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U.S. Department of Justice
Immigration and Naturalization Service

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



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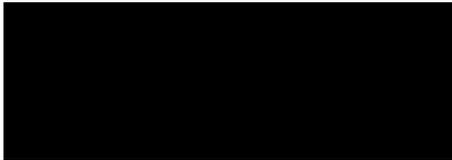
Date: **DEC 06 2002**

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's type of business is not listed on Part 5 of the petition. It seeks to classify the beneficiary 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 that the petitioner had not established that the beneficiary has earned sustained national or international acclaim.

On appeal, counsel argues that the petitioner responded to all of the director's concerns as stated in her request for additional documentation and that she "ignored" evidence. Counsel speculates that the nature of the beneficiary's work in nightclubs may have resulted in the director's "underlying hostility" to this petition.

As will be discussed in detail below, any error in not providing the petitioner with an opportunity to address the director's concerns is best remedied by the consideration of rebuttal evidence on appeal. The petitioner submits no new evidence in support of this appeal. Further, we do not find that the director ignored any evidence. The director's decision is based on the evidence submitted and the regulatory criteria. While the director does question the prospective benefit of the beneficiary's work despite Service policy not to require specific evidence of this requirement, in light of the director's conclusion that the beneficiary does not meet a sufficient number of the regulatory criteria discussed below, we do not find that stated concern to constitute reversible error. Counsel's specific arguments will be discussed below.

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). These criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a disc jockey (DJ). The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained national or international acclaim. The petitioner has submitted evidence that, purportedly, 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.

██████████, member of the Board of Supervisors for the City and County of San Francisco, asserts, “The beneficiary has been recognized in 1995 and 1996 with the nationally recognized Cable Car Award.” The beneficiary submits the certificates for these “awards,” reflecting only that he was nominated for the award. The certificates also indicate that the awards are issued by the City of San Francisco. ██████████ continues that the beneficiary received a certificate of honor from the City of San Francisco in 2000. The record supports this assertion.

The director concluded that the petitioner had not provided any “independent background information” about the above awards. On appeal, counsel asserts that this assertion is “not true” as the petitioner submitted the above-mentioned letter from ██████████ ██████████ a member of the board that issued the award is not an “independent” source. Moreover, he does not explain the selection criteria for the award or who is eligible. If only residents of San Francisco are eligible, the beneficiary was not compared with DJs around the country. As such, the awards are not evidence of his national acclaim. While the regulation permits “lesser” nationally recognized awards, evidence submitted for each criterion must be evaluated as to whether it demonstrates national or international acclaim. Purely local awards are not evidence of national acclaim.

Finally, counsel notes that the director did not raise this issue in her request for additional documentation. The remedy for any failure in this regard would be to consider any evidence that would have been submitted on appeal. The petitioner submits no new evidence regarding this criterion on appeal.

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 asserts that the beneficiary's "selection" as a reporter for *Billboard Magazine* and his membership on the magazine's selection committee satisfies this criterion. Ricardo Companioni, dance charts manager for *Billboard Magazine* asserts:

Our Club Play chart consists of songs which are the most popular in dance clubs across the country. This chart is compiled by selected Billboard reporters who must DJ in clubs on a regular basis in order to maintain grassroots awareness and ensure the accuracy of our charts.

[The beneficiary] has the special privilege of being a Billboard reporter. This speaks both to his status in the industry and his power in influencing the direction and success of new dance music.

Chris Cox, a Grammy winning remixer, asserts that of the tens of thousands of DJs, only 150 serve as reporters for Billboard. Loren Daniel Chaidez, president of Loren Chaidez Promotion, asserts that Billboard has a "very selective grooming process" for their reporters.

The director concluded that the petitioner had not provided evidence of "set rules for membership including rigid standards to join." On appeal, counsel argues that this statement is "factual error" as the letters from [REDACTED] and [REDACTED] adequately confirm the standards for Billboard reporters.

We concur with the director that the beneficiary does not meet this criterion. While we agree to some degree that the record lacks evidence in the form of "membership bylaws" or similar rules of the requirements for "membership" on the reporting committee, we find this position to be inapplicable to this criterion for the reasons discussed below.

