



B2

U.S. Department of Justice
Immigration and Naturalization Service

Public Copy

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



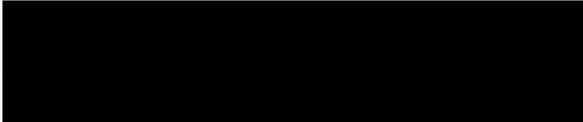
File: [Redacted] Office: Nebraska Service Center

Date: 16 SEP 2001

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy.

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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an Eastern European Folk Orchestra. 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 has earned the sustained national or international acclaim necessary to qualify 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). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on April 30, 2001, seeks to classify the beneficiary as an alien with extraordinary ability as a vocalist of Eastern European folk music. The statute and regulations require the beneficiary's acclaim to be sustained. The record reflects that the beneficiary has been residing in the United States since 1995. Given the length of time between the beneficiary's arrival in the United States and the filing of the petition, the petitioner must demonstrate that the beneficiary has earned national acclaim in the United States during that time. The beneficiary has had ample time to establish a reputation as a musical performer outside of Slovakia.

On appeal, counsel notes that the director failed to issue a request for evidence informing the petitioner of the deficiencies in the record. At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence that the petitioner would have submitted in response to such a request.

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, counsel 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.

The petitioner submits a letter from Jerry Jumba, a self-described musician, music teacher, Cantor, chant teacher and publisher, who also identifies himself as a "Green Card Advocate" for the beneficiary. He states that in 1990, at nineteen years of age, the beneficiary was named "Vocal Laureate of the acclaimed Makovicka Struna Rusyn Folk Art Song Festival in Bardijov, Slovakia." In a statement accompanying the initial filing, counsel asserts that the beneficiary's receipt of the Vocal Laureate award satisfies this criterion. 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). The petitioner also submits a letter from Ladislav Kiselak, Artistic Director, Sarisan Slovak Folk Ensemble, stating that the beneficiary was a member of their group from 1993 to 1995. The letter further states that in 1994 and 1995 the beneficiary won the statewide singing competition, entitled "Our Best," sponsored by Slovak national television. Counsel, however, offers no argument that the beneficiary's victories at the "Our Best" competition satisfy this criterion. Without first-hand evidence from the awarding entities showing that the beneficiary actually received these awards, we find that the director was correct in stating that the beneficiary had not met this criterion.

On appeal, the petitioner provides a letter, dated September 12, 2001, from Milan Bobak, an official of the Union of Rusyns-Ukrainians, an organization founded in 1990 and devoted to "preserving and developing the culture of Rusyn-Ukrainians living in the Slovak Republic." Milan Bobak states:

The Rusyn-Ukrainians are an ethnic group that traces its heritage to the medieval city-state of Kievan Rus. The Rusyn-Ukrainian people have never had their own homeland. Instead, they live as ethnic minorities in the countries: Poland, Hungary, Slovakia, Ukraine, Romania, Serbia, Croatia and [the] Czech Republic.

“Makovicka Struna” in Barjedov and “Festival of Rusyns-Ukranians in Svidnik are the most significant nationwide activities of [the Union of Rusyns-Ukranians]... Makovicka Struna is the highest competition of Rusyn-Ukranian singers in Slovakia.

[The] Slovak Republic has the highest population of Rusyn-Ukranians from the countries mentioned above. This way we consider Makovicka Struna to be the top-peak competition of Rusyn-Ukranian singers in the world.

[The beneficiary] won the competition in 1990 and became the Laureate of Makovicka Struna. This is the highest prize conferred upon any participant in the competition. Nationally, six to seven hundred singers vied for the prize that year.

The petitioner, however, offers no contemporaneous evidence of the beneficiary’s actual receipt of the above awards in 1990, 1994, and 1995. It must be emphasized that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The absence of the actual prizes from the Makovicka Struna and “Our Best” competitions are significant omissions from the record.

