



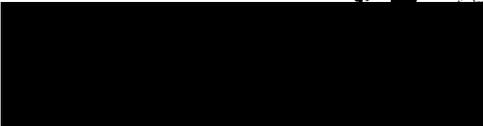
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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC 00 082 50229

Office: Vermont Service Center

Date: 3 MAY 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established that she 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 on January 19, 2000, seeks to classify the petitioner as an alien with extraordinary ability as a soprano solo performer. 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 that, she claims, meets the following criteria:

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel for the petitioner asserts that the beneficiary has met this criterion through her receipt of the following awards:

1. Florida Atlantic University Student Scholarship, 1997-1998
2. Mannes College of Music Student Scholarship, 1993-1996
3. Honor Society Phi Kappa Phi Scholarship Winner from Florida Atlantic University, 1998
4. Music Guild of Boca Raton College Scholarship Award, 1996-1998
5. Artist in Residence from the Florida-Israel Institute, 1998
6. Artist in Residence from the Israeli Consulate in Miami, Florida, 1997 and 1998
7. First Place Award in the Student Song Festival Competition from the Thelma Yellin School of Arts, 1990

It has not been demonstrated that these awards are nationally recognized in the United States or Israel, or that the petitioner competed against professional opera singers or concert soloists to win these awards.

The student scholarships relate to financial assistance received by the petitioner while pursuing her undergraduate degree in Music at Florida Atlantic University and Artist Diploma from Mannes College. Even if the petitioner were able to demonstrate that these awards were based on prior musical achievement, they merely represent financial assistance for tuition and living expenses while pursuing one's degree or diploma. The petitioner has not provided the criteria for these awards or evidence that they were awarded by outside nomination, demonstrating the field's regard for the beneficiary's ability, as opposed to the petitioner's application for financial assistance. Counsel asserts that the Honor Society Phi Kappa Phi Scholarship from Florida Atlantic University "is clearly a U.S. nationally recognized award for excellence in the field of endeavor." University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Awards based on academic achievement at one's college are local in nature and 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 her particular school or university, but it offers no meaningful comparison between the petitioner and the most experienced and practiced sopranos in the musical field.

The petitioner offers no documentation detailing the requirements for participation in the Artist in Residence programs. The minimal evidence provided by the petitioner indicates that these programs are generally limited to students in Florida. For example, documentation from the Israeli Consulate in Miami, Florida states that the petitioner "performs in the Florida State." It has not been shown that her participation in such programs constitutes receipt of an "award" that is nationally recognized in the United States or Israel. According to a brief memorandum from

the Florida-Israel Institute, the petitioner's participation in this "co-op program" for Israeli students is contingent upon her future performances "during the term of the agreement (generally one semester)." Receipt of this funding limits comparison of the petitioner to the other students applying for the co-op program, thus excluding other more experienced and practiced individuals in the field from consideration. It has not been demonstrated that the petitioner was selected by outside nomination, demonstrating the field's regard for the petitioner's ability, as opposed to the petitioner's application to the programs. Co-op funding supports one's future performances, and it cannot be argued that the receipt of a co-op automatically places the recipient at the pinnacle of her field. Further, the reputation of an awarding body does not automatically establish that funding from that body is a significant national honor. The petitioner has not shown that she has earned national acclaim as a result of her participation in Artist in Residence programs.

Counsel asserts that the First Place Award from the Thelma Yellin School of Arts also satisfies this criterion. According to the certified translation of the article appearing in *Rosh Youth Magazine*, "All art students in [the] Thelma Yellin School of Arts take months to get ready [for] their song festival, which they create and produce... [The petitioner] is a twelfth grade student, wants to be a singer, and works hard in this direction." This local award limits comparison of the petitioner to her hundred or so fellow high school students participating in the musical competition, thus excluding other more experienced and practiced sopranos in the field from consideration. Further, the petitioner has not established that performances at the song festival competition were judged based on one's ability as a soprano, rather than creative lyrical writing or some other unidentified criteria.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that judges membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation.

