U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: [redacted] (EAC-98-031-51592) Office: Vermont Service Center Date: NOV 19 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]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The approval of the employment-based immigrant visa petition was revoked by the Director, Vermont Service Center. An untimely appeal was subsequently remanded by the Administrative Appeals Office (AAO) for consideration as a motion by the director. The director reaffirmed his decision to revoke the petition. The matter is now before the AAO 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. On February 20, 1998, the director approved the petition. Upon review, 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.

The director issued a notice of intent to revoke on July 30, 2001. The director noted that in support of his application to adjust status, Form I-485, the petitioner had submitted documentation indicating that the petitioner was not performing at a level consistent with national or international acclaim. Thus, the director requested additional evidence regarding the petitioner's eligibility. In response, counsel asserted that the following for the sitar was limited in the United States. The petitioner submitted additional evidence of his performances at local cultural festivals.

The director issued a final decision on November 8, 2001. In addition to expressing concerns regarding the petitioner's current level of success, the director also stated:

> Aside [from] a few letters of support, the record offers no evidence of the [petitioner's] nationally or internationally recognized awards. In addition, the record is void of articles published about the [petitioner] relating to his achievements in the field of sitar entertainment. Lastly, the record produces no evidence of continued achievements in the field.

The director then concluded that "the record does not establish that the [petitioner] is of the E11 caliber as an Indian sitar player." The petitioner appealed the director's decision on December 12, 2001, more than 15 days after the notice of revocation. As such, the AAO remanded the matter to the director for consideration as a motion to reopen and reconsider. The AAO made no determination as to the merits of the director's decision at that time. On August 27, 2002, the director considered the evidence submitted on motion and reaffirmed his decision to revoke the petition. The director noted that the petitioner must demonstrate eligibility as of the date of filing and that the record was supported mostly by "letters of personal endorsement." On September 4, 2002, the petitioner filed the instant appeal.

On appeal, counsel argues that the director based his decision on the petitioner's income, which is only one of ten criteria for eligibility, three of which must be met. Counsel further states that an ability to support oneself is not an issue at the petition stage and notes that an affidavit of support was submitted in support of the petitioner's application to adjust status.

While the petitioner's notably low income in his field may have led to the director's reevaluation of the petition, it is clear from the director's decision that he concluded that the initial approval was in error and that the record did not demonstrate that the petitioner had sustained national acclaim as of the date of filing the petition. As stated above, the director expressed concern that the record was supported almost entirely by reference letters. 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. Thus, we concur with the director's concerns regarding the initial evidence submitted. That evidence will be discussed in more detail below.

For the reasons discussed below, we find that the petitioner has not established that he enjoyed national acclaim in India. Moreover, a petitioner must establish sustained acclaim up until the date of filing. The petitioner entered the United States in February 1995, more than two and a half years prior to filing the petition. Thus, even if the petitioner had enjoyed national acclaim in India, he must demonstrate that he has sustained that acclaim in the United States after 1995. While we acknowledge that a petitioner need not meet every criterion or a specific criterion, we find that the director reasonably questioned whether the petitioner's earnings of a paltry $7,480 ($10,372 gross) in 1997 (the year in which the petition was filed) through providing music lessons for $40 per hour (or room and board) and performing at local cultural engagements was consistent with national or international acclaim.[1]

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

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[1] While a petitioner must establish eligibility at the time of filing, the record does not establish that the petitioner's earning potential has improved. By 2000, the petitioner was allegedly playing sitar at an Indian restaurant in Connecticut for $135 per night. The petitioner's 2000 tax return, however, while reflecting $98,545 in income, reflects no wages or business income. Rather, the bulk of the petitioner's income is represented by $30,000 in IRA distributions and $71,231 noted as a "cancellation of debt."

(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 CIS 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 sitarist. 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, counsel asserted that the petitioner "received national fellowships for excellence in his field of endeavor." The record reflects that the petitioner received an academic fellowship to study sitar at the Manipur State Kala Academy.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Similarly, experienced experts do not compete for fellowships and competitive postdoctoral appointments. Thus, the fellowship cannot establish that the petitioner is one of the very few at the top of his field.

