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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 00 161 52940 Office: Vermont Service Center

Date: 23 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 April 7, 2000, seeks to classify the petitioner as an alien with extraordinary ability as a musician and actor. The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing and working in the United States since 1994, but the wealth of the documentation submitted relates to the petitioner's activities in his native Ukraine. Given the six years between the petitioner's arrival in the United States and his filing of the petition, the petitioner must demonstrate that he has earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a musician and actor outside of the Ukraine.

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, he 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.*

In response to the director's request for further evidence, counsel asserts that the petitioner has met this criterion based on the following:

1. Commendation from C-G Advertising Agency "for active participation in a presentation dedicated to a newly market firm," 1991.
2. Reader popularity poll from *Vechernyaya Moskva* Newspaper voting the petitioner as "1991 Singer of the Year"
3. Diploma and Title of Laureate of the International Competition of Vocalists, "Dneprovskiye Zori," 1991
4. Commendation "for participation in Gala-Concert dedicated to the 'Day of Ukraine' held within international competition 'Slavyansky Bazar,'" 1992
5. Honorary Diploma for "active participation in charity work" at the Ukranian National Television Marathon- "International Day of the Disabled- 1993"
6. Diploma from Kiev Music Hall "for taking the First Place in the International Competition 'Theatrical Kiev' and for the best personification of the artistic image of Sergey Yesenin," 1991
7. Partnership "Eko Art" Diploma issued for "great special input in creation of spiritual and cultural values for achievement of craftsmanship in creative work," 1993

We note that the petitioner has not received a single musical or acting award since 1993. Pursuant to the statute and regulations, the petitioner must establish that his national or international acclaim has been sustained since coming to the United States in 1994. Even if the petitioner's awards were more recent, the record does not reflect that the above awards are nationally recognized in the United States or the Ukraine. The significance and importance of the awards are not self-evident.

The petitioner must provide evidence to establish that the above awards enjoy significant national or international stature. The record contains no documentation from the awarding entities or from independent witnesses to establish the importance of the petitioner's awards or the entities presenting them. The petitioner offers no documentation detailing the criteria used for determining the winners or the number of other recipients. Simply receiving an award with the word "national" or "international" in the title does not satisfy this very restrictive criterion.

The petitioner has submitted certificates that acknowledge his participation in an event or festival, but these are not prizes for excellence. Mere participation in concerts, marketing presentations, charity events and competitive performances does not constitute receipt of an "award" that is nationally recognized. Finally, we note that the awards from the *Vechernyaya Moskva* Newspaper and Kiev Musical Hall reflect local rather than national recognition.

*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 response to the director's request for further evidence, counsel asserts that the petitioner meets this criterion as a member of the Russian Theater Association, Theater Association of the Ukraine, Theater Association of the U.S.S.R., Ukrainian Histrionics Society, and the National Theatrical Union of the Kiev Municipal Department Government.

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.

The petitioner submits a letter verifying his membership in the National Theatrical Union of the Ukraine from 1989 through 1992, a membership card from the Theater Association of the U.S.S.R., and a membership card for the Ukrainian Histrionics Society. The petitioner offers no evidence from these organizations demonstrating that their membership requires outstanding achievement as judged by nationally recognized musicians or actors. Counsel refers to a letter from Igor Afanasyev, Vice President of Russian Garden State Television in New Jersey, stating that membership in the Russian Theater Association and Theater Association of the Ukraine "is only granted to artists of outstanding achievements, whose work represents a significant contribution to the country's culture." Igor Afanasyev, an employee of a Russian language television station broadcasting from Edgewater, New Jersey, has not shown that he is an official representative of the associations mentioned above or that he is even a member. Therefore, his statement constitutes a claim rather than first-hand documentation of the associations' membership requirements. The record contains no direct evidence listing the associations' specific membership requirements, such as the fulfillment of certain criteria or election by nationally

recognized performers. Further, the petitioner provides no evidence as to the total number individuals holding similar membership in these associations.

