is noted that the Bureau's decision in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien satisfies the criteria and is eligible for O-1 classification. The evidence submitted must establish that the

beneficiary qualifies as an alien of extraordinary ability.

The beneficiary is a 27-year old actress with experience in both films and theater.

The beneficiary was nominated for the 2000 Goya Award and was the recipient of an Actor's Union Award for Best Female Supporting Actress. The petitioner asserts that the Goya Award is Spain's equivalent of the Oscar and that the Union Actors Award is commensurate with the Screen Actors Guild (SAG) Actor Award. In support of this assertion, the petitioner submitted two movie reviews¹ that mention that the Goya Award is the Oscar equivalent.² As evidence that the Union Actors' Award is the equivalent of the Screen Actors Guild, the petitioner provided the Bureau with a letter from the beneficiary's agent asserting that the Union Actors award is "regarded as the equivalent of the SAG Award." The petitioner failed to establish that the Union Actors' Award is a significant national or international award of prize in the beneficiary's field of endeavor. 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). The petitioner has established that the Goya Award is a significant national award.

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

For criterion number one, counsel for the petitioner asserts that the beneficiary "has performed as the lead or in a starring role in fourteen feature films in Spain." Counsel further asserts that the petitioner will star in "Van Helsing" as one of Dracula's three brides and will play a lead role in "Stage Kiss." The petitioner provided evidence in the form of reviews, publications and publicity releases that the beneficiary has and will perform lead or starring roles in productions, which have a distinguished reputation. The beneficiary satisfies this criterion.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.

¹ One of which was published on the internet at www.uol.com.br/mostra/jornal/jornal28.

² An internet search provided corroborating evidence that the Goya Award is the equivalent of an Oscar.

The petitioner submitted evidence that the beneficiary has achieved national and international recognition for her achievements evidenced by critical reviews and internet publications. The beneficiary satisfies this criterion.

Evidence that the alien has performed, and will perform, services as a lead, starring, or critical participant in productions or events which have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials.

As discussed above, the beneficiary satisfies this criterion.

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.

The petitioner provided evidence that the beneficiary has a record of major commercial and critically acclaimed successes as evidenced by occupational achievements. The beneficiary has acted in several films that have been nominated for significant awards. The beneficiary satisfies this criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

The petitioner provided the Bureau with evidence that the beneficiary has received significant recognition by virtue of her nomination for the Goya Award. The beneficiary satisfies this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The petitioner indicated that the beneficiary would be paid \$100,000 for her performance in "Stage Kiss." In the absence of wage surveys, the Bureau cannot evaluate whether the proffered rate of pay is high in relation to that received by others equally qualified. The petitioner failed to establish that the beneficiary satisfies this criterion.

The petitioner provided the Bureau with two consultations. The Screen Actors Guild states that it raises no objection to the granting of an O-1 visa to the petitioner. The Alliance of Motion Picture and Television Producers wrote a letter opining that the beneficiary has a history of extraordinary achievement. The petitioner, therefore, satisfies the consultation requirement.

After a careful review of the entire record, it is concluded that the petitioner has shown that the beneficiary is a person of extraordinary achievement in the motion picture or television industry.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. The director's decision shall be withdrawn; the appeal will be sustained.

ORDER: The appeal is sustained.