*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.*

According to a certificate in the record, the petitioner was a "member" of the General Council of the Manipur State Kala Academy, "a composite versions of the 3 National Akademies viz. Sangeet Natak Akademi, Lalit Kala Akademi and Sahitya Akademi of India" from 1993 to 1995. The principal of the Government Music College, Imphal, affirms that the petitioner "was serving in the Department of Instrumental Music (SITAR) of this College." Professor L. Mangi Singh asserts that the petitioner obtained his position at the Government Music College "as he has a highest caliber in the field of

Sitar." Finally, P. Devakeshwor Sharma, President of Sangitacharya Maisnam Thambou Singh Gabesana Kendra, Imphal, certifies that the petitioner is a life member of the Kendra. Mr. Sharma asserts that the Kendra is a group of 30 "much talented, skilled and expert members in their musical tracts" which organizes various programs. According to Mr. Sharma, "to become a member of this Kendra is not a[n] easy job, one should be properly examined of their talent and skill."

A General Council for some type of collaboration between three academies is not an association. Regardless, the record does not contain the membership requirements for the council or the selection process. A teaching position at an academy is a job, not a membership. We cannot conclude that every musician capable of obtaining employment teaching at an academy is nationally or internationally acclaimed. Finally, while Mr. Sharma indicates that it is not easy to become a member of Kendra and that a member "should be properly examined," the record does not contain the official bylaws for the Kendra setting forth its membership requirements. Moreover, there is no indication that the Imphal organization relies on national experts to select members.

*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.*

While counsel asserted that the petitioner meets this criterion, he did not reference any exhibits as evidence to support that assertion. We note that evaluating one's students is inherent to the job of music instructor. We cannot conclude that every music teacher enjoys national or international acclaim.

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

In response to the director's November 20, 1997 request for additional documentation, counsel asserted that the petitioner meets this criterion through the production of a compact disc featuring his live performance at the Lotus Arts Center in New York City. A compact disc is not a scholarly article in the field of music. We note that music scholars do sometimes author scholarly articles in music journals or texts. Thus, this criterion appears applicable to the petitioner's field and we need not accept comparable evidence to meet it. Regardless, the production of a compact disc is not comparable evidence of national or international acclaim. The regulations specifically provide a criterion relating to the production of compact discs by musicians. That regulation, set forth at 8 C.F.R. § 204.5(h)(x), requires commercial success. A petitioner cannot claim to meet the scholarly article criterion through the submission of evidence that is insufficient to meet another criterion to which the evidence more clearly relates. While Patricia Elvin, who claims to have produced the compact disc, projected in 1998 that the compact disc would generate a profit of $12,000, the actual profits from the compact disc are not documented in the record.

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

Initially, counsel asserted that the petitioner meets this criterion through his performances in India and the State of Maryland in the United States. This criterion clearly relates to visual artists. Even if we

were to consider the petitioner's performances as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4), we must evaluate any evidence submitted to meet a criterion as to whether it is indicative of or at least consistent with national or international acclaim. The petitioner relies on letters from the President of the North American Manipur Association in New York and Mr. Singh as evidence of his performances in India. Any musician who makes a living in his field performs. Without objective evidence of the venues where the petitioner played and their significance, such as media coverage of the events, we cannot determine whether the petitioner's performances in India are comparable evidence to meet this criterion. In Maryland, the petitioner performed at two cultural festivals at local high schools. These venues do not appear indicative of or consistent with national or international acclaim. We note that one of the petitioner's references, Misha Masud, indicates that he is a classical Indian musician who has performed at Lincoln Center and The Metropolitan Museum of Art, among others. Another reference, Dr. A. Ravishankar Rao, also played at the Lincoln Center. This information suggests that the top of the petitioner's field is considerably higher than the level he has achieved.

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

The petitioner relies on letters asserting that he has performed at venues throughout India and is one of the top sitarists in India. None of these letters identify a specific organization for which the petitioner filled a specific role that is leading or critical. The record contains no objective evidence regarding the venues where the petitioner performed suggesting that they have distinguished reputations nationally. The petitioner also performed with the Kathak Ensemble in New York on four occasions. The record does not reflect that the ensemble has a distinguished reputation nationally.

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 sitarist 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 sitarist, 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.