The record fails to demonstrate that the above memberships require outstanding achievements of their 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. Further, the petitioner offers no evidence of membership in theatrical or musical associations in the United States. The petitioner's evidence thus fails to satisfy 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 petitioner 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.<sup>1</sup>

The petitioner submits articles from *Vzglyad* and *Echo of Planet*, two Russian language newspapers that appear to be published and distributed only in New York. Counsel offers no evidence regarding the extent of the newspapers' circulation throughout the United States. Because the vast majority of U.S. readers do not read or speak Russian, these local newspapers are too limited in their scope to be considered major media. For similar reasons, the petitioner's appearances on Russian language radio and television in the United States do not constitute major media exposure for the petitioner or his activities. On appeal, the petitioner submits a second article from *Echo of Planet* dated May 19-25, 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. The petitioner has not established that he has been covered in the leading music periodicals, such as *Rolling Stone* or *Spin*, or the trade magazine *Billboard*.

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<sup>1</sup> 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.

The petitioner submits articles appearing in *Krasnoye Znamya* (date not provided) and *Komsomolskoye Znamya* (1991). The two articles mention the petitioner's performance in a theatrical production. Also provided is a captioned photograph from *Leninskoye Znamya* (date not provided) that does not even mention the petitioner. The petitioner is the primary subject in only one of these three published pieces. We also note that the petitioner has omitted evidence regarding the extent of the publications' circulation. Thus, it has not been demonstrated that these publications constitute major media.

The petitioner submits incomplete translations of what appear to be playbills and promotional pieces for the petitioner's theatrical performances in the Ukraine. By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation that 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). Unattested summary translations of various articles cannot suffice to satisfy this criterion. Without complete translations, it cannot be determined that the petitioner is the main subject of the pieces, or that he was featured because of his achievements as an extraordinary actor. These items do not reflect national media coverage, but, rather local publicity commonly used in advertising theatrical productions. Further, the entire production appears to be the main subject and the petitioner is often listed merely as one of several participating actors.

Igor Afanasiev states: "Many articles were written about the role of [the petitioner] in modern music and theater art of Ukraine..." The regulation requires the submission of published materials about the alien, rather than third-party letters attesting to the existence of such published materials. The letter from Igor Afanasiev cannot carry the same weight as the published materials themselves.

The petitioner submits photographs which, he claims, were taken during the taping of various television segments. The record does not show whether these segments aired on major national television programs or lesser local stations. More acclaim and prestige adheres to a prime-time series on a major national broadcast network, for instance, than to a five-minute performance on a local community access cable program devoted to the Russian-speaking residents of New Jersey.

The petitioner also submits photographs of scenes from the movie "Mother" and the cover of his compact disk entitled "I am so Hungry for Love," recorded in 1993. Compact disks and box office receipts are covered by the "commercial success in the performing arts" criterion, below.

*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 petitioner must demonstrate that his national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level. For example, judging a national athletic competition or an international film festival carries greater weight than judging a county-wide competition.

In response to the director's request for evidence, the petitioner submits a letter from the Rock Academy Private Performing Art's Production Company which merely states: "Issued to [the petitioner] in that from June 15<sup>th</sup> through June 20<sup>th</sup> of 1992 he was a member of the judges panel of Ukrainian National Festival 'Ura- Novoyavorovsk 92.'" The letter from the production company, numbered 175, does not indicate who the petitioner judged, how many judges were selected, or the criteria used for the selection of judges. Further, the petitioner has not demonstrated the extent to which this production company was involved in the 1992 "Ukrainian National Festival."

The petitioner also submits a letter from Boris Neiburger who alleges to be "one of the producers of the International Music Festival 'Russian Songs of America' which took place in September-October 1999 in New York City." Boris Neiburger indicates that the petitioner was a jury member and further states: "As in all international jury committees, ours consisted of the most distinguished and respected artists in the field of music." However, he fails to offer the names of any of these "distinguished and respected artists" or the criteria used for the selection of judges. Further, the petitioner offers no evidence that this festival is an internationally recognized musical competition; and therefore not limited only to Russian language singers from the New York area.

Simply alleging that one judged a festival with "national" or "international" in the title does not satisfy this very restrictive criterion. Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim.

