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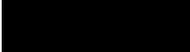
U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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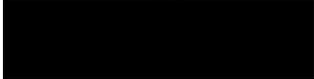


File:  Office: NEBRASKA SERVICE CENTER

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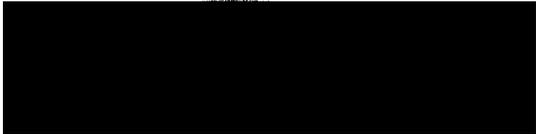
DEC 18 2003

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)

ON BEHALF OF PETITIONER:



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 Citizenship and Immigration Services (CIS) 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 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 Administrative Appeals Office 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

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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 pertinent regulations 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.

The petitioner is a Celtic musician who, at the time of filing, performed with a touring production of *Lord of the Dance*. Counsel quotes fiddle player [REDACTED] of Ireland's National Millennium Committee, who states "[o]f the thousands of people who play the Celtic violin in Ireland, less than 0.5% of these, the cream of the crop, reach the required level that is necessary to work as a professional performer." The petitioner seeks an employment-based visa and the appropriate field of comparison is among others actually employed as musicians. To hold

otherwise is to stipulate that gainful employment as a musician is, by itself, *prima facie* evidence of extraordinary ability.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel states that the petitioner satisfies this criterion because she has won gold medals at several national musical competitions in Ireland: Fleadh Cheoil na hEireann (multiple years) and Slodagh. The petitioner submits background information about Fleadh Cheoil na hEireann, establishing its significance as a national musical competition. The record contains no evidence about Slodagh, either to establish its importance or to demonstrate that the petitioner won an award.

A fragment of an undated article from an unidentified newspaper indicates that Shamrock Ceili Band placed third in the "Ceili Bands - Over 18" category of an unidentified competition. The article does not identify the members of the band. Because this article contains no useful details, it has no value as evidence.

A copy of a brochure from "Fleadh Cheoil na hEireann '84" contains a section entitled "The Reigning Champions." One column, headed "15-18," lists "Shamrock C.B." among 31 individuals and groups. An adhesive note attached to the photocopy states "List of gold medal winners / [The petitioner] played with the band 'Shamrock Ceili Band' / 1st Place." This note is not evidence that the "reigning champions" all won gold medals, or that the petitioner was a member of the band.

A similar handwritten adhesive note states that the petitioner received "two first place medals in: bodhran and drums / gold medalist" in 1985. The 1985 brochure includes the petitioner's first initial and surname twice in the "15-18" column of "The Reigning Champions" section. It does not identify the instruments played.

The evidence submitted is insufficient to establish that the petitioner won gold medals in Fleadh Cheoil na hEireann, and the record contains no evidence at all about the Slodagh competition.

The director noted that the documentation indicates that the petitioner's awards, from nearly two decades ago, were in the "15-18" category. This appears to be an age category; the petitioner was 17 and 18 years old in 1984 and 1985. The director observed that this award does not compare the petitioner to established experts and professional musicians, but rather limited comparison to other musicians who were, at the time, between 15 and 18 years of age.

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

Counsel cites the petitioner's "leading role as Fiddle player in not one, but two of history's most popular musicals – 'Riverdance' and 'Lord of the Dance.'" The petitioner submits several witness letters pertaining to this work. [REDACTED] senior executive producer of *Riverdance – The Show*, describes the petitioner's role for that production:

In 1997, Riverdance – The Show toured Australia. At this time, the Production’s fiddle player [REDACTED] submitted [the petitioner’s] name as her potential deputy, to replace her during periods of leave or illness. Given our prior knowledge of her ability we were in no doubt that [the petitioner] was of the required standard for this feature role.

Consequently, [the petitioner] first performed with the show in May 1997 and continued to perform in the role until the completion of the Australian tour in the summer of 1997. [The petitioner] subsequently became unavailable to Riverdance – The Show as she was engaged by a similar international production, Lord of the Dance. Were it not for this fact, it is highly likely that Riverdance – The Show would have called upon [the petitioner] to provide her services in [the] USA after her initial engagement in 1997.

