

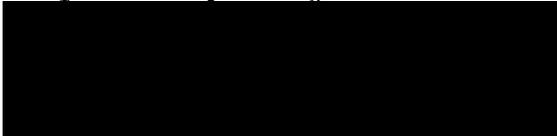


BA

U.S. Department of Justice  
Immigration and Naturalization Service

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



File: WAC 02 071 51112 Office: CALIFORNIA SERVICE CENTER

Date: DEC 03 2002

IN RE: Petitioner:  
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)

IN BEHALF OF PETITIONER:



**PUBLIC COPY**

**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 C.F.R. 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 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 that 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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California 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 field of ethnomusicology. 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 describes her work as "connected with the revival of the Yiddish music culture." The petitioner states that she plans to conduct research on 20<sup>th</sup> century Yiddish (Eastern European Jewish) music, as well as deliver lectures and implement a Yiddish music education program.

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.

*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 submits several reviews of her anthologies of Jewish music. One of these reviews is not a published review, but rather a letter (presumably to the publisher) recommending the publication of one of the petitioner's books. Published reviews appeared in the English-language newspapers *Azernews* and *Caspian Business News* as well as several Russian-language publications. A number of these publications are not identified and thus they fail to meet the plain wording of the criterion. The petitioner has not shown that those that are identified, such as *Echo*, represent major national or international media. Another publication, *Forverts*, is identified as a Yiddish-language newspaper published in New York. Because Yiddish is spoken only by a small segment of the U.S. population, a U.S. publication in Yiddish does not appear to constitute major media, even if the petitioner had established that *Forverts* circulates nationally and not just in the New York area. It is not clear whether *Forward*, an English-language publication mentioned on appeal, is the English version of *Forvertz*.

The mere existence of published material does not automatically satisfy the criterion if the petitioner does not establish that the published material meets the requirements listed in the regulation. Because the burden of proof is on the petitioner, the Service is under no obligation to presume that the articles and interviews in the record appeared in major, nationally circulated publications rather than minor local publications with minimal distribution.

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

The petitioner submits several witness letters. Some of these letters are references from individuals who have worked with the petitioner. For example, Dr. Harris M. Berger, an assistant professor at Texas A&M University (where the petitioner taught as an unpaid adjunct lecturer in 1997) states in a 1997 letter that the petitioner's work "reveals powerful new insights into the important area of musical orientalism (the Western European interpretation of Eastern cultures) and is of the first quality."

Most of the remaining letters are from officials of Jewish cultural centers in Russia, Israel and the United States, thanking the petitioner for contributing copies of her books to their programs and asserting that the books contain "important and rare works." The books in question are described as "volumes of sheet music."

One of the petitioner's recent collaborators, Dr. Jeffrey Wollock, research director of the Solidarity Foundation in New York, New York, states:

Although I had not met [the petitioner] in person until her recent visit to New York, I was already familiar with her scholarly work and had been corresponding with her for about two years. In my opinion her work represents an important contribution to our knowledge of East European Jewish music. . . .

While there has been considerable study of folk songs, much more attention has been given to their language than to their musical content. East European Jewish instrumental folk music has been very little studied. . . . Jewish music in the Soviet period has been even less studied. . . .

In the United States this gap is now finally being recognized and there is a growing demand to fill it. However there are few scholars with the training or motivation to work in this area. . . .

[The petitioner], who has already made an impressive contribution with her three published collections of Jewish vocal and instrumental music in arrangements by Soviet Jewish composers, is eminently equipped to address all these issues. She has made extensive analysis of the musical characteristics of East European Jewish folk music, has studied its history, and has searched out rare printed editions and manuscripts. . . .

Her work thus far is promising, and with the support she deserves, I am confident she will make an important contribution.

“Promising” work that suggests the petitioner “will make an important contribution” in the future does not show that the petitioner has already satisfied this criterion.

*Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submits partial copies of books she has written, including music instruction textbooks and the aforementioned anthologies of sheet music. The only evidence in the record that addresses the distribution of the books consists of letters from institutions to which the petitioner herself had mailed copies of her books. The very act of publication, in this manner, does not establish or reflect acclaim. Evidence of the books’ popularity and sales, in relation to the sales of other books in the field of the study of folk music, would be highly relevant, but no such evidence is in the record.

Among the documents are graduate theses, with no evidence that those theses have actually been published. The record shows that 100 copies were printed of the petitioner’s candidate thesis (the Russian equivalent of a doctoral thesis). Even if we consider the production of 100 copies to constitute “publication,” it is not clear that such a small print run could realistically contribute to the petitioner’s acclaim at a national or international level.