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

The petitioner submits letters from various witnesses, mostly from individuals who instructed or worked with the petitioner. We discuss representative examples here. Professor Semjon Skigin of the Berlin University of Music states that he performed with the petitioner and that the petitioner "ranks as one of the best musicians in the world." Vladimir Maximov, President of Ryabina Records in Brooklyn, New York, states: "For many years I know [the petitioner] as an extremely gifted, talented and accomplished artist... I am pleased to obtain the petitioner's talents for several of my upcoming projects." Mark Rutkowski of the Institute for Modern Music in Warminster, Pennsylvania states that he "met and worked with [the petitioner] on several occasions." Mark Rutkowski describes the petitioner as "an extraordinarily gifted and accomplished pop singer and guitar player" and notes that he and the petitioner will soon begin the production and recording of the petitioner's solo album which "will expose the whole world to great gift of [the petitioner]." Stacie Precia of the Brooks Atkinson Theater of New York states that she was impressed by the petitioner's performance at

of the musical field. Similarly, Robert Rubeni, President of Alien Flyers Records, indicates that the petitioner's presence in the United States "will greatly contribute to the music community" and "will make a far reaching impact on the field of music." The above witnesses' assertions that the petitioner has a promising future do 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 he has a brilliant career ahead of him. 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.

██████████ Manager of the Warehouse Recording Studio in New York City, states: "I've had the pleasure of both personally and professionally of working on a musical project with [the petitioner] and can say without hesitation that he ranks as one of the best musicians that I have come across." ██████████ and ██████████ list several artists with whom they allege to have worked, including: Dionne Warwick, John Waite, Carly Simon, Herbie Hancock, Liza Minelli, Dave Matthews, Paul Shaffer, Mariah Carey, Eric Clapton and Luther Vandross. A simple comparison of their achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment that places him at or near the top of the musical field. We cannot ignore that these individuals have performed in more distinguished venues than the petitioner has, won more significant awards for their work, and are easily recognized in the musical and/or theatrical fields. While these individuals have received major-label recording contracts, the petitioner offers no comparable evidence.

██████████ a self-described "Principal Singer of the Metropolitan Opera" in New York, states that he has known the petitioner since 1998 and that the petitioner "would be a rare and valuable asset to any music theater or any field of [the] music industry." Galina Konareva performed with the petitioner at the Kiev Music Theater and states that she has given concerts in venues such as the Lincoln Center and Carnegie Hall. She credits the petitioner as being the "first performer in the first Ukrainian rock opera." ██████████ and ██████████ offer few specific details regarding the petitioner's proven musical achievements. We note that the petitioner's performances in the United States do not include leading roles in distinguished venues like Carnegie Hall or the Metropolitan Opera House at Lincoln Center.

██████████ Professor of Music at the Kiev State Institute of Theater Arts, first met the petitioner in 1984 as his musical teacher. She refers to an award won by the petitioner in 1986 as a student, but no evidence of this award has been submitted into the record. Ludmila Tretiak credits the petitioner with organizing the "Student Theater of Folk Music" at the Kiev State Institute. Musical study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Success as a music student does not place the petitioner above more accomplished professionals in the field of music.

On appeal, the petitioner submits a letter from A ██████████ President of Maestro U.S.A. Children Music Theater and School of Performing Arts in New York, stating that the petitioner voluntarily works at the organization teaching drama, singing, and conducting the children's

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On appeal, the petitioner submits a letter from ██████████, President of Maestro U.S.A. Children Music Theater and School of Performing Arts in New York, stating that the petitioner voluntarily works at the organization teaching drama, singing, and conducting the children's choir. He adds: "During the period of our working together, [the petitioner] exhibited an extraordinary talent demonstrating that he is an outstandingly gifted performer in the field of music and dramatic arts." ██████████ President of AT International Productions in New Jersey, states that her company has been doing business with the petitioner "for the last six years, specializing in show business." She states: "With our help [the petitioner] performed many not-for-profit shows in Russian language speaking American resorts." The letters submitted on appeal describe the petitioner's work as a volunteer music teacher, conductor and resort entertainer. However, the petitioner in this case seeks an employment-based visa. While the petitioner's volunteer work with children is commendable, the petitioner's activities that are held to benefit prospectively the United States must derive from his employment as an actor/vocal artist.

The petitioner's witnesses consist entirely of his 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 his 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. The record contains no convincing evidence that the petitioner has earned national acclaim as an actor or musician since coming to the United States in 1994.

Reputation by association cannot suffice to establish that the petitioner himself enjoys national or international acclaim. While the petitioner has attracted the favorable attention of several prominent individuals in the music field, simple comparison of their achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment that places him 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.

While the witnesses have stated in general terms that the petitioner is a vocally talented performer, there is no consensus that the petitioner 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 instructors, personal acquaintances, and the Russian-speaking segment of the population in the New York area.

