

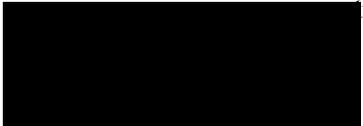


BA

U.S. Department of Justice  
Immigration and Naturalization Service

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



File:

Office: Vermont Service Center

Date: SEP 24 2002

IN RE: Petitioner:   
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



**PUBLIC COPY**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The Association Commissioner affirmed its decision on motion. The matter is now before the Associate Commissioner on a second motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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 submitted new witness letters. On January 10, 2001, the Administrative Appeals Office (AAO) on behalf of the Associate Commissioner, dismissed the appeal. The AAO concluded that the petitioner was a member of an association requiring outstanding achievements of its members. The AAO, however, noted the following deficiencies in the record:

1. The petitioner had not established the significance of his awards,
2. The petitioner had not established that he had been the subject of published material in major media prior to the date of filing,
3. The petitioner had not established that he had actually served as a judge at the International Music Festival for Children and Youth in St. Petersburg prior to the date of filing,
4. The petitioner had not provided objective evidence to support the assertions of his contributions to the field,
5. The petitioner had not provided evidence of the earnings of others in his field for comparison or his own remuneration prior to the date of filing.
6. The petitioner failed to provide evidence of the sales of his compact disk.
7. The petitioner had not demonstrated that he had sustained any alleged acclaim enjoyed in Armenia during his several years in the United States prior to filing the petition.

On his initial motion, the petitioner submitted a letter from the Composers and Musicologists Union of the Republic of Armenia asserting that "disorderly and unkempt treatment" during 1987 through 1995 "caused major losses at the National Radio and Television, as well as theatrical archives," including "posters, newspaper articles, publications, and other matter" relating to the petitioner. The petitioner also submitted a contract between himself and Trinity Church of Princeton for the composition of a Christmas carol. Counsel asserted that additional documentation would be available and submitted within 30 days.

On May 23, 2002, the AAO affirmed its initial decision. The AAO noted that there were no provisions for additional time to submit evidence on motion. Regarding the union letter, the AAO stated that it did not establish that the union "was the sole source of records for radio stations, television stations, newspapers, magazines and other major media throughout Armenia." The AAO

noted the lack of direct evidence from these media confirming the destruction of their records. The AAO reiterated that any acclaim in Armenia would need to have been sustained during the petitioner's several years in the United States in order for him to establish his eligibility. Regarding the contract with Trinity Church, the AAO noted that it was contingent on donations by the congregation and that the petitioner had not demonstrated how it compared with the salary of other composers.

In his current motion, the petitioner argues that he has submitted evidence from a U.S. radio station that plays his music and from a major orchestra that includes his music in their repertoire. The petitioner further asserts that the AAO "cavalierly dismisses the catastrophic turmoil experienced in Armenia between 1987 and 1995 when priceless archives and records were damaged or destroyed." The petitioner requests that the Service obtain a "State Department analysis" of the situation in Armenia during that time. The petitioner submits evidence that the Christmas carol he composed for his church was performed.

The record includes third party assertions that the petitioner's music has been "featured on major radio stations in the United States and have become part of the repertoire of several important orchestras." In its first decision, the AAO stated that the major radio stations and important orchestras were not identified and had not provided their own confirmation of this assertion. The record does contain an October 11, 1999 letter from Jill Pasternak, the producer of "Crossover" at Temple University Public Radio. She asserted that Crossover's interview with the petitioner would be aired October 16, 1999 and that "we are playing excerpts from your symphonic suite 'Moliere' and 'Children of Arbat.'" In its first decision, the AAO acknowledged this letter and noted that the interview was aired after the petition was filed. The AAO further noted that the record contained no evidence regarding whether this interview was aired nationally. The record still contains no evidence that Temple University Public Radio is a major radio station. In addition, the letter is not clear as to whether the petitioner's music would be aired during the interview, or is frequently aired.

We also acknowledge that the record includes letters from Jack Moore and Alexander Fiorillo, both of whom assert that they play the petitioner's music. Jack Moore is the Conductor and Music Director of the Independence Sinfonia of Philadelphia, the Principal Conductor of the Orchestra Society of Philadelphia, and the Music Director of the Ambler Symphony of Ambler, Pennsylvania. Mr. Moore does not indicate which of these orchestras includes the petitioner's music in its repertoire or provide evidence that whichever orchestra performs the petitioner's music has a national reputation. Mr. Fiorillo is a professor at Temple University. While he indicates that he performs the petitioner's compositions, he does not indicate that he performs with any nationally renowned orchestra.

In light of the above, the petitioner has not provided evidence from major radio stations or orchestras as claimed in his current motion.

Further, it is the petitioner's burden of proof to establish that documentation is unavailable. The Service need not obtain an opinion from the Department of State as to conditions in Armenia during a certain time period. In its second decision, the AAO noted the lack of evidence "from

Armenian major media institutions, governmental institutions or libraries confirming the non-existence or destruction of their records from 1987 to 1995.” As such, the petitioner was placed on notice of the type of evidence regarding the destruction of records that the Service would consider. The petitioner did not submit such evidence in support of his current motion. Moreover, in his current motion, the petitioner fails to address the AAO’s statement that even if the petitioner had demonstrated that Armenian records were destroyed, the petitioner must still meet the “extensive documentation” standard in the Act and demonstrate sustained acclaim during his years in the United States.

Evidence that the petitioner’s Christmas carol was performed at his local church on December 16, 2001, is not evidence of his national acclaim as of February 19, 1999, when the petition was filed. The petitioner has still failed to submit evidence of the range of remuneration for the top classical composers in the United States.

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 composer 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 composer, 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

**ORDER:** The Associate Commissioner’s decision of May 23, 2002 is affirmed. The petition is denied.