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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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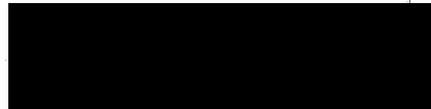
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FILE: WAC 03 011 51218 Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2004

IN RE: Petitioner:
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:



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.

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 sustained and the petition will be approved.

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 he has earned sustained national or international acclaim at the very top level.

This petition, filed on October 15, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a trumpet player.

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).

On appeal, counsel argues that the petitioner satisfies this requirement by virtue of his Grammy "nomination" in 1999 as trumpet soloist for Canadian Brass, a five-man music ensemble. The regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards

qualifying as major, internationally recognized awards. Examples of one-time awards which enjoy truly international recognition include the Nobel Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. While receipt of Grammy "Award" is indisputably one of the highest possible honors in music field, a Grammy "nomination" is not adequate to satisfy this requirement. The petitioner's Grammy nomination in the category of "Best Classical Crossover Album" as a member of Canadian Brass will be addressed below as a lesser nationally or internationally recognized prize or award.

Barring the alien's receipt of a major, internationally recognized 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. We find that the petitioner's evidence satisfies the following three 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 a certificate from the National Academy of Recording Arts and Sciences reflecting his participation as the trumpet soloist on the 1999 Grammy Award-Nominated Album "Take the 'A' Train - Canadian Brass Plays the Music of Duke Ellington."

The petitioner's music ensemble, Canadian Brass, received a Silver Rose Award (for first prize in a musical category) at the Golden Rose Festival in Montreux, Switzerland in 1998. Documentation provided by the petitioner confirms the international scope of this competition.

The director's decision stated that "an alien cannot claim to have satisfied this criterion by virtue of his or her participation as one of several members in a group."

On appeal, counsel states that the AAO has often held that "awards need not be the result of the petitioner's sole efforts, because this would unfairly penalized petitioners merely for selecting to practice their talent in a team or band, rather than as an individual." Counsel further states:

In its most recent pronouncement, in the *Matter of [name not provided]*, WAC-01-202-57536, (AAO Jan. 31, 2003), the AAO enunciated that awards garnered by collaborative efforts can satisfy the awards criterion, stating:

We agree that a team award can suffice for this criterion. For example, a tennis champion who wins a major doubles tournament is not precluded from meeting this criterion simply because he plays doubles tennis instead of competing on his own.

While unpublished appellate decisions have no force as precedent and thus are not binding with regard to unrelated proceedings, we concur with counsel that the petitioner, who is one of only five band members, has played a significant role in the success of Canadian Brass. The record adequately demonstrates his major role as a member of this small music ensemble.

In addition to his recognition as a member of Canadian Brass, the petitioner has also received individual music awards.

The petitioner submitted a certificate reflecting that he won a first prize at the Prague Spring International Music Festival in 1992. The petitioner also submitted evidence showing that he won first prize at the Ellsworth Smith International Trumpet Solo Competition in 1992.

A 2001 article in *Brass Bulletin*, a quarterly music journal published in five languages and distributed in 64 countries, discusses the petitioner's awards.

In 1990, [the petitioner] went to the Canadian Music Competition, a prestigious competition open to all instruments, won the Grand Prize (the only trumpeter to have won it during the 40 years of the competition's existence) and received a scholarship to the prestigious Julliard School of Music, in New York.

* * *

In May [of 1992] he won First Prize in Prague (2nd Prize went to Wolfgang Bauer), then First Prize at the Canadian Concerto Competition and in October, First Prize (unanimously) at the Ellsworth Smith International Trumpet Competition (ITG). In September 1993 he went to the Munich Competition, where he won a 3rd Prize, behind Wolfgang Bauer (2nd Prize), no First Prize having been awarded.

We find that the documentation presented by the petitioner is adequate to satisfy this criterion.

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

We concur with the director that the petitioner's evidence satisfies this criterion.

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

A document entitled "Canadian Brass Biography" states:

The Canadian Brass sprang from modest and highly experimental roots in Toronto, Ontario, in 1970. The brass quintet was not established as a serious concert ensemble at that time....

Canadian Brass master the gamut of concert presentations – from formal classical concerts to music served up with lively dialogue and theatrical effects. No matter what the style, the music is central and performed with utmost dedication and excellence.

The "fabulous five" spend most of their time on tour, and have performed with many major symphony orchestras in the U.S., Canada, Europe and Japan. They have gained a large international following of their solo performances that offer a large variety of musical styles.

