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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.
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Washington, D.C. 20536

[redacted]

File: EAC 01 041 50283 Office: Vermont Service Center Date: 17 SEP 2002

IN RE: Petitioner:
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

[redacted]

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.

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

Counsel states that the petitioner "is well known internationally as an expert in Bulgarian folk music, specifically as a player of the 'kaval.'"

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, 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.

S. Moutafchiev, chief art manager of the Professional Folk Dance and Music Ensemble Trakia, states that the petitioner is responsible for Trakia's having won first prize at folk music festivals in 1983 and 1985. The record contains no documentation from the awarding entities themselves to confirm the awards, the petitioner's role, the significance of the awards or other details. A Trakia official's claim that the group won these awards is not documentation thereof.

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.

Atanas Stoev, president of the Folk Society – Varna, states that the petitioner "was one of the initiators, the founders, and a member of the Board of Managers" of the society. Mr. Stoev does not specify the requirements for admission of new members. Also, the name of the society includes the name of the Bulgarian city of Varna, suggesting that the society is local rather than national or international in scope.

Dragomir Nenov, president of the Union of Bulgarian Musicians and Dancers, states that the petitioner "has been a regular member of the Association of Folk Orchestra Conductors since 1988." Mr. Nenov does not indicate that one must have outstanding achievements to become a member; rather, the organization appears to be a trade union or guild.

H. Haralanbiev, president of the Cooperative Union – Varna, states:

> [The petitioner] started working with the Folk Dance and Music Ensemble at the Palace of Culture – Varna immediately after graduating from the Academy of Music in Plovdiv. . . .
>
> He took part in the administration of the ensemble first as a member and later as president of the Council of the Artists, as well as member of the Board of Managers at the Palace of Culture.

It is not clear how the above constitutes membership in an association, rather than employment. Employment, even in a leadership capacity, is not membership in an association.

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.

Tania Konstantinova, who identifies herself as "the Executive Manager of the International Folk Festival 'Dobroudja Dances and Sings'" and a journalist with Bulgarian National Radio – Radio

Varna, states that the petitioner "has often been included in the board of adjudicators at folk festivals, competitions and fairs."

H. Haralanbiev of the Cooperative Union – Varna states that the petitioner was "a member of the adjudicator's body" and "has many times assessed the possibilities and the skills of a variety of folk orchestras, singers, dance ensembles at revues and at festivals, organized by the Cooperative Union – Varna and the central Cooperative Union – Sofia."

The record contains no documentation from the organizers of the unnamed festivals to establish the extent of the petitioner's judging work, or to demonstrate that the petitioner acted as a judge at a national rather than local or regional level. The vague and general assertion that the petitioner acted as a judge at unidentified events is not evidence of the alien's participation as a judge of the work of others.

A letter from M. Marinov, president of Sunrise-Marinov House of Music, contains somewhat more specific information, referring to "folk competitions at House of Music 'Sunrise-Marinov,' in which [the petitioner] has taken part as president of the adjudicators." Even then, this letter offers no specifics about the competitions themselves.

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

M. Marinov states that the petitioner led a folk ensemble on two cassette recordings issued by Sunrise-Marinov in 1998 and 1999. The 1999 cassette is a compilation of various groups; the petitioner's group plays on two tracks. The petitioner submits copies of the cover art from these recordings. Recorded music is not inherently an original artistic contribution of major significance. The record contains nothing to show that the recordings that feature the petitioner are more important or significant than other recordings of Bulgarian folk music. Also, the record contains no documentary evidence to establish the extent to which these cassettes have been distributed, or to show that Sunrise-Marinov is a major recording company.

Counsel cites another copy of H. Haralambiev's letter, with the following passage highlighted:

> His creative experience at the ensemble was related to many records in the National Radio Broadcasting and the National TV, tours in France, Italy, Germany, participation in regional and republican reviews of the Folk Dances and Music Ensemble, as well as many concerts, performed in a variety of villages and towns in the country.

As with so many other claims in the record, the claims in the above passage are vague, general, and unsupported by direct evidence from primary sources. Not every television appearance or foreign tour qualifies as an original contribution of major significance. General assertions to the effect that the petitioner is a talented, prolific, and dedicated musician do not establish that the petitioner is among the most highly acclaimed, best-known, or most influential musicians nationally or internationally.

