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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: WAC-02-208-50317 Office: California Service Center Date: MAY 29 2003

IN RE: Petitioner: [redacted]
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:

[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 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, California 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 --
>
> (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 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 musician. 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.

The petitioner submitted an award letter from the Ministry of War in Iran dated April 19, 1950, honoring the petitioner with a Second Grade Art Medal as of April 4, 1950 for "sincere cooperation with the Army Radio Orchestra." The petitioner also submitted a photograph of himself wearing the medal. [redacted] President of Pars Video, Inc. in California, asserts that the medal is "equivalent to the Grammy Award given to prominent artists in the United States." [redacted] President of the Iranian Music Association in California, asserts that the medal is "the highest Art Medallion that an Iranian musician can get. In fact it is equivalent to the Grammy Award given to prominent artists in the United States of America." [redacted] a professor of Persian language and literature at the University of Washington, asserts that the petitioner has "won medals of the highest order in this field." [redacted] of the [redacted] Foundation in New York, asserts: "Due to his especial qualities as well as his contribution to the advancement of musics [sic] of his homeland, His Imperial Majesty, [t]he [K]ing of Iran Mohammad Reza Pahlvi (Shah), [g]ranted him second-grade Medallion of Art, superior in ranking in the hierarchy of Iran's artistic emblems that could be gained by [a] musician in their especial fields from the most eminent authority of the country."

The director concluded that the petitioner had not documented the significance of the award. On appeal, counsel asserts that the letters come from independent third parties. All of these letters are from individuals residing in the United States. None of them represent the Ministry of War or did so in the 1950s. While the director's characterization of the letters as "self-serving" throughout his decision may be too dismissive, we concur that unsupported letters by themselves are insufficient. 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 petitioner did not submit any published material on military awards in Iran evaluating second class medals. Nor did the petitioner submit any evidence of media coverage of his award or, given the length of time since the petitioner received the award, media coverage of more recent similar second class awards that might suggest their significance. Notably, of the articles chronicling the petitioner's career in books and magazines all but one fail to mention that the petitioner received this award despite discussing his work with Radio-Iran. It is not credible that an article that chronicles the petitioner's biggest achievements would omit an award on the level of a U.S. Grammy.

The only article that mentions the award is "A Chat with [the petitioner]," in the Fall 2001 issue of *The Artist*. The petitioner provides no information regarding this publication. As the petitioner was in the United States in 2001, it appears that this magazine may be an Iranian-American publication. The title of the article suggests that the reporter is reporting a conversation with the petitioner rather than his own independent journalistic investigation. We note the following language: "Without any doubt, *as quoted by himself*, getting this medallion is the pride of any Iranian artist." (Emphasis added.) It remains, according to the plain language of the award letter, the medal was presented by the Ministry

of War in appreciation for work with the military's radio. The award was not issued by a cultural ministry for excellence as an artist.[1]

Regardless of the award's significance, it was issued in 1950, 52 years prior to the filing date of the petition. The record contains no evidence that the petitioner has been recognized at any Iranian music festivals or award galas since 1950.[2] As implied by the director, an award from more than five decades prior to the filing of the petition cannot establish sustained acclaim at the time of filing.

> *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 a one-page biography that appeared on pages 207 and 208 of Volume Three of the book *Men of Iranian Traditional and Modern Music*. The record contains no information regarding the publisher of this book (Sanaei Book Store), the publication date, or its circulation. Appearing as one of hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim. Moreover, without the publication date, we cannot determine whether this publication is evidence of the petitioner's position in the field at the time of filing.

In addition, the petitioner submitted articles appearing in the August 31, 2001 issue of *Javanan International Weekly Magazine*, and the Fall 2001 issue of *The Artist*. The petitioner failed to submit any materials regarding the circulation or significance of these publications. Thus, he has not established that it constitutes major media.[3] Moreover, an artist with sustained acclaim over several years can be expected to produce published materials from throughout his career. The petitioner appears to claim national acclaim in Iran. The record certainly fails to demonstrate sustained national acclaim in the United States where he now resides. Yet, it appears that the publications in which the articles appeared may be Iranian-American publications.[4] Thus, they can only demonstrate limited recognition among those who comprehend Farsi in California, or possibly even other areas of the United States. The petitioner has not submitted any published materials about his career in major Iranian newspapers in Iran.

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[1] A biography of Aref Arefkia at www.iranchamber.com reflects that the Shah issued Highest Cultural Imperial Medallions as early as 1974. According to www.arts.ualberta.ca, Haymo Taeuber was honored with First Class membership in the Imperial Order of Arts and Science in 1960. According to www.loristjeknavorian.com, the top art medal in Iran is currently awarded by the Minister of Culture. These specifically artistic honors carry more weight as honors in the field than second class military medals.

