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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

AMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass., 3/F
425 I Street, N.W.
Washington, D.C. 20536

File: WAC 02 232 52540 Office: California Service Center Date: OCT 23 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)

IN 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 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 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 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, filed on July 15, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a "singer/recording artist." The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since 1998. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a singer in this country.

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, counsel 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.*

Counsel states: "In 1998 the petitioner competed in the World Championships of Performing Arts in Los Angeles where she took the silver medal." The record contains an "Official Souvenir Book" from this event, which was held at the Los Angeles International Airport Hilton Hotel from October 20-24, 1998. The Official Souvenir Book states:

> Sports has it Olympics! The performing arts now has its World Championships! This is the only international event of its kind for the performing arts (dancers, singers, models) and takes off where StarSearch left off.... Now, with this one-of-a-kind international festival, opportunities can occur for agents to find fresh faces and great talent... and new careers catapulted for those lucky enough to be discovered!
>
> * * *
>
> Celebrity seminars exclusively for contestants and attendees are scheduled during the 1998 event to disseminate relevant, bonafide information about "making it in show biz"!

The visa classification sought by the petitioner, however, is intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. The above description indicates that the World Championships of Performing Arts is for those who aspire "to be discovered" rather than for those who have already earned sustained national or international acclaim.

Pages 33 through 44 of the Official Souvenir Book contain the photographs of numerous contestants. The petitioner's photograph appears on the same page as that of many other Bulgarian contestants, each identified by age group (such as 8-10, 11-12, 13-15, 16-19, 20-29, 30-39 and 40 plus). As evidence of her silver medal, the petitioner submitted a photograph of her medal (undated) and a pre-printed "form" document with the petitioner's name, award category, and age group handwritten into blank spaces. The document states: "According to the jury's decision, [the petitioner] is awarded the gold/silver/bronze medal as the Winner of the 2000 World Championships of Performing Arts in singer/country music in the 18-24 category."[1] The certificate was dated October 14, 2000. We note here that all of the other documents contained in the record which mention the petitioner's participation in this event (such as the Official

[1] The word "silver" was circled in black ink.

Souvenir Book, the petitioner's resume, and counsel's assertions) indicate that she won this award in 1998 rather than in 2000 as stated on the certificate. In fact, the petitioner would have been twenty-six years old as of October 2000 and therefore too old for the 18-24 age group category written on the certificate. Neither the petitioner nor counsel has resolved this discrepancy in the documentation presented. Nevertheless, it has not been shown that the petitioner's silver medal was significant beyond the context of the event where it was presented. For example, the record contains no evidence of national or international media coverage surrounding the petitioner's receipt of this award (as might be expected of a "nationally or internationally recognized" award). A talent competition of this nature, limited to members of a particular age group, would not significantly distinguish the petitioner from experienced professionals in the music industry.

The petitioner also submitted a translation of a letter from the Genko Genov Foundation/Golden Orpheus International Pop Festival, stating: "At the 28th International Festival 'The Golden Orpheus' in 1997, [the petitioner] received the award of the Bulgarian Society of Songwriters as the performer of the song 'Magic of Love' written by Christian Boyadjiev and Michael Jonchev."

The record also includes a translation of a letter from [redacted] President of the Genko Genov Foundation and the Golden Orpheus Festival, stating:

> The international festival "The Golden Orpheus" is the biggest musical event in Bulgaria on the pop-rock scene. It proudly celebrated its 30th birthday. The festival is very well known not only in Europe, but [throughout] the whole world.
>
> * * *
>
> On the stage of "The Golden Orpheus" has performed some of the best singers in the world like: Boy George (Culture Club), The Temptations, Julio Iglesias, Alannah Myles... The international festival "The Golden Orpheus" helps young talents and nurture[s] them on their way to success.
>
> * * *
>
> At the 28th Annual Festival... which took place on 8/30/97 until 9/3/97, [the petitioner] received the prestigious award of the Association of the Bulgarian Songwriters as the performer of the song "Magic of Love."

