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Immigration and Naturalization Service

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



File: LIN 00 255 53521 Office: Nebraska Service Center

Date: 22 FEB 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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit music organization. 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 the petitioner had not established that the beneficiary qualifies 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). 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, filed by the Schubert Club on September 6, 2000, seeks to classify the beneficiary as an alien with extraordinary ability as a gamelan teacher and director. The petitioner describes gamelan as "an Indonesian orchestra of mostly percussion instruments that are built and tuned as one unit." The director denied the petition on November 28, 2000, acknowledging the beneficiary's skills as a teacher, but stating that "the evidence does not establish that he has achieved the sustained national or international acclaim required for classification as an alien with extraordinary ability."

On appeal, counsel for the petitioner claims that the beneficiary "meets a number of the criteria enumerated in the immigration regulations, and taken as a whole, the evidence demonstrates that [the beneficiary] meets the standard of an alien of extraordinary ability in the arts." The petitioner submits additional evidence in support of the appeal that will be addressed along with the initial evidence accompanying the petition.

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, it claims, demonstrates that the beneficiary 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 for the petitioner asserts that the beneficiary has achieved national acclaim by winning an Outstanding Student Award from the Department of Education and Culture, Republic of Indonesia, on August 17, 1985. The award states: "For his ability and academic achievement, his personality, and for his dedication as a student in matching the University's goals so that he is entitled to be named as an outstanding student." This award relates to the beneficiary's academic accomplishments while pursuing his undergraduate degree at the Indonesian Academy of the Performing Arts. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Awards based on academic achievement do not constitute nationally recognized "awards for excellence in the field of endeavor." A student award may place the petitioner among the top students at his particular university, but it offers no meaningful comparison between the beneficiary and the most experienced and practiced in the field. According to the certified translation provided, the petitioner did not receive his bachelor of art's degree in gamelan music until 1987. This degree reflects that it was awarded by the Republic of Indonesia, Department of Education and Culture, Indonesian Academy for the Performing Arts. The Indonesian Academy for the Performing Arts falls under the Department of Education and Culture. Counsel states: "Each year, each one of the fifty-four state universities in Indonesia choose one student to receive this award. These are considered to be the most excellent students in their respective universities..." An award given by one's own university fails to demonstrate receipt of a nationally recognized prize or award.

The beneficiary was awarded a commission from the American Composers Forum of St. Paul, Minnesota in 1997. According to its director, this organization has over 1,400 members and seeks to "link musical composers and performers with communities." The Composers Commissioning Program ("CCP") is a national competition for musical grants administered by the Director of the American Composers Forum. On appeal, counsel argues that the Service improperly "minimized the significance of this grant." In fact, the evidence submitted by the

petitioner only affirms the director's finding. The CCP application literature provided by the petitioner states: "Bearing in mind that CCP is intended for **emerging composers who have yet to establish themselves on the wider musical scene**, state how you consider yourself to be 'emerging' and how this project represents a musical and professional step forward." Additional CCP literature provided states: "Only emerging composers may apply. **'Emerging Composers' are at any early stage in their careers, with as yet little peer recognition, no national reputation (as determined by prior performances and awards), and have limited professional opportunities.**" These criteria hardly qualify the beneficiary as an alien of extraordinary ability. It is interesting to note that "a panel of three professional musicians familiar with diverse genres of contemporary music" judged the beneficiary as meeting these criteria. The beneficiary's application to this program represents his own admission that he has not yet reached the top of his field.

Receipt of this commission limits comparison of the beneficiary to the 130 other composers and performers applying for the grant, thus excluding other more experienced and practiced individuals in the field from consideration. The CCP funding was awarded not by outside nomination, demonstrating the field's regard for the beneficiary's ability, but upon his application to the program. In a letter dated October 10, 1997, Philip Blackburn, Program Director, congratulated the beneficiary as "one of the recipients" to receive funding in the amount of \$3,000. Worth noting in the letter is the following statement: "The enclosed summary lists those who were selected." This summary of other CCP recipients was not provided. According to CCP literature, the total CCP pool of money for 1997 was \$65,000. CCP literature also indicated that they would grant each composer up to \$8,000. Thus, the beneficiary received less than five percent of the overall pool of money available for 1997. It could also be concluded that other "emerging composers" received this same type of monetary award, possibly in even greater amounts. Grants funded under the CCP program support future composition rather than recognized prior achievements, and it cannot be argued that the receipt of grant funding automatically places the recipient at the pinnacle of the field. Further, the reputation of the awarding body does not automatically establish that a commission from that body is a significant national honor. The petitioner has not shown that the beneficiary has earned national acclaim as a result of receiving the CCP commission. In fact, the application criteria provided by the petitioner only demonstrates the beneficiary as being "at any early stage in [his] career, with as yet little peer recognition, no national reputation (as determined by prior performances and awards), and [having] limited professional opportunities" as judged by "three professional musicians."

