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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

File: [Redacted]

Office: Vermont Service Center Date:

AUG 6 2001

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Acting 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 she has sustained national or international acclaim at the very top level.

The petitioner claims "extraordinary ability in the field of piano arts of Venezuela and Latin style piano arts." 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, she 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.*

A document list included with the petition lists several "awards, special shows and acknowledgements." Most of the documents so listed are newspaper articles or documentation of concert performances. What remain are the three items listed below.

The petitioner claims to have received a "national award" from the United States Achievement Academy in 1993. A letter from the academy states, in part:

The Academy has selected you for the All-American Scholar At Large Division because you have been honored in other programs and are among the top academically talented students in America. This outstanding honor is an important national award recognizing your hard work and commitment solely to Academic excellence.

This is plainly a student award, in which the petitioner is compared only with other students rather than the most experienced and established figures in her field. Furthermore, there is no mention of the piano or music in general; it is not an award for excellence in the petitioner's field. Elsewhere, the letter indicates that "[t]he Academy reserves the right to limit student participation to the demography of students who . . . have an expressed grade point average of 3.3 on a 4.0 scale." Thus, the award appears to be essentially an acknowledgment of high grades. There is no indication that anyone outside of the academy itself considers this honor to be "an important national award." The letters include an invitation to purchase a yearbook, listing the year's winners. Clearly, the "award" does not include a complimentary copy of the book. The only apparent purpose behind the "award" is to solicit the purchase of the yearbook.

The petitioner received First Class Honours of the Grade 5 Examination in Theory at the Royal Conservatory of Music in 1990. Like the above, this is an academic honor. It may help establish her standing among music students, but conservatory study is not a field of endeavor. The honor says nothing of the petitioner's standing among concert pianists in general, or at a national level; it compares her only to other students at the same conservatory.

The certificate essentially documents the petitioner's high score on a college examination.

The petitioner received a plaque at a 1996 piano recital in Carabobo. The petitioner has not established that this plaque represents a nationally recognized award rather than a local honor.

*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.*

The petitioner notes that the publisher of Who's Who in Latin America has solicited her biography. The publisher's letter states that the book "is a dictionary of biographies . . . of people in each country of Latin America who are becoming or are very famous" in various fields. We note that one need not already be "very famous," and that the publisher offers no guidelines for determining how an individual is "becoming . . . very famous." The letter itself is a "form" letter with the petitioner's name handwritten at the top. In fact, the document in the record is obviously a photocopy, rather than the original letter, yet the petitioner's name is not copied; it is handwritten in blue ink. It appears that the petitioner re-wrote her name because it was not legible in the copy. The documentation pertaining to the Who's Who book is in some respects similar to the documentation from the U.S. Achievement Academy; achievement-related information has been compiled into a book, apparently for the purpose of selling that book to the persons named therein.

The petitioner is mentioned in various issues of MSM Notes. The masthead of this publication identifies it as "A Newsletter for Manhattan School of Music Students, Faculty and Staff." MSM Notes is clearly not a national or international publication; its circulation is limited to the campus of one school of music. Similarly, the Manhattan School of Music Alumni News is not a major national publication but rather a narrowly targeted newsletter distributed to the school's graduates.

The petitioner submits copies of reviews of her performances, published in El Espectador, El Carabobeño and other newspapers. The petitioner has submitted only fragmentary capsule translations of these articles, although 8 C.F.R. 103.2(b)(3) requires a "full" and "complete" translation. These newspapers appear to be local newspapers for the Valencia area, rather than major national publications. Also, these reviews, and short pieces published shortly in advance of performances, are routine in the performing arts. The petitioner has not established that only the most acclaimed artists receive local newspaper coverage in this manner.

Some of the claimed "published materials" are actually advertisements for forthcoming performances. Purchasing advertising space does not satisfy this criterion, because anyone can purchase such space, regardless of their level of achievement.

