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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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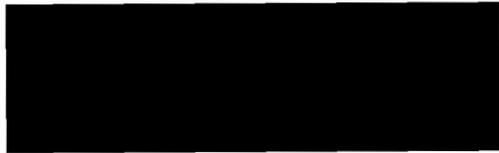


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 25 2009**  
LIN 08 040 50302

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska 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. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal or Motion, in which he asserted that the evidence submitted "demonstrates [] the petitioner's credential[s] as an accomplished, talent[ed] actor who has sustained national or international acclaim necessary for this classification." Counsel indicated on the Form I-290B that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of the date of this decision, however, more than 11 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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.

U.S. Citizenship and Immigration Services (USCIS) and the legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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 she has sustained national or international acclaim at the very top level.

This petition, filed on November 15, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an actor. 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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three of the criteria outlined in 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 record reflects that the petitioner was previously approved as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), on July 22, 1998 under USCIS receipt number WAC 98 094 51755 and approved for adjustment of status to that of permanent resident on June 5, 2000. According to counsel, the petitioner subsequently "abandoned his permanent resident status and secured an O-1 visa for future employment in the United States."

On appeal, counsel asserts that the petitioner's previous approval for this immigrant visa petition is evidence of his extraordinary ability, and that his "talent, abilities and level of acclaim has [*sic*] not diminished." Nonetheless, while the petitioner may have been previously approved as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), that fact is not sufficient, in and of itself, to establish that he is currently an alien of extraordinary ability as set forth in the Act. The petitioner must establish that he has maintained sustained national or international acclaim through the date of his current petition.

Further, while USCIS has approved an O-1 nonimmigrant visa petition filed on behalf of the beneficiary under section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), that prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999);

*Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the beneficiary's qualifications).

Although the words "extraordinary ability" are used in the Act for both the nonimmigrant O-1 classification and the first preference employment-based immigrant classification, the applicable regulations define the terms differently for each classification. The O-1 regulation explicitly states that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines extraordinary ability as "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 evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear regulatory distinction between these two classifications, the beneficiary's receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

With the petition, the petitioner submitted an August 15, 2007 letter from Covington International, a production and talent management firm, signed by [REDACTED], in which she stated that the petitioner had been nominated for an Emmy award for best supporting actor for his role in the television movie *One Against the Wind*. The petitioner did not list this nomination in any of the other documentation submitted with the petition and submitted no documentation to corroborate that he had received an Emmy nomination. In his May 22, 2008 letter accompanying the petitioner's response to the director's request for evidence (RFE) dated April 15, 2008, counsel also asserted that the petitioner had been nominated for an Emmy award for his role in *One Against the Wind*. Counsel further asserted:

Under the pertinent section of the Code of Federal Regulations which deals with the weight that is to be given to an individual who has received a national and/or international prize or award for excellence in their particular field, there is no statement or case law that states that a major international or national award's significance is diminished over time.

The record, however, does not support counsel's statements that the petitioner has been nominated for an Emmy. The petitioner submitted his biography as listed in the online encyclopedia *Wikipedia* and from the Internet Movie Database (IMDB), and information about the movie *One Against the Wind* from the IMDB. We note first that with regard to information from *Wikipedia* and the IMDB, there are no assurances about the reliability of the content from these open, user-edited Internet sites.<sup>1</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* and the IMDB are the only cited sources. Second, neither *Wikipedia* nor the IMDB indicate that the petitioner was nominated for an Emmy award.

On appeal, counsel asserts that the petitioner "is the recipient of a major international award nomination, an Emmy Award, for best supporting actor." It is unclear whether counsel argues that the petitioner is eligible for this immigrant visa petition based on of a one-time achievement because he has been nominated for an Emmy award. A nomination for an award is not a receipt of an award. Furthermore, the petitioner has not established that he has been nominated for an

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<sup>1</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . **Wikipedia cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. [Emphasis in the original.]

See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on July 29, 2009, a copy of which is incorporated into the record of proceeding.

According to the IMDB, information on the website comes from various sources, and includes "press kits, official bios, autobiographies, and interviews" as well as "people in the industry and visitors." The site indicates that while efforts are made to keep the information as "accurate and reliable as possible," "occasional mistakes are inevitable." See [http://www.imdb.com/help/show\\_leaf?infosource](http://www.imdb.com/help/show_leaf?infosource), accessed on July 29, 2009, a copy of which is incorporated into the record of proceeding.