The beneficiary was also one of thirteen individuals selected to receive a 1997 Minneapolis Award for devoting his "time, talent and energy to enriching the community." The beneficiary was nominated by "an appreciative student." This award from the City of Minneapolis is local rather than national and is not specific to the beneficiary's field of endeavor.

*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 newspaper and magazine articles and promotional materials containing information about gamelan in general, the Schubert Club, and the Victoria University Music Department. The articles regarding Victoria University and the University's Gamelan Padhang Moncar devote much of their attention to Professor [REDACTED] rather than the beneficiary. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles that barely even mention the beneficiary cannot satisfy this criterion. Most of the articles submitted are from the local Minnesota or New Zealand press and only briefly mention the beneficiary or show his picture with a gamelan. Further, these articles appearing in the entertainment sections of various local papers promote upcoming venues for the orchestra rather than describing the work of the beneficiary. These brief pieces do not reflect national media coverage, but, rather local publicity that is common for performing artists. We will address the articles that focus on the beneficiary as the primary subject.

A 1996 article in the College of St. Catherine's *Leader* describes the school's receipt of a gamelan and mentions the beneficiary's arrival as a new instructor. A 1995 article in the *Dominion* describes the beneficiary's work as the tutor of an upcoming workshop at Victoria University. Seven articles, from Minnesota newspapers such as the *St. Paul Metro*, *Star Tribune*, *East Side Review*, *St. Cloud Times*, and *Clearwater Tribune*, describe the beneficiary's visit to various elementary schools from 1998 to 2000 to give introductory gamelan lessons. These articles seem more devoted to the cultural enrichment of the students rather than the notoriety of the beneficiary. In a 1996 article from the *St. Paul Pioneer Press* the beneficiary states: "In Minnesota, I'm the best [gamelan player]. But if I go home, I would have to learn much more." The petitioner submits two articles mentioning the beneficiary's receipt of a 1997 Minneapolis Award for community service. A 1999 article in the *Minnesota Monthly* describes the beneficiary as "the state's only gamelan teacher" and mentions his efforts at local universities and elementary schools. The brief articles from local papers in Minnesota and New Zealand represent limited, local coverage of the beneficiary's work near his residence rather than publication in the major media.

The petitioner submits an Indonesian article "about [the beneficiary] and Gamelan in New Zealand" appearing in *Kompas* on July 13, 1990. Also submitted were numerous articles regarding Victoria University's Gamelan Padhang Moncar's tour of Indonesia dated December 8, 1993; December 26, 1993; December 29, 1993; December 30, 1993; January 1, 1994; January 4, 1994; January 5, 1994; January 12, 1994. None of the articles mentioned above were accompanied by certified English translations. By regulation, any document containing foreign language submitted to the Service 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. 8 C.F.R. 103.2(b)(3). Without proper translations, it is unclear what these articles represent.

On appeal, counsel argues that these articles demonstrate that “the [beneficiary’s] work in teaching and performing has been significant, locally, nationally and internationally.” The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). It should be noted that the evidence provided by the petitioner contradicts counsel’s assertion. The Exhibit 8b article entitled “Gamelan Padhang Moncar’s Study Tour of Indonesia” describes the group’s five-week study tour of Java and Bali, from December 1993 to January 1994, led by the beneficiary and Professor Jack Body.

For many of us, this was our first chance to experience live gamelan performances by “real” gamelan players. It was a wonderful chance to pick up ideas on playing techniques and styles. The most critical audiences were the local musicians who were not afraid to laugh at our efforts, but in a friendly and appreciative way.

Counsel’s attempt to classify these non-translated articles about the “study tour” as evidence of the petitioner’s “sustained and widespread publicity” as a “master teacher” misstates the record. The petitioner’s own evidence suggests that the “local” Indonesian musicians perform at a higher level than the beneficiary’s group.

The petitioner provides information from the American Gamelan Institute’s website. This organization publishes *Balungan*, a journal devoted to “scholarly and artistic perspectives on gamelan and related arts worldwide.” On appeal, counsel states that “... the service ignored the evidence of published material about [the beneficiary] in a professional publication, *Balungan*.” The article reflects an interview of the beneficiary by his former colleague from the New Zealand Gamelan, [REDACTED]. Another former colleague, Professor [REDACTED] served as an editor of this publication. The petitioner has offered no evidence regarding the extent of *Balungan*’s circulation to establish that it qualifies as “major” media. A publication with few subscribers is insufficient to demonstrate sustained national acclaim. Even if we were to accept the article in *Balungan* as appearance in a major trade journal or professional publication, the regulation requires “published materials,” and a single published interview of the beneficiary conducted by a former colleague would be insufficient to satisfy this criterion. In sum, the evidence submitted is insufficient to demonstrate that the petitioner has attracted the sustained attention of the national press or major media.

