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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-01-181-54264 Office: Vermont Service Center

Date: 17 SEP 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: SELF-REPRESENTED

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 the *sustained* national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that she has been unable to obtain employment with a renowned opera troupe in the United States because of her immigration status.

The petitioner entered the United States in June 1998 with a tourist visa that expired in December of that year. She has not established that she ever obtained any nonimmigrant visa after that time. She did not file the instant petition until May 21, 2001, nearly three years after entering the United States. We cannot consider the petitioner's decision to remain in the United States without legal status a mitigating factor in her inability to sustain her acclaim. There are nonimmigrant visas available to artists performing in the United States. Alternatively, the petitioner could have filed an immigrant petition earlier. It remains, the regulations require that a petitioner demonstrate sustained acclaim at the time of filing the petition. Thus, the petitioner in this case must demonstrate that she enjoyed sustained national acclaim as of May 21, 2001, when she filed her petition. At that time, she had been living and performing in the United States for nearly three years. As such, she must demonstrate that she attained sustained national acclaim during that time.

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

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(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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an opera singer. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, she claims, meets "the majority of ten evidence requirement," but fails to assert which criteria those are. Nevertheless, the evidence submitted appears to relate to 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 submitted a certificate from the Presidium of the People's Council of the People's Socialist Republic of Albania conferring upon her the medal of honor "Naim Frasheri" Class III on September 21, 1985. The award is based on her "high level interpretation of the operistik production by Albanian Composer." One of the petitioner's references, Hermira Gjoni, asserts that the Naim Frasheri is the most prestigious award in Albania. The petitioner also submitted a document with her name at the top entitled "Artistic Experience," which also contains two photos. The source of this document, whether it is a translation of a newspaper article or her personal statement of her experience, is unclear. Thus, this document has limited evidentiary value. The document indicates that the petitioner was awarded first prize at the 1982 Lyric Singers' National Competition.

The petitioner submitted little documentary evidence regarding the significance of the Naim Frasheri other than the testimony of her references. The petitioner relies on the testimony of her references as evidence of her receipt of other awards. At best, this evidence, considered with the evidence discussed below, reflects that the petitioner enjoyed national acclaim in Albania in the 1980's. Thus, the petitioner must demonstrate that she sustained that acclaim up until the date of filing.

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.

The petitioner submitted a letter from the Albanian American Women's Organization welcoming her to membership. The petitioner has not provided the membership requirements of this

organization and it does not appear to be an organization for opera singers. Limoz Dizdari, Chairman of the Association of Writers and Artists in Tirana, Albania indicates that the petitioner is a member of that association. In a subsequent letter, Mr. Dizdari asserts:

The membership of our league is regulated with strict entry requirement if its members to have a uni2que [sic] talent or advanced education in the field of arts and culture. The membership is only conferred to those individuals who are finally approved by the Board members.

Advanced education is not an outstanding achievement. While the petitioner may be "one of the most distinguished members" of the association, the record does not reflect that the association requires outstanding achievements of all its members. In light of the above, the petitioner has not established that she meets 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.

The petitioner submitted articles published in *Drita* in the 1980s. The petitioner included partial translations suggesting most of the articles were about events at which the petitioner performed as opposed to articles specifically about the petitioner. Only one article appears to focus primarily on the petitioner. *Drita* appears to be a weekly publication by the Writers and Artists League of Albania. The petitioner has not established the circulation of this publication. As such, she has not established that it constitutes major media. Moreover, news coverage 15 years prior to the date of filing is not evidence of sustained acclaim.

The more recent media coverage submitted consisted of two articles in *Illyria*, an Albanian-American newspaper. One article covers an Albanian celebration in which the petitioner participated and the other is an interview with the petitioner. A newspaper published in a language the majority of the population in that country cannot comprehend cannot be considered major media. Thus, the evidence submitted for this criterion does not meet the plain language of the regulation in that the petitioner has not established that she has received the attention of major media in Albania or in the United States during her three years in this country.

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 document entitled "Artistic Experience," discussed above, indicates that the petitioner was the chair of the Commission for the valuation of the students at the Albanian Academy of Fine Arts. Limoz Dizdari, Chairman of the Association of Writers and Artists in Tirana, Albania, indicated that the petitioner "participated in several juries for admission of the new artists in the 'Institute of Arts' or in numerous musical contests." Nina Mula, a former colleague at the High Academy of Arts in Albania indicates, "we have been also members in different commissions on the competitions for the acceptance of new students in the Academy." Lindita Lole confirms that the

petitioner was on the jury when Ms. Lole auditioned for admittance to the Academy of Fine Arts in Albania and when she won second place in the national competition for opera singers. Mr. Dizdari asserts that the petitioner was invited for several radio and television appearances as a critic. None of the references indicate when the petitioner served on juries in Albania. The petitioner's resume suggests that she was a voice instructor for the Academy of Fine Arts up until 1998. The evidence for this criterion is the strongest evidence that the petitioner sustained any acclaim past the 1980's when she won awards. Nevertheless, the record contains no evidence that the petitioner judged the work of others after 1998.

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

The petitioner submitted numerous reference letters from those in the field of opera in Albania and the United States as well as others with little knowledge of opera. Other than the letters discussed under the other criteria, the letters mostly provide praise of the petitioner's voice. The ten regulatory criteria at 8 C.F.R. 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

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

Tish Daia, a professor in Albania, indicates that he wrote an opera specifically for the petitioner, "Mother's Advice" in which the petitioner performed several times, including in a televised performance. The record includes a second, unsigned copy of the translation of this letter that includes a photograph identified as the petitioner playing the lead role in "Mrika" with the Theatre of Opera and Ballet in Albania. The reference letters suggest that the petitioner performed in leading opera roles for distinguished opera companies in Albania. The reference letters do not indicate, however, that the petitioner performed any leading roles after the 1980's. While she performed in Greece during the early 1990's the record does not establish whether she performed in a leading role for an organization with a distinguished reputation.

The document entitled "Artistic Experience" indicates that the petitioner performed the leading role of Carmen in the opera "Carmen" with the Florida Lyric Opera. A program for "Carmen" in the record reveals that the performance was at a local church. The petitioner also performed songs from "Carmen" at an opera highlights show at the local church. The petitioner has not demonstrated that the Florida Lyric Opera has a distinguished reputation nationally. It appears to operate out of a local church.

In light of the above, the petitioner has not established that she performed in a leading role for a distinguished organization after the 1980's. The letters from two members of the Metropolitan

Opera in New York assuring that the petitioner will be able to obtain such roles once she has legal status in the United States are insufficient.

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

Mr. Dizdari asserts that the petitioner "has been receiving almost twice the salary paid to other artists in her field." Mr. Dizdari's assertion is unsupported by evidence of the petitioner's salary and evidence of the range of salaries for opera singers.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has recently distinguished herself as an opera singer to such an extent that she may be said to have achieved *sustained* national or international acclaim. 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.