While the beneficiary's role for *Billboard Magazine* will be considered below under the "judging" criterion, an employee of a magazine, even where unpaid, is not a "member" of the company that publishes the magazine. For example, while "selection" as an employee for the National Academy of Sciences, and publisher of the *Proceedings of the National Academy of Sciences*, may carry some prestige, it does not require the same accomplishments as membership in the academy. In addition, a "committee" of employees is not an "association" such that membership on the committee can satisfy the plain language of this criterion.

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.

While neither the petitioner nor counsel claimed that the beneficiary meets this criterion, the director included a discussion of it in light of some of the evidence submitted. The petitioner submitted several articles in the *New York Times*, the *Salt Lake Tribune*, the *San Diego Union-Tribune* and the *Atlanta Journal and Constitution* about the rise in fame of disc jockeys in general and, more specifically, DJs other than the beneficiary. The record does include an article in *Circuit Noise* that

identifies the beneficiary as one of “San Francisco’s own gems” in an article about the use of European music by DJs. The petitioner, however, did not provide evidence that this publication is a major, national publication.

In her request for additional documentation and again in her final decision, the director concluded that the articles were not “about” the beneficiary or his work. On appeal, counsel challenges the director’s discussion of this criterion since the petitioner never claimed that the beneficiary met it. Counsel does not, however, challenge the conclusion that the beneficiary does not meet it, and we concur. We simply note that the fact that some DJs, such as Mark Ronson and Paul Oakenfold, can gain national fame as a DJ is not evidence that every popular club DJ enjoys national acclaim. While counsel requests that this evidence be ignored if background material regarding the beneficiary’s occupation is not needed, the petitioner submitted this evidence for consideration and we cannot ignore that this evidence suggests that the top level of achievement in the beneficiary’s field is higher than the level he has attained.

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.

The beneficiary serves as a reporter for *Billboard Magazine*, a position that requires him to review new music and the listener response to that music. The petitioner submitted the letters regarding this position discussed above. In addition, the record contains evidence relating to *Billboard’s* importance in the field.

The director concluded that the beneficiary was “one of a number of contemporary artists” selected to judge music for the magazine and that the petitioner had not established that “inclusion in the process of judging others was limited to artists of outstanding achievement or to renowned artists.”

On appeal, counsel asserts that the director “disregarded” several letters attesting to the importance and prestige of *Billboard* reporters. Mr. Companioni’s assertion that a *Billboard* reporter for the club chart “must DJ in clubs on a regular basis” supports the director’s conclusion that the requirements for being a reporter are not remarkable. Nevertheless, the remainder of the letter, in addition to Mr. Cox’s comments, suggests that the reporter selection is indicative of some amount of acclaim. As such, we conclude that the beneficiary minimally meets this criterion.

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

In support of this criterion, the petitioner submitted several letters from nightclub owners in California, Colorado, Texas, Utah and Washington as well as other members of his field. The nightclub owners attest to the beneficiary’s talent and popularity with customers. Brad LeBeau, president of Pro Motion, the oldest and largest independent dance music promotion firm, provides general praise of the beneficiary’s abilities. Neil Lewis, a fellow club DJ who claims to have performed all over the United States, Canada, Singapore and Australia, asserts that the beneficiary is “one of the most recognizable names in the Disc Jockey world.” Jerry Bonham, another fellow DJ

in California, asserts that the beneficiary has raised the art of remixing to another level by mixing in key. Ricardo Companioni, dance charts manager for *Billboard Magazine*, writes that the beneficiary is one of the most influential DJs in the industry.

Jeffrey Grimm, president of Mythic Music Group that produces dance music, confirms that the beneficiary mixed one of their releases by Eduardo Xol and praises his talent. A copy of the vinyl single identifies the second track as the beneficiary's mix. Steve Bourasa, president of Direct Hit Remix Service, asserts that the beneficiary performs remixing services for that company, including "tracks from Warner Music, Sony Music, BMG and Arista Records." Mr. Bourasa asserts that the beneficiary's remixes "continue to set the standard."

