



U.S. Department of Justice

Immigration and Naturalization Service

102

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

[Redacted]

File: [Redacted]

Office: Texas Service Center

Date: JUL 11 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:

[Redacted]

Public Copy

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
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 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 the assistant principal bassist with the Louisiana Philharmonic Orchestra ("LPO"). 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, 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.

Counsel indicates that ten exhibits in the record fall under this criterion. Some of these exhibits do not represent prizes or awards at all; rather, they indicate that the petitioner had passed auditions in order to join various musical ensembles. While the audition process is, by nature, competitive, it does not follow that to be selected via audition is a form of prize. Rather, the group simply selects the candidate who is best qualified, which is the norm throughout the field and, indeed, in many other occupations.

An "honorary certificate" in the record indicates that the petitioner "won the first place of Final Audition, '82 Qing-Nian-Zhi-You Cup Competition." The record does not identify the nature of the position for which this competition was an "audition," nor does the record offer any further evidence regarding the nature or significance of the Qing-Nian-Zhi-You Cup.

Some of the documents in the record reflect actual prizes awarded to the petitioner. These awards, however, offer no indication that they are national or international in character. Rather, they are from various entities in the city of Shanghai, ranging from the local symphony orchestra to the "Cello, Bass and Harp Subdivision of the String Department at Shanghai Conservatory of Music." All of the petitioner's awards are from when he was a student; he has not shown that he has won any awards or prizes as a "professional" musician rather than as a student.

The petitioner submits a certificate appointing the petitioner an "Honorary Citizen of the Great State of Nebraska." The certificate, from 1990, makes no reference to the petitioner's musical accomplishments, or to the arts in general. Rather, the bulk of the text offers praise for Nebraska itself and "the nationally rated Cornhusker football team." The petitioner's name, and the date of issuance, appear to have been typed onto a pre-printed "form" document. The record offers no evidence that honorary Nebraska citizenship is a nationally recognized award for excellence in the field of classical double bass playing.

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.

Counsel states "[i]n April 1999, [the petitioner] was nominated as a member of the Board of Executive Directors of the Louisiana Philharmonic Orchestra." There is no evidence that the petitioner actually became a member of this board prior to the filing of the petition; nomination is a preliminary step, and the original submission does not reflect the petitioner's actual membership on this board. Furthermore, counsel indicates that board members are "voted in by the orchestra meeting" rather than by recognized national or international experts. There is no evidence that the board is an "association in the field" rather than simply the governing body of one particular orchestra.

The petitioner has established his membership in one organization, the International Society of Bassists, but the record contains no evidence to establish the criteria that prospective members must meet. The membership letter in the record is a "form" letter, addressed to "Dear New Member," which indicates that the induction of new members is routine rather than a special occasion reserved for a select few.

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.

A 12-paragraph review in the San Antonio Express-News devoted one sentence to the petitioner's double bass adaptation of a composition "originally composed for cello." A second review in another issue of the same newspaper devoted one of its nine paragraphs to the petitioner's "expressive phrasing and sumptuous tone in double bass."

The Alliance Review, in its "Local" section, printed a review which included a captioned photograph of the petitioner. The petitioner's name does not appear in the body of the review. Another captioned photograph, with no accompanying article, appeared in the New Orleans Times-Picayune. Both captions identify the petitioner by name and by instrument but offer no comment on the petitioner's skill, performance, or reputation. The caption to a third photograph, from an unidentified newspaper, does not mention the petitioner at all; the petitioner is one of over a dozen unidentified musicians depicted in the photograph.

The petitioner has not shown that he has attracted sustained attention from national or international media. The petitioner has not shown that the above newspapers constitute major national (rather than local) publications, or that the occasional brief mention in a review is a rare accomplishment, reserved only for the top musicians in his field. The petitioner has not established that he has been the principal focus of feature articles in major national or international publications.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Counsel states that the petitioner "has been a teacher of Doublebass for many years." This fact, by itself, does not distinguish the petitioner from other music teachers, all of whom "judge" their students. The petitioner has not been shown to act as a judge in a capacity which sets him apart from almost all other double bass players at a national or international level.

According to [REDACTED] then executive director of the LPO, the petitioner "has supervised the String Section of the Greater New Orleans Youth Orchestra . . . and has served on the judging committee of The New Orleans Youth Concerto Competition since 1997." This competition is local rather than national or international in nature.

Counsel discusses other duties of the petitioner under this criterion, but these duties are supervisory in nature, and counsel uses such phrases as "key role" and "leading role" in describing them. It appears, therefore, that these duties are best addressed under a different criterion:

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

As noted above, the petitioner is the assistant principal bassist with the LPO (the section also has a principal and four other bassists). The petitioner has also held assistant principal positions with the San Antonio Symphony and the Shanghai Symphony Orchestra.

[REDACTED] president of the LPO, states that the orchestra conducts outreach programs such as Young People's Concerts. Mr. Miller states:

Traditionally, the role of an Assistant Principal is to play the part of Principal, or "leader of the section," for these community outreach concerts. In addition . . . [the petitioner] finds time to help with the Discovery Half-Notes Club. Specifically, [the petitioner] sends handwritten notes to Discovery subscribers, thanking them for their subscriptions and reminding them of upcoming concerts.