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

The petitioner states that she played a concert with the Symphonic Orchestra of Valencia, and she asserts that, according to the concert master, "they experienced a full house . . . and that 200 people [were] left standing outside because the tickets were completely sold out." The record offers no evidence to support or clarify this assertion. A sold-out concert at a local concert hall does not demonstrate a consistent, sustained pattern of commercial success at the national or international level.

The petitioner amply documents her involvement in the performing arts, submitting concert programs and newspaper reviews, but these documents do not establish that the petitioner is among the most commercially successful artists in her field, nationally or internationally.

Beyond the above criteria, the petitioner has submitted a number of witness letters. All of these witnesses are from areas where the petitioner has resided or attended school, such as Manhattan and the Venezuelan city of Valencia. A number of these letters merely attest to the petitioner's educational credentials and musical competence. The letters, as a whole, do not establish that the petitioner has earned a significant, sustained reputation beyond the localities where she has lived and studied.

The director instructed the petitioner to submit further evidence to establish eligibility. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "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."

In response to this letter, the petitioner has submitted more letters, many from established musicians. The authors of these letters praise the petitioner's abilities as a musician, but they do not indicate that the petitioner has earned widespread acclaim. For instance, Anthony Newton states "I predict that [the petitioner] has a bright future," but he does not indicate that the petitioner has already reached the pinnacle of her field. The expectation that the petitioner will, one day, reach that peak is necessarily speculative and cannot establish that the petitioner was eligible for this very restrictive classification as of the day

she filed the petition. The witnesses observe that the petitioner has performed internationally, but sustained acclaim does not automatically or inevitably derive from performance tours.

The director had noted that the petitioner does not appear to have earned substantial compensation, as might be expected of a nationally or internationally acclaimed musician. In response, the petitioner submits several letters discussing benefit concerts at which the petitioner has played. At such charity events, of course, it is customary for the performers to receive little or no compensation. Still, not all of the petitioner's recitals have been charity benefits. The petitioner states "[i]f I did collect money for my performance, I can collect a lot of money, since I am one of the best Venezuelan and Latin pianist[s] in that area." This assertion is conjectural and speculative. While the petitioner can help to establish eligibility with evidence that she has received substantial compensation, it cannot suffice for the petitioner simply to claim that she could receive large sums, if she were to choose to do so.

The director denied the petition, stating that while the petitioner may be "in the beginning stages of a potentially promising career," she has not shown that she has already reached the very top of the field as the regulations require.

On appeal, the petitioner argues that she has submitted letters from "the top experts in [the] field" attesting to her abilities as a musician. The petitioner must, herself, rank among "the top experts in [the] field" in order to qualify for this highly restrictive visa classification. The experts who have offered letters are very heavily concentrated in Valencia and Manhattan, where she studied music; many of these experts are the petitioner's own professors and mentors.

Similarly, the news coverage of the petitioner's work appears to be limited to the city of Valencia, and the state of Carabobo in which Valencia is located. While the petitioner has received favorable reviews in the Valencia/Carabobo media, she has not established that such reviews are anything but routine among actively performing musicians.

The petitioner asserts that a Venezuelan composer has created a work especially for her to perform, which "will be inaugurated during the second quarter of the year 2000." When the appeal was filed in January 2000, this date was still several months into the future and the petitioner cannot have earned significant acclaim from an event which had not yet occurred.

The petitioner asserts that she has satisfied various criteria which she had not originally claimed, such as display of the alien's work in the field at artistic exhibitions or showcases and

performance in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner relies on so loose an interpretation of these criteria that virtually every pianist who performs in public can be said to have satisfied them.

The petitioner protests that the director has characterized her simply as a "concert pianist," rather than in the narrower category of "a Venezuelan and Latin Style piano music arts pianist." Even if we accept that this narrower category is a field of endeavor in its own right, the petitioner must still establish that she has a national or international reputation, throughout the field rather than mostly among her own teachers and acquaintances.

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 herself as a pianist to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a pianist, and has had local success while impressing some distinguished musicians, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.