This criterion requires documentation establishing that the beneficiary’s awards enjoy significant national or international stature. It has not been shown how the beneficiary’s receipt of the Laureate of Makovicka Struna prize, an award that appears recognizable to only a regional ethnic minority, constitutes national or international recognition. We note, for example, the absence from the record of national or international media coverage about the award. An alien cannot earn acclaim at the national or international level through awards or performances known to only a limited geographic segment of a nation’s populace. In his letter, Milan Bobak refers to the Rusyn-Ukranian people as an “ethnic minority” in Slovakia. We note that while the beneficiary’s popularity may indeed extend beyond the boundaries of Slovakia, there is no evidence demonstrating that the Laureate of Makovicka Struna prize is nationally recognized throughout Poland, Hungary, the Ukraine, Romania, Serbia, Croatia or the Czech Republic. This award appears to enjoy only regional recognition among the people that the petitioner’s witness, Jerry Jumba, refers to as “the little known sub-national central European Eastern Slavic people known as the Carpatho-Rusyns.” Jerry Jumba further states: “They reside around the exact geographic center of the European Continent, throughout the Carpathian mountain chain bordering Slovakia, Poland, Ukraine, Hungary and Romania.” The beneficiary’s receipt of the Makovicka Struna award, therefore, constitutes only regional or “sub-national” recognition among an ethnic minority rather than national recognition in Slovakia or international recognition in countries throughout Eastern Europe.

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 director's decision states the following: "The beneficiary has been the subject of reviews and other coverage in newspapers and other media, thus nominally meeting this criterion." The evidentiary source for the director's conclusion, however, is unknown. A complete review of the record reveals little or no evidence to support the director's conclusion. We note that in a statement accompanying the filing of the petition, counsel does not even claim that the beneficiary meets this criterion.

Other than a brief, local promotional piece appearing in the *Cleveland Scene*, the petitioner has provided no articles or reviews featuring the beneficiary as the main subject. The petitioner also submits three magazine/newspaper pages containing only photographs of the beneficiary. One of the photographs, appearing in the *Danville News*, reflects local, rather than national, media coverage. The remaining submissions, published outside of the United States, did not include the title, date, or author of the published material as required by the regulation. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and captioned photographs that barely even mention the beneficiary cannot satisfy this criterion. Two of the magazine/newspaper submissions were not accompanied by English language 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). The burden is on the petitioner to establish the beneficiary's coverage in major national or international media. We note that the petitioner has omitted evidence regarding the extent of the circulation of the publications featuring the beneficiary.

The petitioner submits no evidence to show that, since the beneficiary's 1995 arrival in the United States, the beneficiary has attracted any national media attention. As a performer working in the U.S., it is entirely appropriate to hold the beneficiary to U.S. standards when considering media coverage. The petitioner has not shown that the beneficiary has received coverage in major U.S. news and/or entertainment publications, comparable to the coverage received by top folk music

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 purchasing an advertisement in a national publication.

performers in the U.S. We further note that news coverage limited to the Eastern European immigrant community in the U.S. is not national in scope.

In sum, the petitioner has failed to show that the beneficiary 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

Counsel lists six compact disks and a video as satisfying this criterion. The mere fact that the beneficiary has issued recordings of her work does not demonstrate that such recordings are nationally or internationally recognized as having major significance in the field of folk music. Such recordings are common among vocal artists and do not necessarily set the beneficiary apart from other musical performers. We further note that, according to the compact disk jackets provided, the beneficiary was featured among other artists on several of the compact disks. The beneficiary's musical recordings will be further addressed under the "commercial success in the performing arts" criterion, below.

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

Counsel cites the beneficiary'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 generally covered by the "commercial success in the performing arts" criterion, below. However, because the beneficiary has performed at a variety of free folk music festivals throughout her career, we will consider the performances as comparable evidence under 8 C.F.R. 204.5(h)(4).

The petitioner provides a listing of the beneficiary's performances at venues such as the Chicago Cultural Center, Midwest Arts Conference, the Kennedy Center's Millennium Stage and the National Folk Festival. In support of the listing, the petitioner submits documentation (such as brochures and promotional advertisements) confirming the beneficiary's participation as a featured folk artist.

The petitioner also submits a letter from J [REDACTED], Executive Director, National Council for the Traditional Arts ("NCTA"). He states:

The NCTA, a non-profit corporation founded in 1933, is recognized as one of the premier organizations active nationally in the presentation and documentation of traditional, folk and ethnic arts. Indeed, the NCTA is the oldest organization in the country with such a focus.

* * *

The NCTA has a long association with the Smithsonian Institution's folklife programs, among other things helping program the annual Festival of American Folklife on the National Mall in Washington, D.C. We also have a close relationship with the Library of Congress and its folklife and ethnic heritage programs and collections... We work frequently with the Folk and Traditional Arts division at the National Endowment for the Arts and are the recipient of major grants from the Endowment. We produce the Endowment's National Heritage Fellowship Awards presentation program, which recognizes the accomplishments of the greatest living masters of the traditional arts in America, and administer the Site Evaluation/Technical Assistance Program for the Folk and Traditional Arts division.