There is no indication that the petitioner's leadership role extends beyond the four other bassists who participate in these concerts (in the absence of the principal). Documents in the record show that 15 of the LPO's 16 sections have a principal (the sole exception being the orchestra's lone pianist), and of the 11

sections that have three or more musicians, nine also have assistant principals.

The petitioner is also co-chair of the LPO's Education Committee, but the record does not establish that this committee enjoys national or international distinction in its own right. The LPO's own materials appear to indicate that the orchestra and its ancillary activities are directed primary at the local area rather than nationally.

While the petitioner was a student at the Cleveland Institute of Music, counsel asserts that the petitioner "made critical contributions to the strengthening of the Doublebass Department and to the maintenance of the school's leading position among worldwide musical institutions." The record does not reflect that, as a student, the petitioner played a leading or critical role for the institute, or that the Double Bass Department, standing alone, represents a distinguished organization or establishment.

Counsel asserts that, as assistant principal bassist for the San Antonio Symphony, the petitioner "played a vital role in its Community Education Program for schools in the greater San Antonio area and in taking the bass section to a higher professional level." Again, this impact, to the extent that it is documented, is predominantly local.

The petitioner has not demonstrated that he has come to the sustained attention of others in his field at a national or international level, which this extremely restrictive visa classification demands.

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

The petitioner submits letters from various witnesses. All of these witnesses have direct personal or professional connections with the petitioner, primarily through orchestras with which the petitioner has played and conservatories where the petitioner has studied. A number of these witnesses express admiration for the petitioner's skill as a musician, and describe the petitioner's various duties, but they do not identify any specific contribution that the petitioner has made which has affected the field as a whole (rather than those who have worked with the petitioner or heard his performances). Several witnesses assert that the petitioner's contribution lies in his combination of training in China and in the United States, two countries which differ greatly in their methods of musical instruction. It is not clear how this distinguishes the petitioner from other Chinese musicians who began their training in their native country before emigrating.

Several of these witnesses claim decades of experience and achievement which would appear to place them closer than the

petitioner to the top of the field. Professor Timothy Pitts of Rice University states that the petitioner's work "will have an immeasurable influence on future music culture in the United States," but offers no evidence that the petitioner has already had such influence. Prof. Pitts adds that the petitioner's studies regarding "the obstacles in musical performance due to psychological reasons . . . have drawn more and more attention from both musicians and music teachers." The record offers no independent evidence that the petitioner's work in this area has had a significant national or international impact; testimonials from the petitioner's mentors, such as Prof. Pitts, and from the petitioner's own students, such as attorney George R. Alvey, Jr., do not establish this wider impact.

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

Counsel asserts that various concert performances by the petitioner satisfy this criterion. The criterion, however, is more appropriate for the visual arts. Almost every musician, actor, and other performing artist "displays" his or her work in the sense of performing in front of an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish a separate criterion especially for the performing arts:

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

This criterion properly shifts the emphasis from whether the petitioner has performed publicly, to the number of people who have witnessed those performances or purchased recordings which featured the petitioner. One would expect that, if the petitioner is among the most highly acclaimed musicians in his field, that he would be a major concert draw or that he would sell a significant number of recordings. If there is no high demand for concert tickets or recordings, then it is difficult to see how the petitioner is among the best-known musicians in his field. Nevertheless, the petitioner does not expressly claim to have fulfilled this criterion (the only one to mention, specifically and exclusively, the performing arts).

Counsel does make one reference to ticket sales, stating:

In January 1999, [the petitioner] made a demonstration of Music Journey with [redacted] and the Louisiana Philharmonic Orchestra in LPO's Discovery Family Concert. This event was sponsored by the Brown Foundation and the ticket sales hit a record high.

The petitioner has offered no documentation to demonstrate the extent of this "record high," or to indicate that the petitioner has sold substantial numbers of concert tickets at a national level (for example, on a national tour).

The record contains occasional references to national appearances by the petitioner, such as his appearance in a nationally broadcast concert in China in 1976, but there is no indication that the petitioner was a prominently identified or featured performer in these performances, or that the petitioner has continued to make national appearances as an adult (the petitioner was 15 years old in 1976).

Subsequent to the initial filing, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish extraordinary ability. 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, counsel notes that the petitioner "is currently on an O-1 Visa," which is roughly analogous to the immigrant visa sought in this proceeding. Counsel repeats this argument on appeal, and we will address it in that context.

With regard to the newspaper reviews of the petitioner's performances, counsel states "while the articles . . . pertain to the orchestra performance, what must be noted is that they comment upon his stellar performance" and that the reviewers "singled out" the petitioner for mention. Counsel here misrepresents the nature of the newspaper reviews. Of the five reviews in the record, only two comment on the petitioner's performance at all; two merely identify him as a bass player, and one never mentions him at all; he was simply one of the musicians who happened to be in range of the camera that photographed a portion of the orchestra. Furthermore, regardless of the nature of the reviews' content, local newspaper reviews cannot contribute to acclaim at the national level.

