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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: Vermont Service Center Date: MAY 12 2003

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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 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.

On appeal, counsel notes that the petitioner is now the beneficiary of an approved nonimmigrant visa in a similar classification. We do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must decided on a case-by-case basis on the evidence of record. Moreover, 8 C.F.R. § 214.2(o)(3)(iv), relating to nonimmigrant aliens of extraordinary ability in the arts, provides for entirely different criteria than those for the immigrant classification discussed below. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as simply "distinction," which is further defined as follows:

> Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

Thus, the beneficiary could meet the nonimmigrant criteria and not the ones necessary for immigrant classification.

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 Bureau 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 a 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, she 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.

The petitioner submitted letters regarding artistic grants that she has received. Obviously the past achievements of the artist are a factor in grant proposals. The funding institution has to be assured that the artist is capable. Nevertheless, an artistic grant is principally designed to fund future work, and not to honor or recognize past achievement. As such, they cannot be considered prizes or awards for excellence in the field of endeavor.

Similarly, the petitioner received fellowships for study. The most experienced experts in the field do not compete for fellowships to further their skills. Thus, fellowships cannot be considered awards or prizes indicative that the recipient is one of the very few at the top of her field.

The petitioner also submitted a 1997 letter from Litchfield Performing Arts, Inc. in Connecticut advising the petitioner that she was a finalist for the Simone Belsky Music Award. The record does not include evidence of the award's significance or that the petitioner won this award.

In addition, the petitioner was awarded the American Scandinavian Society Cultural Award in 1995. The record does not include evidence regarding the significance of this award. We note however, that awards limited to an ethnic group within a country are not evidence that the receipts are at the top of their field in comparison with all others in the country regardless of ethnicity. Nor does it appear that the petitioner competed with all other Icelandic musicians residing in Iceland for this award.

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 receipt for her membership dues for the Society of Icelandic Performing Musicians. The petitioner submitted a letter from the European Piano Teachers' Association (EPTA) addressed to "Dear EPTA member." This letter does not mention the petitioner by name and is not evidence of her membership. Regardless, the director specifically requested additional evidence of the membership requirements of these organizations. The petitioner's response did not include the information requested. Unions or organizations that require only that a member work in her field, even a competitive field, and pay dues cannot serve to meet 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 bulk of the record appears to relate to this criterion. The petitioner submitted several previews and reviews of her concerts, often as a member of the Iceland Trio, printed in Reykjavik newspapers, local United States newspapers, and the newsletters of Canadian and U.S. Icelandic club newsletters. One of the concerts was at a New York reception for the President of Iceland sponsored by the Icelandic American Society of New York. The concert received media attention in the society's newsletter and in Iceland in the form of a letter to the editor. The petitioner did not submit evidence regarding the circulation of these publications. In addition, the petitioner submitted a radio review of an Iceland Trio concert at the Wisconsin Lutheran College's Schwan Concert Hall broadcast on Classical 98.3 WFMR in Milwaukee, the station that hosted the concert. There is no evidence that this review was broadcast nationally. While the reviews are favorable, it is not particularly exceptional for an artist to be reviewed in the local media where she is performing.

The petitioner submitted a review of her Mozart and Mendelssohn compact disc in *FanFare*. While including some positive comments, the reviewer concludes that the petitioner is a "charming performer, but that is not enough in a crowded field." The reviewer then recommends several other artists' renditions of Mozart and another artist's rendition of Mendelssohn over the petitioner's disc. Even if the reviewer had issued a more positive review, the petitioner has submitted no evidence regarding the significance of being reviewed in *FanFare*.

The petitioner did submit more positive reviews of her compact disc in the *New York Concert Review*, the *Reykjavik Daily Morgunbladid* and the *Reykjavik Evening DV*. Regardless, as with *FanFare*, the petitioner did not submit any evidence reflecting the significance of being selected for review in these publications. Moreover, the petitioner has not demonstrated that these publications have a national circulation.

The record does contain a few articles in Reykjavik newspapers expanding on the petitioner's accomplishments, including her concerts in New York and her receipt of grants. As stated above, however, the petitioner did not submit any evidence regarding the circulation of these papers. Thus, she has not established that they constitute major media in Iceland.

Finally, the petitioner submitted numerous promotional fliers and announcements of upcoming concerts in various newspapers' art guides. These items are not the result of journalistic reportage and cannot serve to meet this criterion.

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.