The record, however, contains no information from the "Association of the Bulgarian Songwriters" explaining what specific musical category the petitioner won and indicating how many other individuals received similar recognition during the festival.

The petitioner also submitted what appears to be either a compact disc jacket or event program listing numerous songs from the 1997 Golden Orpheus Festival.[2] It contains a message from [redacted] stating: "The best Bulgarian songs are again with you! Selected among over two hundred new songs, they will fill up with music and love first, the open-air theatre of Slunchev Bryag, then, your home." The documentation presented shows that, in addition to performing "A Magic For Love" in a duet with the petitioner at the 1997 Golden Orpheus Festival, Michael Jonchev also wrote the song's lyrics. The record does not indicate whether the award presented to the petitioner was shared with Michael Jonchev.

In response to the director's request for evidence, the petitioner submitted printouts from various websites that briefly mention Bulgaria's Golden Orpheus Music Festival. One Bulgarian music website refers to the festival as "an annual competition for Bulgarian pop-songs – national and for pop-singers – international, held in the Slanchev Bryag Black Sea Resort." Another website states: "Savina Vassileva is holder of the *Grand Prix* at the most popular music festival in Bulgaria, "The Golden Orpheus." However, none of the website printouts mention the petitioner's receipt of a Golden Orpheus Award or a *Grand Prix*.

We acknowledge that the Golden Orpheus is a musical competition of national and international scope. What is not clear from the evidence presented, however, is the national or international significance of the particular award received by the petitioner. For example, of the thirteen published articles presented that discuss the petitioner, only one briefly mentions the petitioner's *appearance* at the Golden Orpheus Festival, stating: "A girl from Plovdiv is going to appear on 'The Golden Orpheus' Fest in August. She's going to do a song duet with Michael Jonchev. The song is called 'The Magic of Love' by Christian Boyadjiev." This article, about her upcoming appearance at the festival, offers no information as to whether the petitioner was competing at the festival. Furthermore, we cannot ignore the absence of national or international media coverage about the petitioner's receipt of an award at this festival. If the petitioner's award were indeed "nationally or internationally recognized," then the petitioner should be able to produce ample unsolicited materials reflecting such acclaim.

On appeal, counsel argues that the director engaged in "hair splitting language analysis and not meaningful reasoning." We concur with the director's finding. The record is not conclusive as to whether the petitioner was recognized as a "young talent... on [her] way to success" or as a top recording artist. Contemporaneous first-hand evidence of national or international acclaim carries far greater weight than the brief, vague statements of witnesses selected by the petitioner. Pursuant to Section 203(b)(1)(A)(i) of the Act, the petitioner must demonstrate that her "achievements have been recognized in the field through extensive documentation." The record, however, lacks any specific description of the petitioner's award category, its criteria for selection, or how it ranks in comparison to receiving the "Grand Prix." We further find that the petitioner's evidence is not conclusive that the petitioner won a competition or was singled out for recognition among the listing of numerous songs from the 1997 Golden Orpheus Festival program. Recognition based solely on participation in a music festival, or inclusion among

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[2] The petitioner's song, performed with Mihail Yonchev, is one of fifteen songs appearing on pages six and seven.

numerous other artists featured on the festival's compilation of new songs for a compact disc, is not sufficient to demonstrate the petitioner's individual national or international acclaim.

> *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 letter confirming her membership in the American Society of Composers, Authors and Publishers (ASCAP).

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. Further, it is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Information provided by the petitioner from ASCAP's website states:

> To become a writer member, you must be the writer or co-writer of a musical composition that has been commercially recorded (CD, record, tape, etc.); or, performed publicly in any venue licensed by ASCAP; or, performed in any audio visual or electronic medium; or, published and available for sale or rental.

