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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 03 010 51579 Office: CALIFORNIA SERVICE CENTER Date: APR 08 2004

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 of the Administrative Appeals Office 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.

Mari Johnson

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 (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. 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 pertinent regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

Counsel states that the petitioner "is one of the most talented concert pianists of his generation. He is recognized among the top performance artists in the field of Classical Music. . . . He is emerging as one of the most promising young pianists of his generation and has gained an international reputation as a concert pianist, soloist, chamber musician and recording artist."

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, counsel claims, meets the following criteria.

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

Counsel states that the petitioner "has received numerous nationally and internationally prestigious awards for excellence in his field of endeavor," and proceeds to name 15 such awards. The burden is on the petitioner to establish the national or international recognition accorded to these awards. One of the awards is from Dimitar Blagoev High School; high school awards are generally not nationally or internationally recognized. Several other claimed awards are scholarships from the University of Southern California (USC), which the petitioner attended from 1995 to 2001. Like the high school award, university scholarships rarely if ever confer acclaim at a national or international level. Furthermore, such scholarships are not available throughout the field of classical piano; only students can receive these scholarships. The most established and experienced pianists are excluded from consideration, on the grounds that they have already completed their education and moved on to careers in the arts. University study is neither a career nor a field of endeavor, and thus being a top student is no indication that one has reached the top of one's field. The petitioner's own resume lists only seven awards, excluding the majority of the awards listed by counsel.

Counsel lists prizes that the petitioner has won at various piano competitions. The petitioner won prizes at the Armenian Allied Arts Association annual competition in 1995, the year of the petitioner's 19th birthday. Several other competitions took place when the petitioner was a child; he was nine years old when he won first prize in the "10 years of age" category at the Svetoslav Obretenov National Competition. Like the scholarships discussed above, these competitions appear to be a means of encouraging young talent, rather than a venue for the most accomplished and established pianists who already have paying careers in the arts.

The only claimed award which does not appear to be contingent on the petitioner's young age, or his status as a student, is a "Diploma ad Emeritus" presented to the petitioner by the Association of Armenian Culture and Arts in Bulgaria, in recognition of the petitioner's "personal contribution of preserving, developing and popularizing the spiritual and cultural heritage of the Armenian nation in Bulgaria and abroad." The diploma does not specify the extent to which the petitioner's skill as a musician contributed to his receipt of the award. Furthermore, it appears that the only Bulgarians eligible for this award are Bulgarians of Armenian ancestry, thus reducing the scope of the award.

The director requested additional evidence, stating that the petitioner had not shown that any of his awards are sufficiently recognized to demonstrate or confer sustained national or international acclaim. In response, the petitioner has submitted documentation regarding several of the competitions he entered. Consistent with the AAO's finding that these competitions are for music students rather than for established musicians, the competitions have maximum age limits for competitors. One competition, in the Czech Republic, has an age ceiling of only sixteen years.

> *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 submits a letter, inviting him to participate in the International Festival of Chamber Music – Plovdiv, which took place in June 2002. There is no explanation as to how this invitation constitutes membership in an association.

Following a request for further information, counsel discusses the petitioner's membership in the Music Teachers National Association (MTNA), and its subsidiary organization, the California Association of Professional Music Teachers (CAPMT). There is no evidence that these associations have any membership requirements, apart from requiring that members must be music teachers. A letter from Denise Apodaca, district coordinator for CAPMT

District IX, states "[e]ach MTNA district selects its own board that typically comprises of [sic] four outstanding members of the association. . . We have had the pleasure of appointing [the petitioner] to serve on the Board of District IX of the California Professional Music Teachers Association since 2002. His music knowledge and experience gained over 21 years of professional career has been enriching to the association." Board members are chosen locally, rather than at the national level. The reference to the petitioner's "over 21 years of professional career" is puzzling, because the petitioner was only 26 years old when Ms. Apodaca wrote this letter in May 2003. Thus, the petitioner's "professional career" supposedly began when the petitioner was no more than five years old.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

Counsel cites 17 articles, published between 1987 and 2002, as evidence under this criterion. The burden is on the petitioner to establish that the articles appeared in major publications with national or international circulation. The mere appearance of the petitioner's name in print does not inherently satisfy this criterion; the petitioner must be a principal subject of the articles. Local newspapers are not "major media," and therefore local coverage cannot suffice unless the petitioner is able to establish a systematic pattern of local coverage that, in the aggregate, shows coverage at a national level. Local newspapers routinely review local concert performances, and therefore the very existence of such reviews is not *prima facie* evidence of sustained national or international acclaim.

One article, from *Maritza*, reviews a 1992 concert performance of works by George Gershwin. The petitioner's name does not appear anywhere in the English translation of the article. Another article, from *Glas*, indicates that the petitioner (then a "16 year old student of the Plovdiv Music School") was the soloist for "Rhapsody in Blue" at that concert. The *Glas* article also indicates that "the concert was broadcast . . . on Bulgarian National Television."