* * *

Two of our most significant events are the National Folk Festival and the Lowell Folk Festival. [The beneficiary] has appeared at both.

The National Folk Festival, which in 2001 marked its 67th year, is the oldest multi-ethnic festival in the country and the one that pioneered the format. It is a traveling festival that moves every three years to a different city, and is produced by us in cooperation with local governments and cultural institutions... The Lowell Festival is now the largest free music festival in the country, with an audience this year of 250,000.

The National Folk Festival and the Lowell Folk Festival each present only about twenty different performing artists or groups each year. There are some solo performers, but because folk-based musics are so predominately ensemble forms, the great majority of performers are musical groups. With so few slots to fill, the selection criteria are naturally extremely demanding. With such large audiences with high expectations, and a reputation for utmost excellence to be maintained, we are careful to present performers we feel are not only preeminent exponents of their traditions, but who also have achieved a level of virtuosity and presence so as to have universal appeal.

Robert Carl Metil, Professor, Department of Fine Arts, Chatham College, states:

Perhaps [the beneficiary's] most outstanding and extraordinary achievement on a national level was her performance for a large audience of general folk music enthusiasts at the prestigious Philadelphia Folk Festival last summer... The Philadelphia Folk Festival is one of the premier venues for folk music performance in the United States, with a long history.

The beneficiary's selection to perform at prominent folkloric music festivals minimally satisfies this criterion as comparable evidence under 8 C.F.R. 204.5(h)(4).

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

On appeal, counsel states that the beneficiary has played a leading role for Harmonia, Sarisan, and the Alexander Duchnovic Theater. In order to establish that the beneficiary performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment.

Walter Mahovlich, Director/Manager for Harmonia, states:

Harmonia was founded in Cleveland, Ohio in 1990 as a musical ensemble performing folk and traditional music from Eastern Europe. From the start, we intended to broadly represent Eastern Europe and not focus on a single ethnic group's music. During the period 1990 to 1997, Harmonia functioned primarily as a regional and local band playing in Ohio and its surrounding area... During the period 1997/98 we realized that our music had broader appeal and the decision was made to pursue national touring with this group. The group was expanded from four musicians to six... In 1999 in a juried process Harmonia was recognized as the top folk group from Ohio and was recognized by the Global Sounds/Heartland Beat touring and training project sponsored by Arts Midwest of Minneapolis and funded by the National Endowment for the Arts. This in turn led to further success and exposure as well as national recognition and national touring.

After performing on the main stage at the National Folk Alliance in February 2000, we received great praise, but were urged by several record companies and presenters to include more vocals in our stage shows. We already realized what the ensemble lacked was a professional quality vocalist and had, in fact, begun a search and tried some candidates.

We concur with the director's observation that "all members [of Harmonia] might arguably claim a leading or critical role" within the small musical group. The director further stated: "...the beneficiary's role appears limited by the fact that she only joined the group in 2000. The petitioning group was organized in 1990 and most of their subsequent progress since then was achieved before the beneficiary joined them in 2000." According to the letter from Walter Mahovlich, Harmonia was already performing at venues throughout the United States prior to employing the beneficiary. While Harmonia may indeed have been recognized as the top folk group from Ohio, the petitioner has not provided sufficient evidence establishing its national reputation in the United States as a distinguished folkloric music group. In a second letter provided on appeal, Walter Mahovlich states:

Since [the beneficiary] began singing with Harmonia in February 2000, the group has been signed by an agent; was offered a recording contract with a well-respected national record company in folk music; has been able to showcase at two of the most important national-arts booking conferences and has performed in fifteen states...

Simply being signed by an agent, offered a recording contract, and performing in several states does not establish that Harmonia has a distinguished reputation when compared to other professional folkloric music groups. It should be noted that the petitioner has provided no direct

evidence showing that the beneficiary or Harmonia have been offered a major-label recording contract. The petitioner has failed to show that Harmonia is among the best-known folkloric music groups in the United States, that their recordings outsell other successful groups, and that their act alone regularly draws large audiences. For example, while Harmonia has performed at national folk festivals among twenty or so other folkloric music performers, there is no direct evidence linking festival attendance to Harmonia or indicating that Harmonia was the main draw. Being the featured act at a \$17 per ticket all-you-can-eat buffet at the Polish Highlander Hall in Chicago on October 29, 2000, does not necessarily equate to having a distinguished reputation in folkloric music.