It is not immediately clear that to act as a stand-in for the lead violinist constitutes a leading or critical role. There is no indication as to how many times the petitioner actually performed while retained as a “deputy.” The petitioner’s own contract indicates that a musician “shall only be entitled to appoint a Deputy for one performance per week or such reasonable number of additional performances as are agreed in writing with the company.” The contract also indicates that the musician, rather than the production company, selects the “deputy.”

Tour manager [REDACTED] states:

I first met [the petitioner] in 1997 when I was managing the Lord of the Dance Tour of the United States. [The petitioner] was brought into the show as a replacement for one of the original Fiddle players. [The petitioner] was chosen for her experience and unique ability as an Irish fiddle player.

I was personally involved in the choice of [the petitioner]; the quality of the show dictated that only a player of the highest class would be acceptable to both the Producers and the audience. [The petitioner] met these requirements and proved to be an outstanding choice. [The petitioner] went from appearing in the original troupe of Lord of the Dance to appearing in the United States touring troupe of which I was the Manager. For the three years that I was in charge of the troupe I found [the petitioner] to be an outstanding performer.

[REDACTED] who identifies himself as “the Touring Manager for [REDACTED] Lord of the Dance,” states that the petitioner “has been employed as a musician on ‘Lord of the Dance’ Troop 2 . . . for one of our subsidiary companies.” Clearly, there are at least two touring companies of *Lord of the Dance*, possibly more.

[REDACTED] a production manager for Clear Channel Entertainment Canada, states that the petitioner “was the lead fiddle player” for *Lord of the Dance*, an assertion never made by the tour

managers named above. Other materials in the record indicate that the production utilized only two live musicians in a short interlude, with most of the dancers' musical accompaniment being prerecorded.

The director requested additional evidence to show that the petitioner's role qualifies as leading or critical. The director noted one reviewer's comment that the petitioner was not even named in the program for a particular performance. In response, counsel states "the significance of her role is based on her selection by Lord of the Dance for this extremely prestigious and lucrative role." This argument seems to imply that the petitioner's role is leading or critical simply because she is employed by *Lord of the Dance*. We cannot accept the apparent implication that every role in *Lord of the Dance* is a leading or critical one. Counsel asserts that the petitioner's lack of program billing is "not indicative of recognition of talent," but counsel does not explain how the petitioner's acclaim can grow when audiences are unable even to learn her name. *Riverdance* and *Lord of the Dance* are, first and foremost, dance programs, featuring ensemble performances by a large number of dancers. The petitioner is an accompanist to these dancers. It is not unreasonable to inquire as to how an uncredited musician performs a leading or critical role for a dance program.

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.

Counsel asserts that the petitioner's "key musical role in Lord of the Dance and Riverdance has received critical acclaim by major media and critics around the world." Counsel cites excerpts from various reviews. The reviews are positive with regard to the petitioner's work, but the record does not show that the petitioner, as an individual, has been the subject of significant major media coverage in her own right, rather than simply being mentioned in passing as part of a routine review of a local performance. Some of these reviews do not identify the petitioner by name at all; they merely compliment "the violinists" or "female fiddlers." The petitioner does not establish that any of the newspapers carrying these reviews qualify as major media.

In response to a request for further evidence, the petitioner has submitted an article from the November 2002 edition of *The Irish-American News*. This article clearly focuses on the petitioner rather than on any production in which she has participated. The article describes the petitioner as an "international, traditional Irish music powerhouse," who is "at the forefront" of a family of "internationally known musicians."

The article appeared in the November 2002 edition, eight months after the March 2002 filing date and roughly two months after the director issued the request for further evidence. A petitioner must establish eligibility at the time of filing; subsequent developments cannot retroactively establish eligibility. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Beyond this case law, we cannot readily dismiss as coincidence the appearance of this article, deeming the petitioner an "internationally known musician," within weeks of the director's notification that the initial published materials failed to establish national or international recognition.

Furthermore, most of the advertisements in *The Irish-American News* are for businesses in Illinois, consistent with local rather than national circulation. The petitioner has not established that *The Irish-American News* constitutes major media rather than a local publication for the Irish population in the Chicago area.