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

The petitioner has submitted letters from various witnesses, mostly from individuals who are professional acquaintances of the beneficiary. We discuss representative examples here. Jack Body, Associate Professor, Victoria University of Wellington, describes the beneficiary as an “outstanding teacher and performer of gamelan.” Professor Body states: “Under his leadership our gamelan ensemble toured regularly throughout the country, and also to Indonesia in 1994, when we appeared on national television on three separate occasions.” We

refer again to the "Gamelan Padhang Moncar's Study Tour of Indonesia" article describing the ensemble's five-week study tour of Indonesia. It cannot be argued that this group's appearance on Indonesian television constitutes a major contribution to the field of gamelan music by the beneficiary. It should be noted that there exists a separate category for commercial success in the performing arts. To fulfill the "original contributions" criterion through televised performances, the petitioner must demonstrate that the beneficiary's performances have been unusually influential and acclaimed within the field. In describing the tour group's effect in Indonesia, a member of the group stated: "The most critical audiences were the local musicians who were not afraid to laugh at our efforts, but in a friendly and appreciative way." This description is hardly indicative of the study tour ensemble's unusual influence and national acclaim in Indonesia.

██████████ Principal, Children's Learning Group, identifies herself as being associated with the beneficiary as a student of Javanese gamelan and as a teaching colleague. She describes the beneficiary as capable in "explaining the intricacies of Javanese musical theories" and as being able to lift the "standard of performance" of the Victoria University gamelan group.

██████████ Assistant Director of the Making the Modern World program at the Eleanor Roosevelt College of the University of California, San Diego, studied with the beneficiary at the Schubert Club from 1996 to 1999. She describes the beneficiary as "the best musical director" and "one of the best educators" with whom she has ever worked.

██████████ Associate Professor of Music at Radford University, also studied with the beneficiary in Minnesota. She describes the beneficiary as "a master musician and a consummate teacher." She adds: "His musical skills are quite unique in the U.S., since the Indonesian musical idiom, in which he is so highly trained and skilled, is completely different from the Western music of our culture." She also states that the beneficiary "has an amazing capacity to understand what each student needs and to offer instruction appropriate to each student."

The petitioner submits other letters from the beneficiary's acquaintances and former students attesting to his ability to teach Western-trained musicians how to play the gamelan. Many of his students later invited the beneficiary to perform at their schools.

On appeal, the petitioner submits a copy of the same letter from R. Anderson Sutton originally provided with petition. ██████████ Professor of Music at the University of Wisconsin-Madison, states:

[The beneficiary] is unquestionably a musician of exceptional ability, widely recognized in Indonesia and internationally as a top performer. What he has accomplished during his years in Minnesota has been nothing short of spectacular. He has trained a core group of American musicians who had no prior experience performing Javanese music to be able to present full-length concerts of a wide variety of musical pieces and styles. In addition to Javanese concert music, he is also a master of the musical pieces used to accompany Javanese dance and Javanese dramatic forms, such as Javanese shadow puppetry and dance

drama. For our presentations at UW-Madison of music, dance, and puppetry in concerts in 1998 and 1999, [the beneficiary] played a leading role. Without his expertise, we would have been unable to present the difficult and very well received programs that we did. Beyond his abilities as a performer, [the beneficiary] is an exceptional teacher, able through his fluency in English to communicate very effectively with American students. And he has conducted many school and community programs that provide America with a valuable first-hand experience with a major art form and culture that is otherwise all but unknown in America.

Also re-submitted on appeal was the letter from Hardja Susilo, Associate Professor (retired) of the University of Hawaii and Director of the University's Gamelan Ensemble. He states:

I have only known the petitioner for a short time and met him in person a couple of times. However, his excellent reputation as a performing artist and a teacher had preceded him. He is an excellent drummer, which in Indonesian traditional music also means an excellent orchestra leader. I saw him in action with his students and colleagues at the International Gamelan Festival at Victoria University in New Zealand, in March 1999. I was so favorably impressed that I invited him to perform as guest conductor in my Javanese orchestra in Honolulu in March 2000. He worked with my ensemble for a week and by the time of the performance the orchestra followed his direction as if he had been working with them for many months.