Counsel for the petitioner argues that the beneficiary's role with Sarisan, a folk ensemble in Slovakia, satisfies this criterion. According to literature provided by the petitioner from Sarisan's web site:

Sarisan is an artistic body of the Center for Performing Arts in Presov and a first-rate folk art representative of the Saris region and its metropolis of Presov. More than sixty young people perform, dance and sing in the ensemble. Mostly the students of secondary schools and universities give annually over seventy performances all around Slovakia as well as in foreign countries.

It has not been shown how a local organization consisting mostly of "students," rather than professional folk singers, qualifies as an organization with a distinguished reputation.

The petitioner submits a letter from Ladislav Kiselak, Artistic Director of Sarisan, simply stating: "As a soloist she was a vocal teacher with the performing ensemble from 1993 to 1995."

The petitioner also submits a letter from [REDACTED], an official of the Alexander Duchnovic Theater, stating that the beneficiary "worked in [the] organization as a soloist singer of The Professional Ensemble of Dance and Song," an organization that has existed since 1956 and gives approximately 100 performances per year.

The two brief letters from [REDACTED] and [REDACTED] offer little information specifying the beneficiary's leading or critical role at their respective organizations. The statute, however, calls for "extensive documentation," a demand reflected in the regulatory criteria, which call for a variety of types of evidence. The petitioner cannot demonstrate the beneficiary's eligibility under this criterion by submitting witness letters that offer only brief, limited detail regarding the nature of the beneficiary's role. A review of the documentation provided reveals no evidence to establish that the beneficiary has ever supervised or overseen other individuals within the Alexander Duchnovic Theater. Further, the record does not indicate that the beneficiary has consistently exercised substantial control over creative or business decisions executed on behalf of the Alexander Duchnovic Theater or Sarisan. The record, therefore, fails to demonstrate that the beneficiary has performed a leading or critical role within her organizations or that her role has attracted sustained national attention. Furthermore, the petitioner has not shown that the beneficiary's organizations have a distinguished reputation when compared to the numerous

other successful musical groups throughout the United States or Slovakia. In sum, the petitioner has not submitted sufficient evidence to satisfy this criterion.

Evidence of commercial successes 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 beneficiary, counsel initially offered no supporting arguments related to the beneficiary's eligibility under this criterion. On appeal, counsel cites a newly submitted letter from Alexander Papp, Manager of Slovak National Radio. Alexander Papp states:

From 1987 through 1993, we invited [the beneficiary] to sing the finest in folk art repertoire for a series of national live broadcasts which were originally heard in the Czech Republic, Poland, Hungary, Romania and the Ukraine. The song archive recordings continue to receive repeat performances in those same countries as part of the national treasury of native songs.

As a nationally renowned singer, [the beneficiary] was a guest recording artist with various popular folk orchestras, festivals and folk art ensembles who published numerous albums, cassettes and CD recordings. These recordings receive national broadcast on Bratislava, Presov and Kosice radio stations, and on smaller radio stations throughout the Slovak National Radio system. Her songs are heard several times a week across the Slovak Republic.

* * *

From 1986 through 1993, [the beneficiary] hosted a radio program titled "For You – For the Youth." This was a weekly program, which ran every Saturday morning. It was a program which featured Carpatho-Rusyn songs enjoyable to youth. It was also a talk show with discussions of current events, daily life, and traditions.

Simply showing that one has been broadcast on the radio does not constitute commercial success. The plain wording of the regulation requires the petitioner to submit evidence of the beneficiary's commercial success in the form of "sales" of compact disks, cassettes, videos, or concert tickets.

The petitioner offers no evidence that "For You – For the Youth" was highly rated when compared to other radio programs and no specific information regarding the number of national or international radio listeners. Other than testimonials from the petitioner's witnesses, the petitioner provides no contemporaneous documentary evidence showing that the beneficiary's recordings and radio broadcasts from the 1980s through the 1990s resulted in her national acclaim in any country. Nor has the petitioner shown how the manager of Slovak National Radio is qualified to speak regarding radio broadcasts in the Czech Republic, Poland, Hungary, Romania and the Ukraine. We also note the absence from the record of national or international media

coverage about the beneficiary's radio program or musical recordings. Being broadcast on a Carpatho-Rusyn radio station that serves only a small ethnic minority of a national populace does not demonstrate national acclaim. While the beneficiary's radio program and recordings may indeed have been broadcast beyond the boundaries of Slovakia, there is no corroborating documentary evidence to support Alexander Papp's contention that the beneficiary is nationally recognized as a folk singer throughout Slovakia, the Czech Republic, Poland, Hungary, Romania and the Ukraine. Section 203(b)(1)(A)(i) of the Act demands 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 ample unsolicited materials reflecting that acclaim.