Jeffrey Sanker, of JS Enterprises in West Hollywood California, asserts that he organizes the White Party Palm Springs, one of the largest citywide conventions in Palm Springs, and that he depends on the beneficiary "to create the magic and success for my most popular event of White Party Palm Springs, the Sunday Sunset T-Dance." An article in the *Miami New Times* submitted by the petitioner provides:

Created in 1984 as a modest AIDS fundraiser, the affair now generates hundreds of thousands of dollars each year to combat the disease and assist its victims. Chief sponsor and recipient of the funds is Care Resource, Miami-Dade County's largest nonprofit AIDS service organization. The five-day extravaganza drew people from around the globe and filled nightclubs, convention halls, and beaches with revelers who paid \$15 to \$150 per event to dance, imbibe, and enjoy.

The article then lists several of the main events, none of which were the Sunday Sunset T-Dance. The article also fails to mention the beneficiary as a significant draw to any event.

The petitioner also submits a letter from Chris Cox, a Grammy winning music producer and remixer who has worked with Madonna, Janet Jackson, Whitney Houston, Celine Dion, Enrique Iglesias, Backstreet Boys, Britney Spears, Christina Aguilera, Jennifer Lopez, LeAnn Rimes, Donna Summer, and others. Mr. Cox asserts that the beneficiary "is a valuable and vital member of the U.S. professional music industry," that he is a trendsetter, and that Mr. Cox seeks out the beneficiary's feedback on his own projects. While Mr. Cox's credentials are impressive, they suggest that the top of the beneficiary's field is higher than the level attained by the beneficiary. Moreover, Mr. Cox does not identify a specific contribution to the field of disc jockeying and remixing that has been emulated by other DJs nationally.

The director concluded that the letters were "reference letters" as opposed to "testimonials of the beneficiary's individual contribution to the field." Next, the director stated:

Although the beneficiary's work in the field of disc jockeying contributions may have benefited his field of expertise, the evidence does not demonstrate how the beneficiary will substantially benefit prospectively the United States.

On appeal, counsel argues that there is no difference between reference letters and testimonials. Counsel further notes that the Service has previously issued an interpretation that the regulations do not require specific evidence of prospective benefit.

First, we read the director's distinction between "reference letters" and "testimonials" as distinguishing, albeit in a limited way, between letters that provide subjective praise (reference letters) as opposed to those that provide specific examples of contributions and how they have influenced the field (testimonials). Insofar as the letters in the record mostly provide general praise and unsupported assertions of "influence" we agree with the director's concerns. We acknowledge that some of the references do note the beneficiary's ability to mix "in key." The record contains no evidence, however, that mixing in key has heavily influenced the field.

Had the director concluded that the beneficiary met at least three of the regulatory criteria, but denied the petition for an ability to demonstrate prospective benefit, we might find counsel's arguments regarding this issue persuasive. As the director did not conclude that the beneficiary had met three criteria, however, we do not find that the director's statement about prospective benefit constitutes reversible error.

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

Counsel asserts that the beneficiary meets this criterion through his work for *Billboard Magazine* and Warner Bros./Reprise Records. The petitioner submits evidence that the beneficiary is a reporter for *Billboard*, reviewing songs for the club charts. In addition, the petitioner submits a letter from Sergio Goncalves, associate director of promotion and marketing at Warner Bros./Reprise Records, asserting that he has employed the beneficiary to produce remixed versions of songs for Warner Bros./Reprise Records. An Internet printout reflects that Warner Bros./Reprise Records is the number one label in the United States.

The director appears to address this criterion, stating:

While the Service does not dispute the reputation of the above mentioned employers, it does not follow that the disc jockeys employed by those prominent employers are inherently among the best in their fields simply by virtue of their association with the prestigious institutions. The Warner Bros[.]/ Reprise Records and [the petitioner's] prestige, however well deserved, is no guarantor of success, let alone national or international acclaim.

On appeal, counsel asserts that the director ignored the beneficiary's work for *Billboard*. Counsel further stated that the director imposed a higher standard by requiring that the beneficiary's work in a leading role result in national acclaim.

We do not read the director's concerns to impose an extra burden. Rather, we read the director's conclusion as finding that an employee cannot demonstrate national acclaim simply by being

associated with a distinguished organization. We concur. The regulation requires that the beneficiary work in a leading or critical role. We cannot conclude that every Billboard reporter for every chart Billboard lists plays a leading or critical role for the entire company. Similarly, every mixer for Warner Bros./Reprise records cannot be said to perform a leading or critical role for the company as a whole.