Counsel states that this organization "represents more than 85,000 composers and songwriters." ASCAP's rules of admission, based on activity in a given field, do not meet the threshold for outstanding achievement in singing or songwriting. Furthermore, the petitioner has not provided evidence showing that her admission to membership in ASCAP was evaluated by experts at the national or international level.

> *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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

We withdraw the director's finding that the petitioner's evidence satisfies this criterion. The petitioner submitted a total of thirteen articles from the 1990's. Not all of the articles offer glowing reviews of the petitioner's musical performances. For example, the only article presented from outside of Bulgaria, appearing in *International Country Music News* (published in the United Kingdom), states:

> I was delighted to accept the kind invitation to go up to the Mildenhall Air Base in Suffolk for their Seventh Hanger Dance... [I]t attracted 1600 country music fans... The seven-band program started at 5pm...
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> * * *
>
> Splav is Bulgarian for an amalgam, as in alloys, but in this case an amalgam of musos that I found quite efficient but pleasantly naïve in the approach.... I enjoyed [the petitioner's] "Heartbreak Hill." She has a voice similar to Dolly [Parton] when she first went to Nashville as 17-year-old, rather shrill at times and I felt that she should perhaps do a couple of songs and then the men do a couple. They're learning fast and I enjoyed meeting and hearing them.

Media coverage such as this is hardly indicative of national or international acclaim as a top singer/recording artist.

Several of the Bulgarian published pieces were accompanied by only partial (or summary) English language translations. By regulation, any document containing foreign language submitted to CIS shall be accompanied by a *full* English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Without complete translations, it cannot be determined that the petitioner is the main subject of the articles, or that she was featured because of her extraordinary achievements as a singer. A few of the articles presented only briefly mention the petitioner. Several articles describe how the petitioner performed the songs of other more renowned country musicians rather than her own original material.

The petitioner appears to have garnered a limited degree of media attention in Bulgaria up until 1998. Subsequent to that time, however, the record contains no evidence of sustained coverage in the Bulgarian major media. Furthermore, the petitioner has provided no evidence to show that since her 1998 arrival in the United States she has attracted any national media attention comparable to the coverage received by top musical performers in the U.S. As a singer working in the U.S. for several years, it is entirely appropriate to hold the petitioner to U.S. standards when considering media coverage.

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

Counsel states: "The petitioner has submitted evidence that she recorded an album with the largest music publisher in Bulgaria [Mega Music] and performed at the 'National Palace of Culture' in Sofia, the Bulgarian equivalent of the Kennedy Center." The wording of this criterion, however, strongly suggests that it is intended for visual artists, such as sculptors and painters, rather than for singers/recording artists. Nevertheless, we will address counsel's assertions and the evidence presented under this criterion.

Information presented by the petitioner states: "The National Palace of Culture is the largest multifunctional complex in Southeastern Europe... The sixteen halls, with seating capacity ranging from 50 to 4000..." The record contains a flyer inviting individuals to the premier of the petitioner's first album, "Ralitsa: 10 Great U.S.A. Country Music Hits," in Hall #9 on March 28, 1994. The information presented offers no further details about Hall #9 or its seating capacity. Further, there is no evidence to suggest that seats for the petitioner's performance at the National Palace of Culture were in great demand, or that she returned there for future performances to a significant degree of fanfare.

Although the petitioner has submitted evidence of her 1994 concert performance/album premier, it does not follow that she has sustained national or international acclaim at the very top level. Concert performances and the release of musical recordings are inherent to the petitioner's profession and therefore would not significantly distinguish the petitioner from other singers. The petitioner has not demonstrated that her music has consistently been the centerpiece of major concert performances at prestigious venues. Such a standard must be set for the petitioner to establish that she enjoys sustained acclaim near the top of her field. Should CIS accept the appearance of a singer at a public performance as satisfying this criterion, then it would follow that any vocalist who performed before an audience would satisfy this criterion for extraordinary ability, thus rendering it meaningless.

The petitioner's recording contract and concert performances will be further addressed below, under a more relevant criterion.