Counsel essentially repeats various arguments without addressing specific questions raised by the director. For instance, the director had noted that the petitioner had not established the importance of the award the petitioner received in the Qing-Nian-Zhi-You Cup Competition. The director instructed the petitioner to "submit evidence that the Qingnianzhiyou Cup Music Competition is recognized as a national competition. The only information provided about this competition is the description from counsel." In response, counsel states only that "a copy of [the petitioner's] Award Certificate is attached for your reference." This certificate was already represented in the record, and it is plain from the director's letter that the issue in question was not the

petitioner's receipt of the award, but the significance of the award.

Three new letters accompany the petitioner's response to the director's notice, one from an official of the LPO and two from members of the Cleveland Orchestra. These letters offer no indication that the petitioner is widely known outside of Louisiana (where he now resides and works) and Cleveland (where he studied for several years).

A letter from Sharon Litwin, executive director of the LPO, refers to the petitioner's leadership activities on the orchestra's Executive Board. As noted above, there is no indication that the petitioner was on this board at the time of filing. Certainly, the original letters from LPO officials never mention this position, concentrating instead on the duties of the assistant principal bassist.

The other two letters, from the conductor and assistant principal double bassist of the Cleveland Orchestra, praise the petitioner's character and work ethic. The witnesses assert that the petitioner is among the finest bass players that they have known. They offer few specifics to support their statements, and therefore their statements have an air of subjectivity about them. It is because of this very subjectivity, inevitable in witness statements, that the regulations demand a broad variety of verifiable documentary evidence. The petitioner cannot establish eligibility simply by showing that those who have worked with him are impressed with his dedication and his musical talent.

The director denied the petition, stating that the petitioner has failed to address key concerns raised in the earlier notice. On appeal, counsel argues that the petitioner's O-1 nonimmigrant visa demonstrates that the Service has already deemed the petitioner to be an alien of extraordinary ability. Approval of an O-1 nonimmigrant visa petition, however, in no way requires approval of a subsequent immigrant visa. We are not in possession of the record of proceedings relating to the nonimmigrant visa, and cannot determine whether that petition may have been approved in error. We must adjudicate every petition on its own merits, and prior Service decisions are not binding on future adjudications unless they have been published as precedent decisions. The petitioner makes no such claim regarding the approval of the petitioner's O-1 petition.

Counsel notes that the petitioner has provided a letter of recommendation from the American Federation of Musicians, which counsel states "is completely unbiased" in this matter. The letter, from 1998, was obtained in connection with the aforementioned O-1 visa petition. Such letters are routine, and indeed required by 8 C.F.R. 214.2(o)(5). Thus, the existence of this letter is simply a variation on the argument that, as a holder

of an O-1 visa, the petitioner ought to be automatically entitled to immigrant classification as an alien of extraordinary ability.

The bulk of the appeal brief consists of lengthy quotations from witness letters which we have already addressed.

Regarding the Qing-Nian-Zhi-You Cup, counsel acknowledges that "additional information . . . could not be obtained," and concludes that "the Service has focused solely on this award and ignored the numerous other awards that [the petitioner] has earned as a result of his stature in the field." The petitioner, however, has provided nothing of substance about these other awards, either. The director appears to have singled out the Qing-Nian-Zhi-You Cup because it is the only one which is not obviously local in nature.

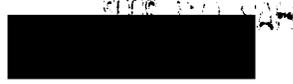
With regard to published material about the alien, counsel asserts that the director "appears to be imposing a new requirement" because "the Regulations do not state that the entire article must focus on the alien; all that is necessary is the title, date, and author of the material." The regulation, however, also requires that the published material be "about the alien." There is some merit to counsel's observation that the reviewers have singled out the petitioner for mention, but these mentions do not translate to national acclaim. Furthermore, the director observed that the petitioner has not shown that the publications in question are major national newspapers. Counsel responds with the assertion that the reviews "appeared in respected newspapers of general circulation," an assertion so vague as to be essentially meaningless. A newspaper can be respected and "generally circulated" and still be a local rather than national publication.

Counsel observes that the petitioner "has been selected on numerous occasions to play in premiers of musical compositions." The record indicates that the composers of these pieces have worked with the petitioner in the past, and not every new work by every composer represents a significant event in the annals of classical music.

Counsel finally asserts that the petitioner "has been selected to play with leading orchestras." With respect to this claim, we refer to supplementary information at 56 Fed. Reg. 60899 (November 29, 1991), which states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

The analogy could be drawn to the musical community, with the argument that not every musician with a famous orchestra has necessarily risen to the top of the field. Also, the petitioner has not shown that the orchestras with which he has played are in



the uppermost tier of world-renowned ensembles such as the New York Philharmonic, the London Symphony Orchestra and the Boston Symphony Orchestra.

The petitioner has enjoyed a successful career in a field where even obtaining steady employment is no small feat, while earning the respect and admiration of his mentors and colleagues. The record, however, does not sufficiently document that the petitioner is among the best-known, most highly-acclaimed figures in his field at a national or international (rather than local) level.

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 himself as a double bassist 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 shows talent as a musician, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field nationally or internationally. 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.