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

Counsel again highlights a portion of H. Haralambiev's letter, indicating that the petitioner's ensemble has appeared on radio, television, and in concert. It is unacceptably broad to declare that every public performance by an actor or musician represents a qualifying "display of the alien's work." This criterion appears more suitable for visual artists such as painters and sculptors, whose works can be shown in museum exhibitions. For performing artists, more important than the mere presence of an audience is the size of that audience, for which there exists a separate criterion.[1]

Among the few pieces of actual documentary evidence in the record (as opposed to witness letters) is material pertaining to December 2000 performances by the Ivan Dimitrov Dance Ensemble, with music by the petitioner's orchestra, held at two sites in Washington, D.C.: the World Bank, and the Millennium Stage of the John F. Kennedy Center for the Performing Arts. Both of these events were billed as "free performances" with "no tickets required."

The record contains no evidence regarding the World Bank's status as a performance venue. The dance performance was held in conjunction with an art exhibit. A flier from the Kennedy Center states "[t]he Millennium Stage was created . . . to make the performing arts accessible to everyone in fulfillment of the Kennedy Center's mission to its community and the nation." There is no indication that the performers involved with the free Millennium Stage performances (in the lobby of the Kennedy Center) are of comparable caliber or acclaim to the acts presenting ticketed performances in the theater proper that is adjacent to the lobby. Even then, the events are billed as performances by the Ivan Dimitrov Dance Ensemble; the petitioner's group provided instrumental support rather than being the featured attraction.

The petitioner submits several more letters that counsel has not coupled with specific evidentiary criteria. For example, Professor Timothy Rice, chair of the Department of Ethnomusicology at the University of California, Los Angeles, states:

> [The petitioner] is a Bulgarian folk musician whose musicality, training, and work experience in Bulgaria place him in the top rank of such musicians. In the United States he has few if any peers in this field.
>
> I can comment with some authority on [the petitioner's] position and reputation in the field of Bulgarian folk music because this has been my academic specialty for almost thirty years. . . .
>
> [The petitioner] is in my opinion an outstanding representative of the Bulgarian folk tradition as a player of the traditional instrument, *kaval*. Bulgarian folk music in the late 20th century is not some dusty, village tradition of no artistic importance . . . [but

[1] That criterion is "[e]vidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." The petitioner has participated in concerts and recordings, and yet counsel does not claim that the petitioner has satisfied this criterion, the only one that singles out the performing arts. Omission of this criterion places the burden on the petitioner to demonstrate that he has become nationally known as a performing artist without being among the most popular recording artists or concert attractions.

> rather] a nearly classical tradition of almost unimaginable virtuosity and artistry, a brilliance recognized by the international "star" status of Bulgarian folk choirs.

Prof. Rice does not comment directly on the petitioner's reputation in Bulgaria, stating only that the petitioner has few peers in the United States. Almost none of the evidence of record concerns the petitioner's acclaim or reputation in the United States. To establish that the petitioner has earned national acclaim in the U.S., he must establish truly national acclaim, rather than recognition within Bulgarian enclaves and witnesses whom the petitioner has selected. In placing the petitioner at the top of the field, Prof. Rice relies on the petitioner's "musicality, training and work experience" rather than on acclaim that the petitioner has earned in his field; in other words, the assessment appears to be a subjective opinion of the petitioner's abilities as a kaval player. Prof. Rice's expertise regarding Bulgarian folk music is beyond dispute, but while Prof. Rice has written extensively about that art form, he does not indicate that he has written anything about the petitioner, or that the petitioner had come specifically to his attention during Prof. Rice's research visits to Bulgaria.

Other witnesses offer general assertions of the type discussed above, such as references to unidentified "medals and awards," and praise for the petitioner's ability not as a performer but as a teacher of his instrument and of Bulgarian folk music in general.

The director stated "[t]he petitioner has submitted generalized letters of recommendation asserting the beneficiary's given abilities and achievements in his field, however, no corroborative primary evidence has been presented which indicates that the beneficiary has risen to the very top of his field of endeavor." The director instructed the petitioner to submit first-hand evidence of sustained national acclaim. This requirement is in keeping with the statutory demand for "extensive documentation" of acclaim.

In response to the director's notice, the petitioner has submitted documentation of awards that the petitioner's students have received at children's musical competitions between 1996 and 2000. The initial submission did not focus on the petitioner's teaching of children, and the petitioner has not shown that Bulgaria's best-known music teachers work with children rather than teaching at the conservatory level.

Regarding the petitioner's own claimed awards, a certificate dated 1981 indicates that the petitioner won a gold medal at the 4th National Fair of Folk Arts at Koprivshtitsa. The record indicates that this festival takes place every four years but there is little additional information. The petitioner also submits a document recognizing his "active participation in the amateur art activities during 1977." This vague assertion does not appear to denote any particular prize or award.