Counsel states that the petitioner has been a member of the Israeli Vocal Arts Institute since 1992. The petitioner provides a copy of her membership card for 1998-1999. We note that the

petitioner attended the Israeli Vocal Arts Institute in 1996. The petitioner offers no evidence that her membership in this organization required outstanding achievement as judged by nationally recognized musicians or vocal artists. Further, the petitioner has failed to provide the institute's specific membership requirements, such as the fulfillment of certain criteria or election by nationally recognized performers. According to documentation provided in support of the petition, the institute "offers a unique course featuring opera performance for professional singers as well as an intensive preparation program for career entry singers." The evidence fails to demonstrate that membership in this institute, which appears open to "career entry singers," constitutes an organization requiring outstanding achievement of its members.

The petitioner submits a flyer from the Israeli Vocal Arts Institute listing its distinguished members. According to counsel, the list includes "over fifteen Metropolitan (New York, U.S.A.) stars, and other worldwide famous singers and vocal artists." We note the absence of the petitioner's name from this listing of "famous" and "distinguished" members. This evidence suggests that the petitioner has not yet reached the top of her field.

The petitioner submits a copy of the Israeli Vocal Arts Institute's Faculty and Student Directory for 1996, the year she attended the school's program of classes as a student. Counsel states the petitioner's listing in this directory of "leading operatic singers is an extraordinary accomplishment." The record does not support this conclusion. The petitioner's appearance in this directory demonstrates only that she attended the institute for musical instruction in 1996 (as indicated by her resume). Reputation by association cannot suffice to establish that the petitioner herself enjoys national or international acclaim. The petitioner provides no evidence as to the total number individuals holding similar membership in the institute.

The record does not reflect that the Israeli Vocal Arts Institute requires outstanding achievements of its members as a condition of membership in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences. The petitioner's evidence fails to meet 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.

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other *major media*. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien cannot earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve

a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.¹

The article appearing in *Rosh Youth Magazine* describes the petitioner taking first place at her high school's student song festival. Counsel offers no evidence regarding the extent of *Rosh Youth Magazine's* circulation. Thus, it has not been shown that this publication qualifies as "a professional or major trade publication or other major media." The article states: "[The petitioner] is a twelfth grade student, wants to be a singer, and works hard in this direction." Such a description of the petitioner does not support counsel's assertions that the petitioner has reached the top of her field. The plain wording of the regulation requires the article to relate to "work in the field for which classification is sought." It has not been demonstrated how winning a song-writing competition at one's high school reflects national acclaim as a soprano soloist.

The petitioner submits ten or so articles and promotional pieces appearing in the *Naples Daily News*, the *Boca Raton News*, the *Bonita Daily News*, the *Sun-Sentinel*, and *Ma'ariv Magazine*. The newspaper submissions generally appear in the music section and promote upcoming venues for the petitioner's performances in Florida or briefly mention her performance at a religious service. 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. These brief pieces do not reflect national media coverage, but, rather local publicity that is common among performing artists. Brief pieces in Florida newspapers represent limited, local coverage of the petitioner's performances rather than publication in the major media.

The two articles from *Ma'ariv Magazine* focus on the petitioner as the primary subject. The first article discusses how the petitioner has "lately [obtained] an impressive success in Miami Beach and other cities in Florida." The second article refers to her "discovery in Florida" and promotes her upcoming 1998 performances throughout the state. No evidence has been provided regarding the significance of this publication to the field of music or the extent of its circulation. Counsel merely states that *Ma'ariv Magazine* "is published in Hebrew in the U.S. and Israel (two editions)." The petitioner cannot earn national acclaim in the United States from a magazine published in language that most of the population cannot comprehend. The petitioner has failed to demonstrate that *Ma'ariv Magazine* qualifies as major media in the United States or Israel. In sum, the evidence submitted is insufficient to demonstrate that the petitioner has attracted the sustained attention of the national press or major media.

