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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: [Redacted] Office: Vermont Service Center Date: 23 MAY 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



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. The director's decision to deny the petition was affirmed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner for Examinations on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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 he qualifies for classification as an alien of extraordinary ability. The Administrative Appeals Office, ("AAO"), acting on behalf of the Associate Commissioner, concurred with the director's finding and dismissed the petitioner's appeal on January 10, 2001. The petitioner filed a motion to reopen on February 12, 2001.

The pertinent statutory language appears in the prior AAO decision and need not be repeated here.

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy.

The petition, filed on February 19, 1999, seeks to classify the petitioner as an alien of extraordinary ability as a composer of classical symphonic music and film scores.

On motion, counsel merely states that the petitioner "has met the statutory standard." Counsel also asserts that the petitioner is "the preeminent composer of Armenia and one of the shining lights of the Middle Atlantic region in the United States." 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).

Counsel also states: "It is anticipated that additional documentation will become available within the next thirty days and we will submit the same." The regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit evidence in furtherance of an already-filed motion. By filing a motion, the petitioner does not guarantee himself an open-ended period in which to supplement the record. The regulations grant the petitioner thirty days to contest the dismissal of the appeal via a motion to reconsider, with no provision for extension or later submission of supplementary documentation. Furthermore, even if the regulations did allow for the submission of supplementary evidence on motion, to date, fourteen months after the filing of the motion, the record contains no such additional evidence.

Counsel offers no arguments to contest the specific issues presented in the AAO's prior decision. The AAO found that the vague assertions from witnesses selected by the petitioner were insufficient to satisfy the "extensive documentation requirement" pursuant to section 203(b)(1)(A)(i) of the Act. The record supports this conclusion. The record contains no primary evidence to support the witnesses' claims that the petitioner is the most famous composer in Armenia. The petitioner has not shown that recordings of any of his compositions were ever issued in Armenia, nor has he submitted so much as one newspaper review to manifest the "critical acclaim" his work has purportedly garnered. Witnesses allege that the petitioner's works have been featured on major radio stations in the United States and become the repertoire of several orchestras; however, these radio stations and orchestras remain unidentified. The construction of the regulations demonstrates the Service's preference for verifiable, documentary evidence, rather than the subjective opinions of witnesses selected by the petitioner.

On motion, the petitioner submits a faxed letter from Yury Harutyunian, Composer, Composers and Musicologists Union of Armenia, addressing the petitioner's absence of published materials in Armenia. The letter, dated February 9, 2001, states:

We regret to inform you that during the time frame of 1987 to 1995 disorderly and unkempt treatment has caused major losses at the National Radio and Television, as well as theatrical archives. As a result of this, some materials associated with artists have been destroyed as well. Among the vanished are also materials having reference to [the petitioner], such as posters, newspaper articles, publications, and other matter.

The petitioner has failed to mention the circumstances regarding the unavailability of such evidence in prior proceedings. We note the absence of such a claim at the time of filing of the petition, in response to the director's request for evidence, subsequent to denial of the petition, and in support of the appeal. The question necessarily arises as to how Composer Yury Harutyunian of the Composers and Musicologists Union of Armenia is qualified to speak for all Armenian radio stations, television stations, theaters, magazine and newspaper publishers, local libraries, and governmental archive institutions. While Mr. Harutyunian may represent the Composers and Musicologists Union of Armenia's Information Center, it has not been established that this Information Center is the sole source of records for radio stations, television stations, newspapers, magazines and other major media throughout Armenia. One could reasonably conclude, for example, that if the petitioner were featured in a major publication or newspaper article, the petitioner would simply obtain such an article directly from its publisher or a local library. The petitioner has offered no direct evidence from Armenian major media institutions, governmental institutions or libraries confirming the non-existence or destruction of their records from 1987 to 1995. Even if such evidence were to be provided, it does not relieve the petitioner of the "extensive documentation requirement" set forth in section 203(b)(1)(A)(i) of the Act.

Mr. Harutyunian's letter regarding the absence of published material about the petitioner in Armenia only strengthens the finding that the petitioner is unable to demonstrate sustained national acclaim through extensive documentation of his achievements. Furthermore, no evidence or arguments are offered on motion regarding the petitioner's national acclaim in United States. The AAO's prior decision noted that while the petitioner had been present in the United States for several years prior to the filing of the petition, the record failed to demonstrate that he earned significant national acclaim in the United States during that time. The petitioner's recognition is largely limited to the mid-Atlantic, as noted by counsel's statement above. Therefore, even if the petitioner had established that he was Armenia's top composer up until 1995, he has not shown that he has sustained that acclaim after relocating to the United States.

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 submits additional evidence in support of the motion that appears most relevant to the following single criterion.

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

The petitioner submits the draft of a contract between himself and Trinity Church of Princeton, New Jersey dated January 29, 2001. Also submitted is a letter dated February 2, 2001 from the Music Director of Trinity Church where the petitioner's daughter serves on the musical choir. The letter is addressed to the church congregation and solicits donations to pay for the petitioner's work in composing a Christmas carol for an upcoming church festival in November 2001. This 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.

Even if we were to consider the evidence, it constitutes only a tentative contract contingent upon funds donated by the church congregation. The contract stated that the petitioner was to be paid \$2,500 for his services. The plain wording of the criterion requires the evidence of a high salary "in relation to others in the field." On motion, the petitioner has presented nothing as a basis for comparison; he has simply provided evidence of a tentative contract and offers no evidence regarding the salaries or remuneration of other musical composers in the United States.

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 he meets at least three of the criteria 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 himself as a composer 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 composer, but is not persuasive that the petitioner's achievements have set him significantly above almost all others in his 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The Associate Commissioner's decision of January 10, 2001 is affirmed. The petition is denied.