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

In order to establish that she performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

Counsel argues that the petitioner's affiliation with Lifetime Entertainment Services and Lerios D'Andrea Musicworks represents a leading or critical role for organizations with a distinguished reputation.

In her first letter [redacted] Vice President for Music, Lifetime Entertainment Services, states:

> I have witnessed [the petitioner's] growth over the past year and it is my professional opinion that she is destined to have a professional recording career and, if she chooses, a career as a

> songwriter for other artists as well as herself. [The petitioner] has demonstrated the drive, commitment, and sheer determination necessary for a successful career in the music industry.

Assertions that the petitioner has a promising future cannot establish eligibility under this visa classification, for the regulations clearly call for evidence that the petitioner already enjoys major success and acclaim.

In her second lette[redacted] adds:

> I asked [the petitioner] to record the lead vocals as part of the main title theme song entitled "Her Words, Her Story" for our Intimate Portrait series. Intimate Portrait is one of our most popular series airing every night Monday through Friday in prime time on our network in the United States.
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> * * *
>
> [The petitioner's] involvement with our project exemplifies the very unique and special touch that she brings to the recording process while elevating the quality and end product immeasurably.

Neither counsel nor the petitioner has adequately explained how singing lead vocals for Lifetime's Intimate Portrait Series' theme song would amount to performing a leading or critical role for that organization. Hundreds of television shows have theme songs and the record contains no evidence that Intimate Portrait has distinguished itself with high Nielsen Ratings. The petitioner's theme song has not been shown to earned her the same level of acclaim comparable to that of The Rembrandts' "I'll Be There For You" (the theme song performed for the hit television series *Friends*), for example.

Also submitted was a letter from [redacted] who describes himself as "a singer, songwriter and Emmy-award winning composer for film and television." [redacted] credits include "scoring one of the biggest television shows in the world, *Baywatch*, since its inception." He states:

> Since the petitioner first walked through our studio doors in February of 2001, she has blossomed as a singer, songwriter and artist, and she is right on the verge of gaining international attention…
>
> * * *
>
> In the course of my career, I have worked with and met many great singers and songwriters of international acclaim, including Paul Anka, Burt Bacharach, Kenny G., Whitney Houston and Carlos Santana to name a few.
>
> * * *

> Therefore, I feel extremely confident when I say [the petitioner] is a true candidate for success, not only in the record industry, but in the entertainment industry in general. It is clear that she is clear about what she wants to accomplish in America and that fact in itself is saying a lot.

The record contains no evidence of a contract involving the petitioner and [redacted] nor has it been shown that the petitioner has commanded an unusually large sum of money for her work when compared to other lead singers in the music industry. We acknowledge that documentary evidence contained in the record indicates that Mr [redacted] and his company enjoy a distinguished reputation in the entertainment industry. However, we reject counsel's assertion that the petitioner, who is working with [redacted] Musicworks "on her upcoming CD," plays a leading or critical role for that organization. The record contains no evidence to establish that the petitioner has ever been employed by, supervised, or overseen other individuals at Lerios [redacted] Further, the record does not indicate the extent to which the petitioner has consistently exercised substantial control over creative or business decisions executed on behalf of the organization. Finally, the record contains no evidence showing that the petitioner has achieved a level of success comparable to that of Paul Anka, Burt Bacharach, Kenny G., Whitney Houston, or Carlos Santana.

Statements from Cory Lerios and Marianne Goode support the director's conclusion that the petitioner has not yet risen to the very top of her field. These two witnesses have asserted that the petitioner is very talented, and *predict* that a successful career lies ahead for her in the music industry. Such attestations, however, cannot meet the extremely high threshold of extraordinary ability. The petitioner must demonstrate that she has already earned sustained national or international acclaim in her field. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which CIS held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. A petitioner cannot file a petition under this classification based on the expectation of future eligibility.