Under separate criteria and throughout his statement supporting the petition, counsel alleges that the two articles from *Ma'ariv Magazine* constitute critical reviews of the petitioner's concert

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the Washington Post, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county. Also, a petitioner cannot satisfy this criterion merely by paid promotional advertisements in a national or local publication.

performances. A review of these articles refutes counsel's assertion. The articles merely summarize the petitioner's background and preview her upcoming concerts. Neither of these articles offers a "critical review" of a specific performance given by the petitioner, as alleged by counsel.

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 instructed or worked with the petitioner. We discuss representative examples here. Ofer Ben-Amots, Assistant Professor of Music at Colorado College, states that the petitioner performed his music in Miami in 1996 and that he has since "collaborated with [the petitioner] on a variety of projects." He states: "Although relatively young, her musical career has been impressive."

Michael Trimble, an operatic tenor who resides in Naples, Florida, states: "The petitioner has been my student for three years... I believe she promises to be one of the most outstanding singers of her generation." He adds: "I am sure that a brilliant future lies before her as an opera singer..." These statements suggest that the petitioner has not yet reached the top of the musical field. Michael Trimble's biography states that his students have won or placed in "numerous prestigious American and European vocal competitions." The biography includes a detailed listing of twenty or so awards that Michael Trimble's students have received, such as the Young Concert Artists' Competition in New York City. We note that the record contains no evidence of the petitioner's receipt of any of these prestigious awards. The biography also states: "Michael Trimble's students have sung leading roles in virtually every major opera house in the world including the Metropolitan Opera, New York City Opera, The Vienna State Opera..." The biography then lists another twenty or so "major" opera houses. Again, we cannot ignore the fact that the petitioner's list of performances includes no such leading roles or performances at these venues.

David Tcimpidis, Director of the Extension Division at Mannes College of Music, describes the petitioner as a talented singer and graduate of his program. He refers to her as "a fine and serious student who earned a very high grade point average." David Tcimpidis concludes by stating: "[The petitioner] is a serious, focused, inspired young artist, possessed of the necessary combination of talent, skill, intelligence, and drive to succeed in the very competitive world of opera and classical music." He speaks of the petitioner's future potential in the world of opera rather than her specific professional achievements.

Ken Keaton, Associate Dean and Professor of Music at Florida Atlantic University, also describes the petitioner's accomplishments as a musical student. He states: "She graduated during the spring 1999 term, *Magna Cum Laude*, with a 3.72 GPA." However, university study is not a field of endeavor, but, rather, training for future employment in a field of

endeavor. Success as student does not place the petitioner above more accomplished professionals in the field of music.

Professor Ubaldo Fabbri of the Dante Alighieri Institute in Italy gave the petitioner musical instruction in 1998. He states that theaters should "open their doors for this young artist who I believe is ready to embark, with care, on brilliant career." Mignon Dunn of the Manhattan School of Music also instructed the petitioner and describes her as having "excellent possibilities for a fine career." Rakefet Hak, Staff Coach/Assistant Conductor for the New York Metropolitan Opera, attended high school with the petitioner at the Thelma Yellin School of Arts, and also received instruction at the Manhattan School of Music in 1995. He describes the petitioner as "one of the most unique and promising young singers I've ever worked with." The statements from these witnesses offer no information regarding the petitioner's prior accomplishments in the field of opera.

Edith Tobias, Vice President of the Music Guild of Boca Raton, details the petitioner's scholarship grants and music background. Her letter contains the following statement:

The Music Guild has sponsored many vocalists and instrumentalists over the years. One who is at the height of his career at the moment is Dean Peterson, a baritone recently returned from La Scala who is now a member of the Metropolitan Opera Company in New York.