In terms of media coverage in the United States, where the petitioner has spent most of his time since 1994, the petitioner has been the subject of an article in the *OCC Coast Report*, published by Orange Coast College, where the petitioner studied from 1994 to 1995. OCC also issued a lengthy press release about the petitioner in 1995, but the record contains no evidence that any major media turned the press release into an article. The petitioner also submits concert reviews published in the *Daily Trojan*, USC's campus newspaper. Campus newspapers are not major media with national or international circulation; their distribution is largely limited to the college that produced them.

The petitioner has also received some coverage in ethnic-interest newspapers (such as the *Armenian Observer*) published, in English, for the Armenian community in southern California. There is no indication of wider circulation of these papers, or of the *Pasadena Star News*. In short, there is no evidence that, during his first eight years in the United States between his 1994 arrival and the 2002 filing of the petition, the petitioner earned any national or international media coverage. While some of the articles about the petitioner that were published in Bulgaria between 1987 and 1994 may have been in national publications, there is no evidence to support this, and such coverage does not represent *sustained* acclaim if the petitioner has received no further national coverage in the decade since he departed from Bulgaria.

Asked for circulation data regarding the newspapers in which the articles appeared, the petitioner has indicated that the United States newspapers are circulated only locally or regionally. Of the Bulgarian papers, some are said to circulate nationally or internationally, whereas others are restricted to an unnamed "county of 600,000 people population." The word "county" is clearly not a misprint for "country" because Bulgaria's national

population is substantially higher than 600,000. The highest-circulation paper named is *Trud*, with a claimed circulation of 200,000 copies daily. The petitioner submits a copy of an article from *Trud* dated January 11, 2003, several months after the petition's October 2002 filing date. The initial submission contained nothing from *Trud*, and therefore there is no evidence that *Trud* carried any articles about the petitioner as of the petition's filing date. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The information and evidence submitted by the petitioner does not establish a sustained pattern of national or international media coverage. Rather, the pattern shown by the evidence indicates consistent local coverage in southern California, often in Armenian-interest newspapers, along with routine concert reviews when the petitioner performs outside of California. When the petitioner has performed in large cities with major newspapers, those papers have sometimes reviewed his performances, but again the petitioner has not shown that reviews of this kind represent a level of media attention granted only to the top classical musicians.

> *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.*

The only evidence that counsel cites under this criterion is a letter from Penny Pan, competition chair for the CAPMT, District III. Ms. Pan thanks the petitioner for "adjudicating our fifth annual Sonata/Sonatina Competition." This event was not national or international in character, but rather it involved one district within a single state. Judging a local competition, in an area where one has resided for eight years, is not indicative of national or international acclaim.

Elsewhere in the introductory brief, counsel claims other judging work by the petitioner, but does not mention it under this criterion. Kunka Pencheva, director of Dobrin Petkov Music School, invited the petitioner "to be the Chairman of the Jury of the Competition for Young Singers and Instrumentalists" in June 2001. There is no evidence that the petitioner accepted the invitation and judged the competition. The invitation letter indicates that the petitioner himself is an alumnus of the Dobrin Petkov Music School, which he attended from age four through sixteen. The petitioner has not shown that judging school music competitions, involving students of elementary and high school age, is the exclusive province of highly acclaimed musicians.

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

To satisfy this criterion, counsel cites "[r]ecommendation and appraisal letters from peers and leading authorities in the field." Half of the witnesses are connected to the petitioner through his studies at USC, and none of the letters show that the petitioner has any reputation in the United States outside of California. Subjective praise for the petitioner's talent does not establish widespread acclaim, regardless of whether such praise is from a USC official or former California Governor George Deukmejian (who has not been shown to be an authority in the field of classical piano). Speculation that the petitioner "is on his way to a marvelous career," as the dean of the USC School of Music states, serves only to demonstrate that the petitioner has not yet achieved such prominence.

The only witness from outside of California is Dimitar Malashinov, director of the 38th International Festival of Chamber Music – Plovdiv. His letter is addressed directly to the petitioner rather than to immigration authorities. He invites the petitioner to present a solo recital at the festival, and he states that an interview with the petitioner, published in a 1994 newspaper article, "is still discussed and treasured in the archive materials of our Festival."

None of the witnesses specify any particular original artistic contribution of major significance in the field. Musical skill is not automatically or inherently a contribution of major significance.

The petitioner has submitted two new letters in response to the director's request for further evidence. USC Professor John Perry, who has been the petitioner's mentor at that university, praises the petitioner's "grasp of the essential qualities pervading a piece of music," his "spirit of giving and contributing to society," and his educational work as Prof. Perry's assistant. Prof. Perry's letter, while obviously expressing a favorable view of the petitioner's musical skill and dedication to his art, does not establish that the petitioner has made contributions that have garnered national or international attention.

Dr. Alice Ray Catalyne, formerly a piano teacher at USC, states that the petitioner's "musicianship, depth of understanding and performing skills place him in that miniscule group of pianists capable of reaching the top." The petitioner has sought a highly restrictive immigrant classification, reserved for aliens who are already at the top of the field, rather than "capable of reaching the top." Like Prof. Perry, Dr. Catalyne restricts her comments to praise for the petitioner's general musical skill and his dedication to teaching and to bringing his music to groups that ordinarily would not hear classical piano performances.

