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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

[Redacted]

File: [Redacted] Office: Texas Service Center

Date: SEP 24 2002

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: 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, Texas 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 requests oral argument to explain the significance of the competitions at which he won awards. Oral argument is limited to cases in which cause is shown. A petitioner or his counsel must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. The petitioner has not adequately explained why he cannot demonstrate the significance of the competitions through documentation, such as media coverage of the competitions. Regardless, the lack of qualifying awards was not the sole basis for denial with which we concur. Therefore, the petitioner's request for oral argument is denied.

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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a concert pianist. 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.*

Initially, the petitioner submitted untranslated award certificates and a list of piano competitions with the 1997 International Piano Competition "Citta di Senigallia" in Italy and the 1996 Claude Kahn European competition in Paris highlighted. In response to the director's request for additional documentation, the petitioner asserted that he had won international competitions of major significance in Italy and France and resubmits the untranslated certificates. The petitioner also submitted a certificate "in recognition of participation" in the Hilton Head Island International Piano Competition and a letter offering the petitioner a Graduate Assistantship for the 1999-2000 academic year at the University of Southern California.

The director noted that the petitioner had not submitted translations of the award certificates or evidence of the significance of the competitions and concluded that the petitioner had not met this criterion.

On appeal, the petitioner submits the missing translations. These translations reveal that the petitioner won fourth prize at the XVIII International Meeting of Young Pianists in 1989 in Senigallia, Italy and first prize at the 1995 European Piano Contest, Claude Kahn, in Paris. The petitioner submitted several Internet press releases and biographies relating to other pianists referencing the Claude Kahn as a top honor and achievement.

The petitioner has still not submitted documentation regarding the significance of his awards. The competition in Senigallia appears to have been a youth competition. A competition where the most experienced in the field do not compete cannot be considered evidence of national acclaim as one of the few at the top of the field. Without documentation regarding the Claude Kahn, such as the jury members and the number and selection of the competitors, we cannot conclude that it is a nationally recognized award. While the petitioner requested oral argument to discuss this issue, the petitioner's personal attestations regarding this matter would not suffice. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Finally, the petitioner has not submitted evidence that the competition itself garners major media coverage or other evidence of the award's recognition.

The petitioner did submit a newspaper article about the Hilton Head competition. The article, however, appears to be in a local paper and is not evidence of the competition's national recognition.

A graduate assistantship, even where competitive and at a prestigious university, is not an award or prize, but a job offer. Moreover, it was contingent upon the petitioner's admission to the school of music. As such, it appears to be more of a training opportunity. We cannot conclude that every graduate student who is also a teaching assistant has national or international acclaim.

Even if we concluded that the petitioner had established that he meets this criterion by winning first prize at the Claude Khan competition, this is just one criterion. The petitioner must meet three. For the reasons discussed below, the petitioner has not established that he meets an additional two criteria.

*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 additional documentation, the petitioner claimed to have been admitted as a member of the Scriabin Music Society of America shortly after May 2001. A petitioner must establish eligibility at the time of filing. See *Matter of Katighak*, 14 I&N Dec. 45, 49 (Comm. 1971). Admissions to membership after the date of filing cannot be considered evidence of the petitioner's eligibility at the time of filing. Moreover, the letter from the society, while praising the petitioner, makes no mention of his membership in the society. Finally, the petitioner has not submitted evidence of the admission requirements for the society. As such, the petitioner has not established that the society requires outstanding achievements of their members.

*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 several programs for his performances. While printed, programs are not published material in major media. The petitioner submitted an article that appears to have been published in the *Carolina Morning News*. While the petitioner is identified in a photograph caption as the pianist playing the Bosendorfer "Imperial" piano obtained for the Hilton Head International Piano Competition, the article is about the upcoming competition and the piano, not the petitioner. Moreover, the article appears to have been published in a local newspaper. A single article in a local newspaper is not evidence of major media attention or national acclaim.

The petitioner also submitted a letter from Charles F. Koelsch, Host of Carolina Concerts on WMUU in Greenville, South Carolina, asserting that the petitioner's performances are broadcast statewide on the weekly Carolina Concerts on South Carolina Education Radio Network. A local

educational radio network is not major media; thus broadcast on this network cannot be considered evidence of national acclaim.

On appeal, the petitioner submits a letter from Maria Atanasov, senior producer of the Voice of America (VOA) Bulgarian Service, asserting that the petitioner was a guest of the VOA. The record contains no evidence regarding the popularity of VOA in Bulgaria or the nature of the program on which the petitioner was a guest.

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

As stated above, the petitioner submitted several programs for his performances. The programs reveal that the petitioner was either one of several pianists performing, performing solo at a church or public library, or an accompanist for a choir. The petitioner has not established that he played a leading or critical role in the joint recital or that the solo performances and choir accompaniment represent organizations or establishments with a distinguished reputation nationally.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

In response to the director's request for additional documentation, the petitioner submitted his compact disk, which he asserts was "released" in May 2001, after the petition was filed. First, the disk is not evidence of the petitioner's eligibility at the time of filing. See *Matter of Katighak, supra*. Moreover, while Nancy Hansman, Competition Director for Hilton Head International, asserts that the petitioner's compact disk "has been an overwhelming success," the petitioner has not provided supporting evidence of that assertion such as documentation of the exact sales numbers.

#### *Other Evidence*

The petitioner submitted several reference letters providing general praise of his talent. Insofar as the letters discuss the ten regulatory criteria, they have been discussed above. 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.

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 pianist to such an extent that he may be said to have achieved sustained national or international

acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a pianist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.