She concludes her letter by stating that the petitioner "will no doubt be highly successful in her music career." This letter clearly places Dean Peterson of the Metropolitan Opera company at a level above the petitioner. This is yet another example supporting the director's conclusion that the petitioner has not yet reached the top of her field.

The petitioner submits additional witness letters from individuals from the Naples Orchestra and Chorus, Florida Atlantic University, and Mannes College of Music.

The petitioner's witnesses consist entirely of her former instructors, musical colleagues, professional music acquaintances, and musical collaborators. While the letters submitted speak favorably of the beneficiary's talents, they fail to offer specific information regarding her achievements of major significance to the field of music. The construction of the regulations demonstrates the Service's preference for verifiable, documentary evidence, rather than subjective opinions of witnesses selected by the petitioner. Several of the above letters are from impressive experts whose opinions are important in the field of music. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Reputation by association cannot suffice to establish that the petitioner herself enjoys national or international acclaim. While the petitioner has attracted the favorable attention of several prominent musical instructors, simple comparison of their achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment that places her at or near the top of the musical field. We cannot ignore that many of the petitioner's witnesses have performed in more distinguished venues and won more significant awards for their work.

The assertion that the petitioner has a promising future does not establish eligibility, for the regulations clearly call for evidence that the petitioner already enjoys major success and acclaim. The majority of witnesses assert that the petitioner is very talented, and that she has a brilliant career ahead of her. Such attestations, however, cannot meet the extremely high threshold of extraordinary ability. The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals "progressing toward the top" at some unspecified future time.

While the witnesses have stated in general terms that the petitioner is a fine student and vocally talented, 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 her former instructors, personal acquaintances, and the Florida communities in which she has performed.

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

Counsel cites the petitioner's concert performances as fulfilling this criterion. The wording of the criterion, however, strongly suggests that it is intended for visual artists, such as sculptors and painters, rather than for musicians. Concert performances are covered by the "commercial success in the performing arts" criterion, below. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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 petitioner has "numerous evidentiary exhibits proving her artistic soprano singing ability by performing at concerts as a lead or starring participant in productions or events which have a distinguished reputation." Concert productions and locally televised events do not constitute "organizations or establishments." Again, we note that concert performances are covered by the "commercial success in the performing arts" criterion, below.

The only evidentiary support for counsel's assertion that the petitioner meets this criterion is the presence of a letter from an organization with which the petitioner has performed. Ralph Stewart, Conductor/Founder of the Naples Orchestra and Chorus, states that he founded the

Naples Orchestra and Chorus "about eight years ago and it has grown in quality and stature ever since." The burden is on the petitioner to demonstrate that this organization has a distinguished reputation amongst the numerous other prestigious musical organizations in cities throughout the United States. The petitioner has not provided documentation demonstrating that this eight-year-old orchestra and chorus commands a distinguished reputation or that she regularly played a leading role. Ralph Stewart states: "I felt particularly fortunate when she agreed to sing three performances last spring." This statement suggests that the petitioner is not even a regular performer with this organization. The record contains no evidence to establish that the petitioner has ever supervised or overseen other individuals within the Naples Orchestra and Chorus. Further, the record does not indicate that the petitioner has consistently exercised substantial control over creative or business decisions executed on behalf of the Naples Orchestra and Chorus.

In sum, the record offers no evidence to demonstrate that the petitioner has performed a leading role within a distinguished organization or that her role has attracted sustained national attention. Thus, the petitioner has failed to satisfy this criterion.

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

Although this criterion relates directly to performing artists such as the petitioner, counsel offers no evidence or supporting arguments related to the petitioner's commercial success as solo performer. The petitioner has not shown that recordings of any of her soprano performances were ever released in the United States or Israel. A simple listing of one's concert performances is insufficient to satisfy this criterion. While the petitioner has performed at sites in Florida, New York, Tel Aviv and Italy while attending school, this does not infer commercial success. The petitioner offers no evidence regarding the commercial success of these concerts in the form of documented ticket sales, nor has she shown that she has given solo performances at prestigious venues such as the Metropolitan Opera. In sum, the petitioner offers no evidence to demonstrate that she has been commercially more successful than the vast majority of performing vocal artists and opera sopranos.