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

Counsel lists numerous concert performances by the petitioner under this criterion. Every concert performance is, in some sense, a "display" by a musician, but it does not follow that every musician who performs in concert has sustained national or international acclaim, or is among the very small percentage at the very top of the field. We note that several of these concert performances took place at retirement homes, churches, private houses, and other sites not generally regarded as top concert venues.

The petitioner's concert calendar for late 2001 and 2002 shows a heavy concentration of shows in southern California, albeit with some shows elsewhere, such as performances in Ohio and Germany.

This regulatory criterion appears to apply more readily to visual arts such as painting and sculpture. The regulations contain a separate criterion especially, and exclusively, for the performing arts; 8 C.F.R. § 204.5(h)(3)(x) calls for evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. Although recordings and concert performances are the two principal means by which performing artists reach their audience, the petitioner makes no claim under the "commercial successes" criterion.

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

We are not persuaded by counsel's argument that the petitioner's activities as a District III adjudicator for CAPMT, and as an assistant lecturer at USC, constitute leading or critical roles for distinguished organizations.

Counsel asserts that the petitioner has performed at Carnegie Hall. The record contains a copy of a program from January 23, 1999, showing that the featured act at Carnegie Hall's Weill Recital Hall was the Bulgarian Chamber Players, a string quartet. Below the names of the players, three "guest artists" are billed, not in alphabetical order, with the petitioner's name at the bottom. Promotional materials for the recital include a photograph of the string quartet, and those musicians' names, with the "guest artists" named underneath in smaller type. The petitioner was clearly not a leading performer at this event.

Counsel claims that the petitioner's "recitals have been broadcast on . . . US national televisions and radios [sic]." The record, however, contains no evidence of national broadcast on American television or radio.

In response to the director's request for additional evidence of leading or critical roles, counsel has repeated that claim that the petitioner fulfilled a leading or critical role for CAPMT by serving as a district adjudicator at a musical competition.

The director denied the petition, explaining in detail why the petitioner's evidence was insufficient regarding most of the claimed criteria. With respect to 8 C.F.R. § 204.5(h)(3)(vii), pertaining to display of the alien's work, the director concluded "[i]t appears that the self-petitioner has satisfied this criterion," but the director did not elaborate. As discussed above, we do not concur with the director's unexplained finding that the petitioner has satisfied the criterion relating to display of his work.

On appeal, counsel contends that three specific awards are qualifying national or international awards. Counsel acknowledges the maximum age limits of two of the competitions, but fails to explain why these limits do not reduce the importance of the prizes. Many of the top concert pianists are too old to participate in these competitions. The remaining competition emphasized on appeal is, in counsel's words, "limited to applicants of Armenian descent," an arbitrary limitation which excludes the majority of classical pianists in the United States (where the competition took place). The fact that the members of the judging panel "were not Armenian" is irrelevant. The petitioner's field of endeavor is "classical pianist," not "Armenian classical pianist."

Counsel states that "other awards and prizes, while admittedly local and academic in nature, also demonstrate [the petitioner's] solid artistic foundation." The petitioner's "artistic foundation" is not in doubt. It remains that there are many highly trained and successful musicians who, nevertheless, have failed to earn sustained national or international acclaim sufficient to place them among the small percentage at the very top of the field.

Counsel argues that the director, in dismissing the petitioner's membership in the MTNA, failed to consider that the petitioner "is not just a member, but a member in a leading position which requires outstanding achievements of its members." The regulation states that the organization must require outstanding achievements as judged by recognized national or international experts. In this instance, there is no evidence that the MTNA, at a national level, had any input regarding the petitioner's selection as a district official of CAPMT. The record does not establish that MTNA's entire leadership structure, down to the district level within subsidiary state associations, consists of acclaimed or extraordinary aliens. Furthermore, MTNA is an association of music *teachers* rather than concert musicians.

Counsel protests that the director has relied on too strict a standard with regard to what constitutes an original artistic contribution of major significance. Such a contribution could take the form of a memorable concert appearance that continues to be discussed after many years, or an album that meets with considerable critical acclaim and influences other pianists. Counsel's dissatisfaction with the director's standard does not mean that we must accept, as a default standard, counsel's choice of a standard, that standard being letters from musicians and music teachers in California who have enjoyed the petitioner's performances.

Counsel protests the director's "gross mischaracterization of the petitioner's roles" for such institutions as Carnegie Hall, the Los Angeles Philharmonic, USC and the MTNA. Counsel's own descriptions do not appear to be entirely devoid of "mischaracterization." Counsel asserts that the petitioner had a "solo performance" at Carnegie Hall, but the petitioner's only documented appearance there was as a "guest artist"

for another group that obviously had top billing at the event. We are not persuaded that a graduate student's work assisting his professor amounts to a leading or critical role demonstrative of national acclaim. We have discussed the evidence at length, above. Counsel's assertions on appeal do not persuade us that the director erred in the fundamental finding that the petitioner has failed to establish his eligibility for the classification sought.

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 classical pianist 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.