Emmy award. Accordingly, the petitioner has failed to provide evidence of a one-time achievement in the form of a major, internationally recognized award.

The petitioner has also submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

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

Counsel alleges that the petitioner meets this criterion based on his nomination for best actor at the Cannes Film Festival and the Geneva Film Festival, and best supporting actor at the Golden Globes. With the petition, the petitioner submitted a list of awards for which he stated he received nominations in 1989, 1996 and 1997. The list does not indicate who prepared it or the sources relied upon in compiling the information.

In response to the RFE, counsel stated that the petitioner had won the E'Febo Doro Award at the Sicilian Film Festival, had been nominated for the Emmy award discussed above, and nominated for best actor at the Cannes Film Festival and the Swiss Film Festival for his role in *Reunion*. The only evidence submitted by the petitioner was documentation retrieved from the IMDB and *Wikipedia* websites. For the reasons stated above, this information is not probative in this proceeding. Furthermore, according to the documentation from IMDB for *Reunion*, the only nomination received by the movie was at the 1989 Cannes Film Festival for its director. Although the petitioner's biographies that appear on the websites indicate that he won the E'Febo Doro Award and was nominated for best actor at the Cannes Film Festival for his role in *Reunion* and at the Geneva Film Festival in 1997 for his role in *The Harpist*, other documentation from the IMDB website does not indicate that *The Harpist* was nominated for any awards. Additionally, the petitioner's profile from the IMDB website does not show that he has won or has been nominated for any awards. Furthermore, 8 C.F.R. § 204.5(h)(3)(i) requires the petitioner to document his receipt of a nationally or internationally recognized award or prize. Nomination for an award is not receipt of an award.

The petitioner has failed to establish that he meets this criterion.

*Published material 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 material 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

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

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 a copy of an undated draft press release from the Cartoon Network announcing the completion of a "live-action made-for-TV movie," *Ben 10: Race Against Time*. The release provides a synopsis of the movie and the characters, including the petitioner, who played the role of the title character's nemesis. The record does not reflect that the information regarding *Ben 10: Race Against Time* was ever published in any media. The petitioner also submitted a copy of an undated "Press Pack" for the film *Dark Corners* in which he was one of the co-stars. A press release does not contain an author, as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). A press release is a company's self-promotion of its own products and services. The information in the press materials are designed to promote the films, with information about the petitioner simply a piece of that promotion. It does not indicate that an independent journalist found the alien worthy of coverage. Although the petitioner provided documentation that information from the "Press Pack" for [REDACTED] was published, the press release is not primarily about the petitioner but about the film in which he appeared.

The petitioner submitted copies of newspaper articles reviewing movies and television shows in which he appeared. While many of the articles mention the petitioner, some, such as a January 18, 1991 review of *Hamlet* and a March 27, 1992 review of *The Power of One*, both by [REDACTED] that appeared in the *Chicago Sun-Times*, do not mention the petitioner and do not include him in the list of stars of the show.

The petitioner provided articles about him that appeared in a December 10-16, 1989 magazine supplement to *The Daily Telegraph*, and the October 26, 1989 and December 13, 1992 editions of the *Daily Mail*. An undated article about the petitioner and his role in *Relic Hunter* appeared on the website *littlereview.com*. Other documentation submitted by the petitioner is not accompanied by English translations. Therefore, they do not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which provides:

*Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Furthermore, as noted by the director, the documentation submitted in support of this criterion is extremely dated, with most occurring 15 years or more prior to the filing of this visa petition on November 15, 2007. The most current documentation submitted by the petitioner under this

criterion relates to the film *Dark Corners*. However, as discussed above, the articles are not about the petitioner or his work. The petitioner submitted no documentation of any published material about him during the years immediately preceding the filing of the visa petition. The lack of media coverage during this period is not consistent with a claim of sustained national or international acclaim.

The petitioner has failed 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.*

In his May 22, 2008 letter accompanying the petitioner's response to the RFE, counsel alleges that "the petitioner's body of work clearly has major significance in his field." Counsel asserts that evidence of this is not only found in this "body of work" but also the fact that he has "received four (4) major industry award nominations." The petitioner, however, provides no evidence to establish how his body of work constitutes a contribution of major significance to his field. Further, the record does not establish that the petitioner has been nominated for four "industry awards." Additionally, the petitioner provides no evidence that being nominated for any award constitutes a contribution of major significance to his field of endeavor.