[2] According to www.loristjeknavorian.com, at least 15 FAJR Music Festivals have been held in Teheran, and the Golden Harp Awards for Highest Artistic Achievement are presented at this festival. Thus, Iran continues to honor its best musicians.

[3] According to a list of Los Angeles County newspapers, *Javanan International Weekly Magazine* is a Los Angeles County publication.

[4] World Press Review's website, www.worldpress.org, does not list any artistic magazines in Iran other than the cultural bimonthly *Payam Avar*.

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

President of Pars Video, Inc., asserts that the petitioner meets this criterion based on his ability to teach American artists to play Persian music on traditional instruments and his invitation to perform at a function of the United National Association, Silicon Valley Chapter. President of the chapter, asserts that the petitioner's group was invited to perform at selected universities and that the petitioner taught santoor at the invitation of the Persian Student Association at Stanford University. Mr asserts that these concerts and lessons contributed to promoting cultural and societal diversity and understanding.

The issue is whether the petitioner has made a contribution of major significance to his field, music. Counsel claims that Eastern music has more scales than Western music, making it difficult for Westerners to appreciate Eastern music. Counsel further asserts that the petitioner is a "specialist in mixing the Eastern ¼ tones and the Western ½ tones," creating a "bridge" for Westerners to accept Eastern music. In addition, counsel asserts that the petitioner developed a new santoor called the Dulcimer-Bass. Counsel asserts that this accomplishment is similar to that of who popularized the banjo by introducing a fifth string. Initially, the petitioner submitted a letter from musician asserting that the petitioner's specialties include the "ability to inter-compose the Iranian music with the Western music, utilizing ¼ tones as well as his successful method in teaching the Iranian music to non-Iranian students." The article in *The Artist* states that the petitioner "is working on an educational collection of Iranian music for dulcimer, intended for introduction of the authentic Iranian music in European countries and the methods of composing the ¼ tone scale of the Iranian music in conjunction with the scales of Western music."

Subsequently, the petitioner submitted a new letter from President of the Iranian Music Association. In this new letter, Mr asserts:

> I certify that [the petitioner] is one of the peerless masters of our country. He is not only famous for creating and playing musical pieces for Iranian music, he is well known for his innovation in improvising a new musical instrument, which is a marriage between the "dulcimer" and "lute" thus giving birth to a new sound in the music of the Middle East. This new instrument is called "Dulcimer –Bass." . . . By using new techniques in playing this innovated musical instrument [the petitioner] has introduced a very delightful range of musical sounds to the music of the Middle East and has greatly advanced this art. . . .
>
> His capability in integrating the western and eastern music and creating and utilizing ¼ scale gamuts in the western music which does not have such scales has enabled the artists to successfully complete his project and have it patented in his name.

The petitioner's contract with World Music Connection dated after the date of filing provides: "Company is familiar with musical abilities of artist who is an expert in Middle Eastern Music (Quarter

Tone Scales) and composing them into Western Music (chromatic scales). This procedure is unique to him and he is a pioneer of this composition."

It is insufficient to simply develop a new instrument or a method for converting ¼ tones to ½ tones. The petitioner must demonstrate that these developments are considered a significant contribution to the field of music and were so at the time of filing. The record contains no evidence that, at the time of filing, the dulcimer-bass had been adopted by top performing artists in Iran or the United States.[5] The record contains no articles in the Iranian or Western media reporting on this new instrument and its alleged impact on Middle Eastern music. The Internet materials submitted by the petitioner on Persian musical instruments discusses [redacted] addition of a fourth string to the setar, but its discussion of the santoor makes no mention of the petitioner's conversion of the santoor into a dulcimer-bass.

In addition, while the petitioner may have a contract to convert Eastern music to Western scales, there is no evidence that his previous conversions have been influential. For example, the record contains no documentation from prominent record labels showing that Eastern music converted by the petitioner has outsold other Eastern music or that Eastern music is gaining popularity in the West due to previous conversions by the petitioner. The record contains no reviews in the Western media reporting an increase in the popularity of Eastern music in the West due to the petitioner's conversions. Finally, while a patent is merely evidence of an original concept without relation to its influence, we note that the claim that the petitioner's conversion process has been patented is unsupported.

Predictions that the petitioner's music, instruction, and books might contribute to Middle Eastern music in the future is not evidence of his past contributions of major significance.

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

The petitioner submits copies of his cassette covers. [redacted] of the [redacted] Foundation in New York asserts that the petitioner's recordings have all been best sellers in Iran and internationally. The significance of this foundation is undocumented. Regardless, the record contains no evidence to support Mr. [redacted] assertion and the petitioner does not claim to meet this criterion.

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 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

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[5] An Internet search for "dulcimer-bass" produced no information about this instrument. The only "hits" were about artists who play the dulcimer and the bass guitar.

petitioner shows talent as a musician, 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.