The petitioner submits two published pieces, apparently intended to satisfy a previously unclaimed 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.*

Counsel describes the first item as a review of "the latest release of the Orchestra Pendari, for which [the petitioner] is the Artistic Director and kaval player." The translation, however, does not read like a review. It simply describes the group's repertoire and identifies group members and studio personnel. It appears to be a press release or advertisement rather than an "article" as such, a conclusion supported by the telephone numbers listed in the original Bulgarian-language piece but omitted from the purportedly complete translation. The piece indicates that all the members of Pendari are music teachers at Anton Strachimirov High School, which indicates that the members of the ensemble do not earn their living full-time as musicians.

Another published piece appears to be an actual article rather than a promotional piece issued by the petitioner's group. The article, however, does not include the date as required under 8 C.F.R. 204.5(h)(3)(iii). The article consists of an interview of the petitioner in his capacity as a music teacher at a primary school in Varna. The title of the publication appears to be *Folklore* but this is not clear from the format of the translation. The record contains no background documentation about *Folklore* to establish that the publication represents major media with national distribution. A single article with only local distribution cannot establish national acclaim. The translation does not identify the author, but the original article appears to identify the author as Radoslav Danov. The same name appears at the bottom of the above press release for Pendari's album.

Additional letters submitted in response to the director's notice indicate that Pendari has performed overseas at various folk festivals, and the authors of the letters offer subjective praise for the petitioner's skill as a musician and as a teacher. Counsel describes these submissions in a statement accompanying the submission, but counsel does not address the director's observation that the record contains little objective evidence of the petitioner's acclaim.

The director denied the petition, stating that the letters in the record do not establish sustained national or international acclaim. On appeal, counsel protests that the petitioner has indeed submitted "testimonials from U.S. and Bulgarian experts which attest to [the petitioner's] extraordinary ability." Counsel discusses the credentials of some of these experts, such as Prof. Rice.

The director, however, did not find that the record lacked letters from experts. Rather, the record stated that the letters do not "verify [the petitioner's] international or national recognition." The director had already advised the petitioner that the record lacked "corroborative primary evidence." Counsel has since supplemented the record with an additional submission, which consists of still more witness letters. Given that the petitioner can hardly be expected to submit letters unfavorable to his petition, the petitioner's witness letters cannot form an objective foundation of a claim of extraordinary ability, regardless of the quantity of letters submitted. We cannot ignore, for all the assertions that the petitioner is a "respected" musician and teacher, the lack of evidence that the petitioner sells a significant number of recordings or concert tickets, and the almost total lack of evidence of media attention. In the music industry, driven largely by record and ticket sales and media promotion, the lack of such evidence is not trivial.

The statute, as noted above, calls for "extensive documentation" of sustained national or international acclaim. The regulations at 8 C.F.R. 204.5(h)(3) implement this statutory language by defining a broad range of evidentiary criteria. The petitioner claims to have satisfied several of

these criteria, but the record contains little or no documentary evidence pertaining to those criteria. For instance, witnesses have asserted that the petitioner won certain prizes in 1983 and 1985, but the record contains no documentation from the awarding entities. If such evidence does not exist, then it is far from clear how the witnesses have direct knowledge of the awards. The petitioner has made several claims for which primary documentary evidence ought to exist, but when the director noted this critical omission, the petitioner responded for the most part with more witness letters. The documentary evidence that the petitioner submitted in response to the director's request for further evidence mostly supports new claims not included in the initial filing. The documentary evidence mostly concerns the petitioner's work as a music teacher.

We note the success of the petitioner's students in competitions, but the petitioner did not emphasize his teaching work until after the director asked for primary documentary evidence. Initially, counsel had indicated that the petitioner "is well known . . . as a player of the 'kaval.'" Counsel placed considerably less emphasis on the petitioner's teaching work, and even then did not indicate that the petitioner teaches at the primary/high school level rather than at the conservatory or university level. The subsequent attempt to shift the emphasis to the petitioner's teaching work appears to represent a material change to the petitioner's initial claim. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998).

The petitioner has clearly had no difficulty locating witnesses who are genuinely impressed with his musical abilities. Some of these witnesses have expressed an interest in employing him in their own Bulgarian musical ensembles. Nevertheless, we cannot find that the petitioner has submitted sufficient documentary evidence to satisfy at least three of the evidentiary criteria set forth at 8 C.F.R. 204.5(h)(3). The petitioner has therefore failed to meet the regulatory standard for sustained national or international acclaim. The petitioner has also failed to meet the statutory standard because witness letters are not "extensive documentation," and this deficiency cannot be remedied by submitting more witness letters.

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 distinguished himself as a musician or music teacher 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 is not persuasive that the petitioner's achievements 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.