On appeal, the petitioner also provides letters from Professors [REDACTED] of the University of Minnesota describing the gamelan workshops offered by the beneficiary and his talents as a teacher.

While the letters submitted speak favorably of the beneficiary's talents, they fail to offer specific contributions of major significance to the field. The beneficiary's expertise as a teacher and performer has resulted in invitations to perform as "guest conductor" at universities in Virginia, Hawaii, New Zealand, and his home state of Minnesota. These performances, however, are insufficient to demonstrate achievement at the pinnacle of his field. While the witnesses have stated in general terms that the beneficiary is respected and in demand, there is no consensus that the beneficiary enjoys a national reputation in the United States or in any other country. Rather, the petitioner appears to have earned a reputation only among his former students and the communities in which he has taught or performed.

Counsel argues that the beneficiary's contribution to the Schubert Club gamelan program's growth is of major significance in the gamelan world because it expands the scope of gamelan education and performance into the general community and facilitates multi-cultural music education in schools. The Schubert Club's expansion appears limited to the Minnesota community, however, and there is no evidence that it has captured the attention of national or international gamelan experts outside of the state.

The beneficiary has submitted letters from his employers, coworkers, colleagues, students, and various other acquaintances. These letters, however, essentially limit the beneficiary's contribution to the individuals involved with his gamelan groups in Minnesota and New Zealand. We do not dispute that the beneficiary's work has yielded positive results in the training of his students and fellow musicians, but it has not attracted significant attention from other gamelan musicians in the field beyond his acquaintances. The letters note the beneficiary's enthusiasm as a gamelan teacher and director, but offer little evidence regarding the beneficiary's specific major contributions resulting in national or international acclaim. The structure of the regulations illustrates the Service's strong preference for verifiable, documentary evidence, rather than subjective opinions from witnesses selected by the petitioner. The Service is not questioning the credibility of the petitioner's witnesses; it is merely looking for the beneficiary's impact on the field beyond his direct acquaintances. The petitioner has not shown the beneficiary to have made presentations to wider U.S. audiences, published scholarly articles regarding gamelan music, or disseminated new methods of musical instruction having a significant impact outside of his own community. If the beneficiary's work is not widely praised outside of his colleagues and former students, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of his field.

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

Counsel states that the beneficiary has played a leading role for the Schubert Club, "a venerable musical organization in the Upper Midwest." The burden is on the petitioner to demonstrate that this organization has a distinguished reputation amongst the numerous other prestigious arts organizations in cities throughout the United States. According to literature provided by the petitioner: "The Schubert Club has 5 full-time staff and about 16 part-time (most of those teach for only a few hours a week in our after-school music programs)." The petitioner has served as Gamelan Director since November 1995. A review of the documentation provided reveals no evidence to establish that the beneficiary has ever supervised or overseen other individuals within this organization. Further, the record does not indicate that the beneficiary has consistently exercised substantial control over creative or business decisions executed on behalf of the organization. In fact, it appears that Bruce Carlson, President of the Schubert Club, plays the leading role for this organization consisting of only five full-time staff. Articles submitted by the petitioner refer to [REDACTED] as the individual responsible for overseeing the acquisitions of the Schubert Club's gamelans. One of these articles state: "To find the best gamelan maker in the world, the Schubert Club hired a consultant from the Boston Museum of Fine Arts." The record offers insufficient evidence to demonstrate that the beneficiary has performed a leading role within his organization or that his role has attracted sustained national attention. The petitioner has not submitted evidence to satisfy 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.*

On appeal, the petitioner states that "the beneficiary commands a higher salary than others in the field." The petitioner alleges that the beneficiary earned \$50,000 in 2000, but offers no evidence in the form of income tax returns or payroll records to support this claim. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner compares the pay of the beneficiary to faculty members in music departments throughout the Minnesota region. The source of this information is unknown.

Assistant Professors	\$30-45K
Associate Professors	\$40-55K
Full Professors	\$50-65K

Based on the petitioner's information, the beneficiary's salary places him below most full professors in the music field. Regardless of educational experience, the figures provided by the petitioner do not reflect that the beneficiary commands a salary placing him at the very top of the musical education field.

It must be emphasized that merely submitting evidence intended to address at least three of the criteria is not necessarily sufficient to demonstrate that the beneficiary has sustained national or international acclaim at the very highest level. The petitioner must clearly establish that the beneficiary is within the small percentage at the very top of his field.

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. The petitioner has failed to demonstrate the beneficiary's receipt of an internationally recognized award, or that he meets at least three of the criteria of which must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the beneficiary has distinguished himself as a gamelan teacher and director 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 beneficiary shows talent in his field, but is not persuasive that the beneficiary's achievements have consistently set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's 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.