The petitioner has failed to establish that he 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 his film and television work and, as counsel alleges, his nomination for an Emmy award as well as receiving nominations at the Cannes and Swiss Film Festivals, and a best actor award at the Sicilian Film Festival. As previously discussed, the documentation of record does not corroborate the petitioner's claims of having won an award or that he has ever been nominated for any award.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) reveals that this criterion applies to the visual arts. The beneficiary is a performing artist. That said, we acknowledge that there may be instances where a film is part of an artistic exhibition or showcase such that the exhibition may be considered comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

The evidence submitted to meet a given criterion must be indicative of or consistent with sustained national or international acclaim in the field if that statutory standard is to have any meaning. Thus, in order to meet this criterion, the exhibition or showcase must be so exclusive that the selection to be displayed in and of itself sets the artist apart from other members of the field.

Films in which the petitioner has appeared have been screened at several film festivals, including the Cannes Film Festival in 1989 and 1997. However, these screenings occurred 10 years prior to the filing of the visa petition and are not consistent with sustained national or international acclaim.

The petitioner has failed to establish that he meets this criterion.

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

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

Counsel asserts that the petitioner meets this criterion based on his roles in various movies and television shows, specifically his role in *Reunion*, *The Harpist*, *Relic Hunter*, and *Ben 10: Race Against Time*. The record reflects that the petitioner was one of the stars of *Reunion* and *Ben 10: Race Against Time*, was co-star of *Relic Hunter* and starred in *The Harpist*.

In his letter accompanying the petitioner's response to the RFE and again on appeal, counsel asserts that USCIS does not understand "the term [co-starring] role within the film industry and the magnitude of a co-starring/principal role in a film or television feature." Counsel also stated that the petitioner "has performed lead or co-starring acting roles" for "major distinguished film and television production companies and theatrical companies."

Nevertheless, although the parts played by the petitioner are arguably leading roles, the roles are only in the particular films enumerated. These films are not organizations or establishments as required by 8 C.F.R. § 204.5(h)(3)(viii). Further, assuming that the roles are leading or critical roles as specified by the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner's evidence does not establish that the films and television shows in which he appeared enjoy distinguished reputations. The petitioner's evidence, primarily from the IMDB website, indicates that some of the work in which the petitioner appeared received attention for individual achievement, such as *Reunion*, which was nominated for a Golden Palm for its director at the 1989 Cannes Film Festival. The television movie *One Against the Wind* apparently won a Golden Globe for best mini-series for motion picture made for television. However, the record does not reflect, either in the reviews or in awards, that the film or any of the other works in which the petitioner appeared has a distinguished reputation. Further, the petitioner submitted no documentation to establish that his film or television work was in a leading or critical role for any of the companies that produced them.

The petitioner has failed to establish that he meets this criterion.

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

The petitioner submitted a copy of a June 11, 2007 contract with the production company Alive and Kicking, Inc. indicating that he would be paid approximately \$2,900 per week for his work on the program *Ben 10: Alive*. A January 26, 2007 "memorandum of agreement" between the petitioner and Covington International, Inc., producer of the film *White Swans*, provided that the petitioner was to be paid \$10,000 per week. The petitioner submitted no documentation to establish that this compensation is significantly high relative to others in his field. The petitioner submitted no additional documentation in response to the director's RFE or on appeal. The petitioner has therefore failed to 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.*

As evidence that he meets this criterion, the petitioner submitted documentation from the IMDB website regarding the box office business for the 2006 film *Flyboys* and 1990 film *Hamlet* in which he appeared. First, we note that the information from the IMDB is not reliable for the reasons previously stated and therefore will not be considered in this proceeding. Additionally, the documentation indicated that through December 2006 *Flyboys* grossed over \$13 million in the United States. However, the estimated budget, according to the IMDB, was \$60 million. Even if we accepted information from the IMDB, a \$13 million gross on a \$60 million budget is not evidence of commercial success. The documentation also indicated that *Hamlet* grossed approximately \$21 million in the United States. However, the petitioner submitted no additional documentation regarding the cost of making the film. The petitioner also submitted documentation from IMDB indicating that Judy Davis was nominated for an Emmy award for her role in *One Against the Wind*, and that the television movie and Ms. Davis won a Golden Globe award. However, winning an award based on critical success does not establish that the film or television show enjoyed commercial success.

The petitioner has failed to establish that he 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. Although the petitioner was previously approved for an immigration visa pursuant to section 203(b)(1)(A) of the Act, the current record does not establish that he has achieved sustained national or international acclaim 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.