In addition, the record contains brochures and advertisements for his performances. The record also contains letters from nightclub owners asserting that the beneficiary performs as a DJ at their club, is in high demand by customers, and is responsible for the club's success. We note that some of the brochures, such as the brochures for the Long Beach Pride Weekend event and Gods and Monsters, headline other "superstar" DJs. Other brochures identify the beneficiary as the "back room" DJ, identifying other "front room" DJs. The record contains no evidence regarding the distinction between the two rooms.

John McCusker asserts that his club, Club Montage in San Diego, was ranked number one by *Nightclub & Bar Magazine* and that the beneficiary "never fails to fill our venue to its maximum capacity because of his popularity and outstanding DJ ability." The petitioner did not submit the article itself. As such, we cannot determine how Club Montage was ranked, whether by poll, survey, or a visit by a reporter, or what factors were used. Similarly, Guiv Naimi asserts that the beneficiary has "consistent ability to fill the dance floor" at Spundae Productions, voted the number one dance club in America by *Thousand Words Magazine*. Once again, the petitioner does not submit the article itself or information about the magazine. Don Reese, president of the Ego nightclub in Seattle, asserts that the beneficiary's recent performance was the most successful night they have had. Angus Bean, CEO of Gus Presents, a special event production company, asserts that he consistently uses the beneficiary and has had 20 guests charter a plane from Seattle to hear the beneficiary perform.

Cary Stringfellow, owner and general manager of the club Axis in Salt Lake City, asserts that they have to book the beneficiary for two nights in a row to meet crowd demand. He further asserts that the club broadcasts some of the DJs performances and that the beneficiary's have gone over well. Mr. Stringfellow does not indicate that the sets are broadcast nationally. The petitioner also submits several articles about Axis, none of which mention the beneficiary. Several articles are about Axis' teen night, one article is about how to spend New Year's since the author's husband will not go back, and others are about the club in general. The articles that do discuss the DJs at Axis focus on Paul Oakenfold.

Without the articles ranking the nightclubs, we cannot conclude that the petitioner has sufficiently established that the nightclubs have a distinguished reputation nationally. In addition, while the beneficiary is clearly popular, without evidence of the basis for the clubs' prestige, the petitioner cannot establish that the beneficiary, as a DJ, has played a leading or critical role for these clubs.

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

While neither counsel nor the petitioner asserted that the beneficiary met this criterion, the director considered evidence in the record relating to the beneficiary's job prospects and concluded that it did not satisfy this criterion. Specifically, in response to the director's request for additional documentation that the beneficiary intended to continue working in his field, the petitioner submitted several employment contracts. The director determined that these contracts did not demonstrate that the beneficiary's salary was significantly high in relation to others in the field.

On appeal, counsel reiterates that the contracts were submitted as evidence of the beneficiary's intent to continue in his field, not as evidence of a high salary. Counsel concedes that the beneficiary does not meet this criterion and we concur. In response to counsel's concerns that the director placed too much weight on this criterion, we note that the director discussed several of the criteria that the petitioner claimed the beneficiary met.

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

The director did not directly discuss this criterion. On appeal, counsel reiterates his claim that the beneficiary meets this criterion.

Counsel initially asserted that the beneficiary meets this criterion due to the sales of his album, "Music for the Clubs." In an unsigned letter, Brad Schelden, dance buyer for Virgin Megastore in San Francisco, asserts that he brought in the beneficiary's compact disk on consignment and sold over 500 copies, comparable with mainstream artists. In an unsigned letter, Arlo Sellers, general manager of Tower Records in San Francisco, asserts that the beneficiary's compact disk "remained in our Top 25 Sales Chart for over 16 weeks," selling over 935 copies. While we recognize that Virgin Megastore and Tower Records are both large, prominent chains, the record contains no evidence that the beneficiary's compact disk sold well, or at all, at either chain outside of San Francisco. Local acclaim, even when significant, is simply not akin to national acclaim.

While counsel does not assert that the beneficiary meets this criterion through his appearances at nightclubs, the record contains letters from nightclub owners who assert that the beneficiary is in demand as a DJ and is responsible for their club's popularity. These letters, however, are not supported with receipts reflecting exceptionally high volume on nights that the beneficiary DJs at these clubs as required by the plain language of the regulation.

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 DJ 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 DJ and has attained significant local acclaim, but is not persuasive that the petitioner's achievements set him significantly above others 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.