On appeal, counsel states: "The INS has abused its discretion in distinguishing between an extraordinary young performer and an extraordinary performer." A review of the director's decision does not support this conclusion. Without reference to this particular alien's eligibility, we concur with counsel's assertion that a petitioner's age or decision to pursue further education is not a factor in determining extraordinary ability. While the wording of director's discussion regarding the witness letters could be improved, it is by no means so flawed as to undermine the grounds for denial. In referring to the petitioner "as among the best of the young," the director was merely noting that the petitioner is a talented singer when compared with other students and vocalists at an early stage in their musical careers. However, pursuant to Section 203(b)(1)(A)(i) of the Act, the petitioner must demonstrate that her "achievements have been recognized in the field through extensive documentation." The petitioner must submit evidence demonstrating

sustained national or international acclaim as a soprano when compared to other performers already at the top of the field, not when compared to her peers or fellow students close in age. Academic success in the field of music is insufficient to demonstrate extraordinary ability. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's performance as a student, while commendable, offers no meaningful comparison between the petitioner and the most experienced and practiced sopranos in the music field.

Counsel initially asserts that the director erred by using age as a factor in determining extraordinary ability, but then offers arguments contradictory to this position. In attempting to overcome the petitioner's lack of evidence when compared to the "most experienced, most professional, most highly respected top U.S. opera performers," counsel argues that top U.S. opera performers were once young performers themselves with "extraordinary ability at a young age." Counsel notes that the petitioner's witnesses view her as an individual "who will someday replace themselves." The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals "progressing toward the top" at some unspecified future time. Counsel essentially contends that the visa classification should be expanded to include talented "young performers" at the beginning of their careers with the potential to reach the top of the musical field at some unknown future point. This contention is contrary to the statute and regulations. The regulations require the petitioner to be "one of that small percentage who have risen to the very top of the field of endeavor," regardless of age, future potential, or stage in one's career.

Counsel takes issue with the director's initial statement that the petitioner "is presently in the United States in F-1 student status." Counsel notes that that the petitioner was granted O-1 nonimmigrant classification and refers to the petitioner's approval notice dated March 3, 2000. We note, however, that the director does address the petitioner's O-1 classification later in the decision. The director states:

Your response [to the director's request for evidence] cites the approval of an O-1 nonimmigrant visa petition as evidence that [the petitioner] has already been found to be an alien of extraordinary ability in the arts. However, section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes nonimmigrant O-1 criteria less restrictive for a beneficiary in the arts, [and thus] less restrictive than the criteria for the immigrant version of the extraordinary ability classification of section 203(b)(1)(A) requested by the present petition.

The director notes correctly that the O-1 nonimmigrant classification granted to the petitioner requiring "distinction" in the arts is less restrictive than the immigrant classification sought by the petitioner pursuant to section 203(b)(1)(A) of the Act.

The Requiem Project e-mail dated October 13, 2000 and the approval of the petitioner's O-1 nonimmigrant status submitted in response to the director's request for evidence came into

existence subsequent to the petition's filing. 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.

The petitioner has offered no evidence that recordings of her music have ever been released in the United States or Israel or that she has regularly performed opera at distinguished venues. We note that many key witnesses have couched their remarks not in terms of what the petitioner has done, but what she is likely to achieve at some unspecified future point. If the petitioner's work is not widely praised outside of her musical colleagues and instructors, then it cannot be concluded that she enjoys sustained national or international acclaim as one who has reached the very top of her 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 petitioner has sustained national or international acclaim at the very highest 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. The petitioner has failed to demonstrate receipt of an internationally recognized award, or that she 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 petitioner has distinguished herself as a soprano soloist performer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent in her field, but is not persuasive that the petitioner's achievements have consistently 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.