Counsel asserts that the petitioner meets this classification by teaching classes. Judging the work of one's own students is inherent to the position of teacher. It is not the type of review contemplated by the regulation as it is not indicative of national acclaim. In other words, we cannot conclude that every pianist who teaches has national acclaim.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner is the author of a chapter entitled, "Icelandic Piano Music, history and development," in *Icelandic Piano Music I*. The article builds upon her Master Thesis that, while not published, is also the basis for a second chapter in the same book by [redacted] In addition, the petitioner authored "The Influence of Music on the Brain," an article published in the Cultural Section of the *Morgunbladid* and "On the Value of Music and Music Education with Regard to Emotional and Intellectual Development," published in the *Forefront of Education*. The Icelandic National Association of Teachers Unions publishes the latter journal. In his request for additional evidence, the director requested evidence that these publications constitute major trade publications or other major media. The petitioner's response did not address this criterion and did not include any evidence regarding these publications. Thus, while the articles are notable because it is not inherent in the musical industry to publish scholarly articles, the petitioner has not demonstrated that her articles were published in major trade publications or other major media.

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

Counsel asserts that the petitioner meets this criterion through her recital as part of an "Icelandic Roots" conference in Canada which drew "leading Icelandic and Canadian scholars, philosophers, and poets" and a lecture at the First Festival of Icelandic Piano Music in Akureyi, Iceland. The record contains no evidence indicating that the conference or the festival are "organizations" or that they have a "distinguished reputation." Moreover, it is not clear that every performer at a conference or lecturer at a festival plays a leading or critical role for that conference or festival as a whole.

While not claimed by counsel, the record contains evidence more related to this criterion that bears discussion. The petitioner has been a member of the Iceland Trio and Nomos Duo and performed as a soloist with the Reykjavik Chamber Ensemble, the Iceland Symphony Orchestra, the Reykjavik Wind Quintet (long-time members of the Iceland Symphony Orchestra), the City University of London Chamber Ensemble, the Metropolitan Winds, and the Bloomingdale Chamber Orchestra. The record does not establish that performing as a guest soloist for an ensemble or orchestra is a leading or critical

role for that group. Specifically, the record contains no promotional materials for these soloist appearances that promote the petitioner's participation above the ensemble or orchestra. In addition, the petitioner has not established that these ensembles or orchestras have distinguished reputations.

Clearly the petitioner plays a leading and critical role for the Iceland Trio and Nomos Duo. The Iceland Trio has performed in many venues, including those hosted by radio stations, and Nomos Duo is the Ensemble in Residence at the Bloomingdale House of Music in New York. While these groups have attained some recognition, the record does not establish that they have a distinguished reputation nationally or internationally.

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

Initially, the petitioner submitted her personal statement anticipating that her income from her work in the field would be $10,000 in 2000. In response to the director's request for additional documentation, the petitioner submitted a letter from the Chairman of the Icelandic Music Information Center asserting that the petitioner's income is not inconsistent with being an artist of high stature. While this may be true, a petitioner cannot establish that she meets a criterion by providing evidence unrelated to whether or not she is one of the very few at the top of her field or has national or international acclaim.

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

The record contains reviews for the petitioner's compact disc of music by Mozart and Mendelssohn and evidence that the international label Naxos was, at the time of filing, preparing to release a Nomos Duo compact disc of Mendelssohn's complete work for piano and violin. The record contains mixed reviews of the petitioner's solo compact disc and several press releases printed in Icelandic media covering the release of the Nomos Duo compact disc. Counsel asserts that the petitioner's discs have been played on radio stations in New York, Connecticut, New Jersey, Pennsylvania, and Toronto.

In his request for additional documentation, the director noted that the record did not reflect that the petitioner's compact discs were or were expected to be a commercial success. In response, the petitioner submits evidence that another label, BIS, is preparing to release a compact disc by the petitioner and evidence regarding the commercial success of Naxos and BIS Records. The commercial success of the label is no guarantee that the petitioner's discs are themselves commercially successful. On appeal, the petitioner submits evidence that Naxos and BIS Records have released her compact discs internationally. The record contains little evidence to support counsel's assertion that the sales are impressive for a classical music compact disc. Regardless, these releases are not evidence of the petitioner's eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Finally, the petitioner submits several reference letters from Icelandic diplomats, her agent, her teachers, other musicians who have accompanied her, another member of the Iceland Trio, her

duet partner, and others in her field who are admirers. These references provide general praise, but do not address the ten criteria. 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 herself as a pianist 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 indicates that the petitioner shows talent as a pianist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.