The petitioner has also written articles in journals of art and musicology. The petitioner has not established whether these journals are major publications. The excerpts submitted show that the

journal text consists of photocopied typed pages, without the professional typesetting often encountered even in minor publications.

The director denied the petition, stating that the petitioner has established that she is a dedicated and prolific researcher of Yiddish music, but that the record lacks critical evidence such as documentation that publications by the petitioner, and other publications about her and her work, have circulated nationally or internationally.

On appeal, counsel focuses on the published materials about the petitioner. Counsel states “[f]ive of the eight publications [in the initial submission] have a presence on the World Wide Web. Through this means of mass communication they have world wide distribution.” The establishment of a web site establishes wide availability but not wide circulation. The petitioner has not shown that the sites in question receive a quantity of visits or “hits” commensurate with major media. There exist millions of web sites which, hypothetically, are available for viewing around the world, but it does not follow that everyone whose work is mentioned on the web has equal exposure or recognition. Because even individual people can and do operate web sites, we cannot accept a publication’s presence on the web as *prima facie* evidence that the publication qualifies as major media. One of the publications with a web presence, *Azernews*, contains flaws which appear to be inconsistent with the standards one would expect from a major publication. For example, a reference to the almost universally famous actress Marilyn Monroe is misspelled “Merlin Monroe.”

Counsel notes that *Kaleydoscop*, one of the publications to discuss the petitioner’s work, has a weekly readership of 129,300 according to the National Readership Survey undertaken by Gallup Media, Russia, in late 2000. While called the “National Readership Survey,” the survey participants were all in one city (St. Petersburg). *Kaleydoscop* is listed in the category “weekly light reading newspapers” alongside local publications such as television programming guides.

A letter from the editor in chief of *Russian Israeli* and *Time* (not to be confused with the major U.S. magazine of the same name) states that the publications are “national weekly edition[s]” that are “popular among tens of thousands of readers,” but the record contains no direct evidence to substantiate this vaguely-worded assertion.

The petitioner submits three new witness letters. Dr. Jeffrey Wollock, previously identified as one of the petitioner’s collaborators, asserts that the petitioner “is in the forefront of scholars who are working to revive” Yiddish music, and that her fourth and latest book is the first pedagogical work of its kind focusing on Yiddish music. That book, published in September of 2002, did not exist when the petition was filed in December 2001 and thus it cannot retroactively establish eligibility as of the filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. For the same reason, media coverage of the petitioner’s work which did not appear until weeks before the submission of the appellate brief cannot establish eligibility as of the petition’s filing date.

Dr. Ilya Heifets of Bar-Ilan University, Israel, states that the petitioner’s “efforts to collect and research music of Ashkenazic Jews are very valuable and the significance of the work done by

[the petitioner] cannot be overestimated.” The record lacks documentary evidence to establish the degree to which the petitioner’s efforts have already influenced musicologists and others in related fields. The statute calls for “extensive documentation,” and letters from witnesses whom the petitioner has selected do not constitute such documentation.

Danial Galay, director of Beyt Frankfurt Conservatory, states that the petitioner “will introduce a corpus of works that are almost unknown to scholars and the wide public” and “introduce the rich Yiddish-Ashkenaz repertoire in music schools and the Educational System in general.” If the petitioner accomplishes these goals, and succeeds in popularizing an art form that is described as virtually lost, then the petitioner will indeed have had a major impact on the arts and on musicology. At present, however, these remain future goals rather than existing accomplishments.

Counsel contends that “there are less than ten persons in the world” who specialize in the study of Yiddish music. This argument relies on an extremely narrow definition of the petitioner’s field. The petitioner’s field appears to be ethnomusicology; her work with Yiddish music is a subspecialty within that field, rather than a field of endeavor that is qualitatively different from the study of Nigerian or Indonesian music. Furthermore, recognition among all ten members of a ten-member “field” cannot reasonably be called national or international acclaim.

The petitioner has established that she has made inroads into reviving a waning musical tradition, and that her work has attracted some interest among musicians and musicologists. The evidence of record, however, is not sufficient to establish that the petitioner’s work has earned her sustained acclaim at a national or international level. Laying the foundation for future acclaim cannot suffice to establish eligibility for this highly restrictive immigrant classification.

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 the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished herself as an ethnomusicologist 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 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.