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

Counsel states that the petitioner has "provided extraordinary cultural contributions based on her dedication to preserving and enriching traditional Irish music." Counsel cites two witness letters. Carol Spellman, archivist of the Folklore Program at the University of Oregon, states:

[The petitioner's] extensive knowledge and experience have been invaluable to me in my fieldwork and research as a Folklorist and educator.

I have interviewed [the petitioner] for my future publication and documentary on Irish women's role and contribution to the tradition. . . . Her goal was to provide information on past tradition and changes that are occurring in the 21st century. She participated in this educational project, which is slated to reach many Americans in the public school system via educational television programming.

The publication and documentary were still in preparation when Ms. [REDACTED] wrote this letter, meaning that it was too early to tell the significance of the petitioner's contribution. Furthermore, the publication and documentary, as a whole, would be primarily Ms. [REDACTED] contribution. Ms. [REDACTED] assertion that, as a gifted performer, the petitioner "acts as a musical ambassador" is too vague to carry significant weight. Every musician exposes the audience, to some extent, to the culture and traditions that produced the music being performed.

[REDACTED] of the Portland Ceili Society states that the petitioner's playing brings "an extraordinary vitality and energy to the music, combined with playing of the highest caliber." He asserts that the petitioner "is willing to play at monthly functions . . . attended by two or three hundred people, even though the amounts the Society is able to pay are small." Mr. [REDACTED] cites this as an example of the petitioner's generosity of spirit, but we note that many musicians who lack sustained acclaim perform under similar circumstances. Mr. [REDACTED] continues: "when the performances are over, [the petitioner] is the one that is dragging the local musicians up and the one who is still keen to keep playing when most everyone else is ready to turn out the lights and go home. That is how musicianship and culture are transmitted." Mr. [REDACTED] asserts that, beyond musical skill, "you should strongly consider the willingness of the artist to share her music and her knowledge widely and freely." The petitioner certainly provides a service to her fellow musicians in this way, but we cannot ignore the statutory and regulatory standard of sustained national and international acclaim. The petitioner has not shown how her willingness to play at small gatherings in this way has culminated in national or international recognition as one of the top artists in her field.

Furthermore, counsel has not explained how playing traditional Irish music and passing on a centuries-old folk art amounts to an original contribution on the petitioner's part. The record contains no claim or evidence that the petitioner composes original music or created an innovative playing style. We do not dispute the petitioner's talent, but playing a musical instrument very well is not automatically an original contribution of major significance.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. Some elements of the petitioner's response are addressed above, in the context of individual regulatory criteria. Also submitted in this response were further witness letters.

[REDACTED] a record producer and talent agent, states that he "was aware of [the petitioner's] reputation long before I was able to hear and see her in person." Mr. [REDACTED] contends that the petitioner "is without a doubt in my opinion the premier Celtic fiddler in the world today. I think the late John Hartford said it best: 'not only is she the best there is, she is most certainly the best there ever was.'" Musician and producer [REDACTED] who has recorded with the petitioner, states that the petitioner is "one of the best musicians I have worked with to date." Session musician [REDACTED] states "I don't think I've heard a better Irish fiddler than [the petitioner]. She represents the very top of her chosen field." [REDACTED] who has played with the petitioner "in Irish music sessions," deems the petitioner "one of the finest and unique purveyors of Irish music that I have ever seen." [REDACTED] a fellow member of the Riverdance orchestra," states that the petitioner "is a Celtic musician of extraordinary ability and will provide an immense cultural benefit to the United States." These letters represent the sincere opinions of the witnesses, but the fact that four musicians, selected by the petitioner, consider her to be highly skilled is not evidence that the petitioner is nationally or internationally acclaimed throughout her field. Most, if not all, of these witnesses have personally worked with the petitioner, and thus their statements do not demonstrate that the petitioner has earned a reputation that extends substantially beyond those who have worked with her.