The petitioner has provided evidence of several of the beneficiary's compact disk recordings, many of which were featured in compilations with other vocalists. The mere fact that the beneficiary has issued recordings of her work does not demonstrate that such recordings are commercially successful. The petitioner offers no evidence that the beneficiary's compact disks have enjoyed a high sales volume. Furthermore, we note that the petitioner has provided no evidence showing that the beneficiary has released any major-label compact disk recordings in the United States from 1995 through the time of the petition's filing.

The petitioner submits documentation (such as programs and photographs) of several of the beneficiary's performances. While this evidence shows that the performances took place, it does not establish commercial success. It cannot suffice for the petitioner simply to demonstrate that the beneficiary has performed before audiences; such performances are inherent to the art of folk music, and we cannot conclude that the majority of folkloric musical performers have not performed in front of audiences. To satisfy this criterion, the petitioner must establish that the beneficiary's performances have consistently drawn larger audiences and/or higher box office grosses than most others in her field, at a national or international (rather than local or regional) level. The petitioner offers no evidence regarding the commercial success of the beneficiary's musical performances in the form of documented ticket sales directly attributable to the beneficiary. In sum, the petitioner offers no evidence to demonstrate that the beneficiary has been commercially more successful than the vast majority of other professional folk music singers.

Beyond the above criteria, the petitioner submits several witness letters, many of which have already been addressed. Margaret Loomis, Administrative Director for the North American Folk Music and Dance Alliance, describes the beneficiary as "a wonderfully talented and competent singer."

T. Temple Tuttle, Professor, Music Department, Cleveland State University, states the following:

I have interviewed the beneficiary, and have auditioned both audio and video recordings of her musical performances. We have found her to be a very talented individual, with two



unique attributes which make her preferable to other applicants: her ability to sing in several East European languages, and her ability to share her culture with our students.

Richard March, Folk and Community Arts Director, Wisconsin Arts Board, states:

Harmonia also is perhaps the ensemble that has benefited most from the Global Sounds/Heartland Beat touring and training project sponsored by Arts Midwest of Minneapolis and funded by the National Endowment for the Arts. I have been one of the organizers of this project.

Through this project, seven Midwestern state arts agencies are undertaking substantial efforts to enhance the careers of the most outstanding performers of traditional music in their states. In a juried process, Harmonia was selected to be the top ensemble representing Ohio.

* * *

Harmonia enjoys a growing national profile in the concert and touring arts world. In recent months they have performed in ten states...

* * *

The prospects for [the beneficiary's] performing arts career as a member of Harmonia are bright. She has the opportunity to make a truly significant contribution to cultural life in the United States.

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. The letters from the above individuals do not directly establish that the beneficiary has, in the United States, earned significant national acclaim. Some of the letters do little more than describe the other evidence in the record. Witnesses assert that the beneficiary is a talented folk music performer, but letters alone cannot establish national recognition. The statute calls for "extensive documentation," a demand reflected in the regulatory criteria, which call for a variety of types of evidence. If the petitioner fails to submit direct evidence of the beneficiary's sustained acclaim, the petitioner cannot overcome this deficiency by demonstrating that witnesses whom the beneficiary has selected consider her to be famous.

For the reasons discussed above, the record is ambiguous regarding the beneficiary's acclaim throughout her native Slovakia; her notoriety appears mostly limited to a small ethnic segment of the population. Furthermore, the record contains no direct evidence that the beneficiary has sustained whatever acclaim she earned in Slovakia since her 1995 arrival in the United States. Finally, we reject the contention that the beneficiary, through receiving a job offer from the petitioner of \$15,000 per year to perform, has climbed to the very top among the nation's folk music artists.



The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence which the petitioner may submit, but it does not follow that every performer who has appeared on stage, or who has been briefly mentioned in a local newspaper article, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that 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.

Review of the record, however, does not establish that the beneficiary has distinguished herself as a folkloric music vocalist 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 beneficiary shows talent in her field, but is not persuasive that the beneficiary's achievements have set her significantly above almost all others in her 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.