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

The petitioner has provided evidence of an album released under the Mega Music record label, which consisted of country music songs from other more renowned musicians rather than her own original material. The mere fact that the petitioner has issued recordings of her work under a particular record label does not demonstrate that such recordings are commercially successful. The plain wording of the regulation requires the petitioner to submit evidence of her commercial success in the form of "sales" of compact discs, cassettes, videos, or concert tickets. The petitioner has not shown that her compact discs/record albums have enjoyed a high sales volume in Bulgaria, the United Kingdom, Europe, or the United States. For example, the petitioner submits no *Billboard* chart information (or its foreign equivalent) to establish that her songs have outsold those of other recording artists.

The petitioner also submitted documentation pertaining to club performances and the concert debut of her "10 Great U.S.A. Country Music Hits" album at the Bulgarian National Palace of

Culture. It cannot suffice, however, for the petitioner simply to demonstrate that she has performed before audiences; such performances are inherent to recording artists, and the majority of successful musicians have performed in front of audiences. To satisfy this criterion, the petitioner must establish that her performances have consistently drawn larger audiences and/or higher box office grosses than most others in her field, at a national or international (rather than local or regional) level. The record, however, contains no such evidence.

On appeal, the petitioner submits two new witness letters and photocopies of other documents that have already been presented.

William Vangelos, President of Blue Focus Management, a company that represents composers in the entertainment industry for feature films and television, asserts that the petitioner "has achieved the highest level of accomplishment in contemporary music in her home country of Bulgaria." The evidence contained in the record, however, fails to substantiate this claim. Given that the petitioner seeks classification as a nationally or internationally acclaimed singer/recording artist, it is certainly reasonable to expect the petitioner to submit evidence regarding the commercial success of her music in the form of documented ticket sales at major venues or compact disc/record album sales. As stated previously, the record contains no such documentation. [redacted] further states that the petitioner has "become known and established in the music community of Los Angeles." He does not indicate that the petitioner has earned national acclaim as a top recording artist in the United States.

[redacted] devotes the majority of his second letter to his own accomplishments in the music industry rather than those of the petitioner. Echoing his previous assertions, he states: "It is just a matter of time until [the petitioner] receives in her own right the success and acclaim that I spoke of earlier." [redacted] does not indicate that the petitioner is a nationally or internationally known musician. Rather, he states that "a lot of time has been invested in the development of [the petitioner's] unique and natural vocal talents." Even if it were unanimously agreed that the petitioner would one day reach the top of her field, this visa classification is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

We note here that the witness letters presented in this case consist entirely of individuals in the music industry who have collaborated with the petitioner in some capacity. If the petitioner's achievements are not widely praised outside of her musical collaborators, then it cannot be concluded that she enjoys sustained national or international acclaim as one who has reached the very top of the field.

Counsel argues that the petitioner's association with [redacted] of Lifetime Entertainment Services is indicative of her extraordinary ability. Reputation by association, however, does not establish that the petitioner herself enjoys national or international acclaim. We acknowledge that the witness letters submitted by the petitioner are from impressive individuals whose opinions are important in the music industry. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to

the preparation of this petition would carry greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

Counsel has cited the approval of the petitioner's O-1 nonimmigrant visa petition as evidence that she has already been found to be an alien of extraordinary ability. Extraordinary ability in the arts in the non-immigrant context means distinction, which is not the same as sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes nonimmigrant O-1 criteria less restrictive for a petitioner in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel CIS to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or case law that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien already holds an O-1 nonimmigrant visa.

For the reasons discussed above, we find that the record is ambiguous regarding the petitioner's acclaim in her native Bulgaria, and it contains no evidence that the petitioner has sustained whatever acclaim she earned in Bulgaria since her 1998 arrival in the United States. The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every musical performer who has issued recordings of her work, performed in public, or collaborated with a well known composer, or whose name has appeared in print, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. In this case, the petitioner has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself as a singer/recording artist 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 the 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.