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

Counsel cites the petitioner's performance at a Gala Concert at the Kiev Pop Theater (1992) and the "International Day of the Disabled" National Television Marathon (1993). Counsel also refers to a notice from the Kiev Theater Art Studio, dated October 24, 2000, noting that the petitioner participated in concerts and charity work from 1989 to 1992. The wording of this criterion, however, strongly suggests that it is intended for visual artists, such as sculptors and painters, rather than for musicians/actors. 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.*

In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. Counsel states that the owner of Café Passage "offered [the petitioner] a position as entertainment director for the Russian nightclub." Counsel also notes that the petitioner "appeared at the Russian Samovar Nightclub in Manhattan and at several high profile charity concerts for disabled children." The petitioner submits a letter from the owner of Café Passage stating: "We believe you will be a valuable addition to our group and look forward to you joining us." The petitioner offers no evidence confirming his employment with either of these nightclubs. A mere offer of employment at an organization or establishment cannot satisfy this criterion. The petitioner offers no evidence beyond the job offer letter and has failed to demonstrate that Café Passage and the Russian Samovar, Russian nightclubs in New York, enjoy a distinguished reputation. The burden is on the petitioner to demonstrate his specific role and that these organizations have a distinguished reputation when compared to

the numerous other prestigious musical/theatrical institutions in cities throughout the United States, such as the Metropolitan Opera.

Counsel indicates that the petitioner has performed on Russian and Ukrainian television and starred in a Russian film entitled "Mother." Counsel also refers to evidence of the petitioner's Ukrainian theatrical performances prior to 1993. Theatrical productions and televised events do not constitute "organizations or establishments." These performances are generally covered by the "commercial success in the performing arts" criterion, below.

The only evidentiary support for counsel's assertion that the petitioner fulfills a leading or critical role in an organization is the presence of a letter from Igor Afanasiev mentioning the petitioner's role at the Kiev Music Theater. Igor Afanasiev briefly describes the petitioner's importance to the theater:

The theater group of the Kiev Music Theater had 170 actors and musicians, out of whom only five were awarded the highest professional category. One of these five actors [was the petitioner]... The petitioner's departure to the United States brought about the fall of the professional level of the theater and its subsequent fold.

Igor Afanasiev's letter suggests that the petitioner played an important role at the Kiev Music Theater up until the early 1990's, but it offers no details of the petitioner's involvement. The record contains no evidence to demonstrate that the Kiev Music Theater enjoyed a distinguished reputation. Igor Afanasiev's statement and the closure of the theater suggest a mediocre reputation at best. In sum, the record offers no evidence to demonstrate that the petitioner has performed a leading role within a distinguished organization or that his 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 supporting arguments related to the petitioner's commercial success as an actor/vocal musician. In a letter accompanying the initial filing, the petitioner states: "I have recorded several international CD's such [as] 'I am so Hungry for Love.'" The mere fact that the petitioner has issued recordings of his work does not demonstrate that such recordings are commercially successful. The petitioner offers no evidence that his compact disks, plays and films have enjoyed a high sales volume. The petitioner has not provided evidence showing that he has participated in any major films or theatrical productions, or released any major-label compact disk recordings in the United States from 1994 until the time of filing. A simple listing of one's musical and theatrical performances is insufficient to satisfy this criterion. The petitioner offers no evidence regarding the commercial success of his musical/theatrical performances in the form of documented ticket sales, nor has he shown that he has given solo performances at prestigious venues such as the Lincoln Center. In sum, the petitioner offers no evidence to demonstrate that

he has been commercially more successful than the vast majority of performing vocal artists and actors.

On appeal, the petitioner submits evidence of a compact disk entitled "The City" that was released subsequent to the petition's filing. See Matter of Katigbak, supra. Even if we were to accept the release of the compact disk as evidence, there is nothing in the record to demonstrate its commercial success or that it earned the petitioner national acclaim in the music industry.

The petitioner has failed to establish sustained national acclaim since arriving in the United States in 1994. Many key witnesses have couched their remarks not in terms of what the petitioner has done, but what he is likely to achieve at some unspecified future point. If the petitioner's work is not widely praised outside of his personal and professional associates, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of his field. Further, it has not been established how the petitioner's performances, which generally appear limited to the Russian language speaking residents of New York and New Jersey, will substantially benefit prospectively the United States.

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 substantial prospective benefit to the United States and 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 petitioner has distinguished himself as an actor/musician 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 in his field, but is not persuasive that the petitioner'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 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.