Senator [REDACTED] director general of Comhaltas Ceoltóiri Éireann (described as an "Irish cultural movement"), states "[The petitioner] is recognised nationally and internationally as an outstanding Irish musician of 'master class.' . . . As a Senator of the Irish Parliament, I am particularly proud that [the petitioner] has excelled in internationally acclaimed shows." We acknowledge the senator's statements, but the statute requires "extensive documentation" of sustained acclaim. The regulations implement this requirement through various criteria that can be fulfilled through objective documentation. A witness' assertion that the petitioner enjoys international recognition cannot carry the same weight as this objective evidence. If the petitioner is indeed one of the top Irish musicians in the world, as claimed, the evidence supporting this claim would not be limited to witness letters, written specifically to support this petition.

The director denied the petition, stating that the petitioner had failed to establish sustained acclaim. On appeal, counsel repeats prior claims regarding the petitioner's awards, but submits no new evidence. There is no indication that the petitioner has won any awards since she

outgrew the 15-18 age category. Even if the petitioner had provided more persuasive evidence of a national award, the petitioner has not shown that she has sustained whatever level of acclaim she achieved as a teenager.

The only new exhibit submitted on appeal is a letter from [REDACTED] Messenger, dance director and associate choreographer with *Lord of the Dance*, who asserts that the petitioner is "incredibly special, like no one I had ever seen before. Not only was her presence on the stage magnanimous, but her fiddle playing is that of a virtuoso." The petitioner had already established that the production staff of *Lord of the Dance* considered the petitioner to be an excellent musician. The central point at issue is not the petitioner's competence, but rather her prominence in the field. The record primarily focuses on the overall reputation of *Lord of the Dance*, and the personal opinions of the petitioner's acquaintances and collaborators, neither of which address or establish sustained national or international acclaim.

Counsel states that the director failed to consider the petitioner's "important role in Lord of the Dance and Riverdance." Counsel offers related arguments in claiming an additional criterion on appeal:

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

Counsel states that the director "disregarded the fact that . . . Lord of the Dance and Riverdance . . . are clearly two of the most important Celtic musical showcases in the history of mankind." Not until the appeal did counsel claim that these shows represent artistic showcases, and therefore the director cannot reasonably be faulted for failing to consider evidence under a then-unclaimed criterion.

The performing arts are covered under a separate criterion which counsel never addresses. The "display" criterion pertains primarily to the visual arts. Furthermore, the petitioner was not the featured artist in either of these productions. The name most prominently associated with both of these productions is that of American choreographer [REDACTED]. The show is primarily a dance show, and as the published reviews demonstrate, the petitioner at times performed anonymously. The shows were clearly not promoted or presented as showcases of the petitioner's work. The reviews also indicate that *Lord of the Dance* had a storyline, performed by the various dancers, accompanied by taped music; the petitioner's performance of folk tunes appears to have been essentially an interval rather than a principal part of the show.

Counsel states that the petitioner has submitted "supporting testimonials from experts within the musical industry" and "from academics in the field of music." The "experts within the musical industry" are musicians who have performed with the petitioner. The two "academics in the field of music" are identified as [REDACTED] the petitioner's former acting instructor, who claims no expertise in music, and [REDACTED] the petitioner's former attorney. Counsel's observation that M [REDACTED] holds "a Bachelor of Arts degree in Music" does not make him an "academic

in the field of music.” All of these individuals have obvious ties to the petitioner, and none of them have been shown to be especially prominent in the field.

Counsel returns to the published reviews that mention the petitioner, and asserts that this “media attention” is “extraordinary in the overwhelmingly positive reviews [the petitioner] has received.” This observation fails to take into account the fact that the petitioner selected the reviews that were submitted. The fact that the petitioner chose only positive reviews to submit does not in any way establish that no negative reviews exist. Because many reviews did not identify her by name, these articles could not contribute to the petitioner’s acclaim. The reviews that do include her name do not refer to her as a musician who was already famous, prominent, or recognized in any way. The only article to refer to the petitioner in such terms was published in a local newspaper after the director noted that the petitioner’s published materials were insufficient.

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.

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 herself as a musician 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 is not persuasive that the petitioner’s achievements set her significantly above almost all others in her 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.