Having started with the very limited base of traditional works for brass, Canadian Brass set out to create their own musical world by transcribing, arranging and commissioning more than 200 works. They are not only presenting works in the classical repertoire but continue to take daring leaps into jazz, contemporary concert music and popular songs. Most of this music, including the Goldberg Variations, is published by Hal Leonard. It is the inspiration and musical staple of students and brass ensembles in North America and Europe.

Millions of television viewers have seen the Canadian Brass in such shows as The Tonight Show, Today, and Entertainment Tonight. They have appeared as guest artists on Evening at Pops with John Williams and the Boston Pops, Beverly Sills' Music Around the World, and numerous PBS specials.

* * *

On their travels around the world, performing on gold-plated Yamaha instruments, they often pause for master classes. The famous five are chamber quintet-in-residence at the Music Academy of the West in Santa Barbara, California. They have been invited by the Canadian Government to play for visiting heads of states on numerous official occasions.

The Right Honorable Kim Campbell, former Prime Minister of Canada, states:

As the former Prime Minister of Canada..., I have had the opportunity to hear some of our country's finest talents on a regular basis.

[The petitioner] is currently a Professor with distinction at the University of California, Los Angeles, and is deserving of his preeminent status as a musician. He has been nominated for a Grammy as the lead trumpeter with the world-renowned Canadian Brass.... In addition, he has performed all over the world at virtually every major concert hall with orchestras such as The New York Philharmonic, the Berlin Philharmonic and The Mormon Tabernacle Choir.

The record contains supporting documentation, such as published materials and awards, showing that Canadian Brass is an organization with a distinguished reputation.

Several letters of support discuss the petitioner's role in Canadian Brass.

For example, Wynton Marsalis, Artistic Director of Jazz at Lincoln Center in New York and world-renowned musician, states:

In every generation, there are musical voices that define and pave the way for the others to follow. As a trumpet player, [the petitioner] is one of those voices of his generation. In addition to being one of the most dazzling trumpet soloists in the history of classical music, he is also a world-class creative artist.

* * *

[The petitioner] has single-handedly revived the Canadian Brass as their solo trumpeter.

Doc Severinsen, also a world-renowned musician, was the multiple Grammy Award-winning Musical Director of "The Tonight Show with Johnny Carson." Doc Severinsen states:

[The petitioner] has achieved international fame as the world's most accomplished trumpet player of his generation, picking up a Grammy nomination as trumpet soloist with the Canadian Brass along the way.

* * *

Just as Madonna is a pop icon in the world of popular music, [the petitioner] is similarly an icon in the world of classical music. He is a "superstar" to the fullest extent of the word.... I cannot think of another classical musician who would be able to contribute as much to classical music in the United States than [the petitioner].

David Ohanian, former French horn player and co-owner of Canadian Brass for twelve years, states:

[The petitioner's] critical and leading role for the Canadian Brass is internationally renowned throughout our genre. The mere fact that he was the piccolo trumpeter of a world-renowned ensemble, such as the Canadian Brass, which has only five performers, is in itself cogent evidence of this essential leading musical role.

[The petitioner's] critical role went further than merely leading the group to standing ovations night after night in preeminent venues throughout the world. His role was foundational in helping to increase the popularity of brass ensembles around the world, and this contribution to the genre in general, as well as to our own ensemble, was recognized at the highest level by the receipt of a Grammy Award nomination and [the petitioner] being singled out as a soloist.

Additional evidence, in the form of published materials, demonstrates that the petitioner served in a primary role as a member of this music group.

The record adequately establishes that Canadian Brass is an organization with a distinguished reputation. The record further reflects that the petitioner played a leading and critical role for the ensemble as their lead trumpeter. Thus, we find that the petitioner's evidence is adequate to fulfill this third criterion.

Additional witness letters and other evidence in the record bolster the petitioner's claim that he has garnered national and international acclaim. For example, Yoshihiro Doi, President, Yamaha Corporation of America, states:

It is due to [the petitioner's] international renown that Yamaha selected him from among all his peers to endorse their trumpets internationally. Therefore, it is no coincidence that [the petitioner] is the only Canadian trumpet soloist endorsed internationally by Yamaha.... In short, [the petitioner's] international acclaim sells our trumpets, which is the primary reason that we have continued to have him represent us.

In addition, the record contains evidence showing that the petitioner performed as official trumpeter at the National Hockey League's Stanley Cup Finals.

In this case, the petitioner has satisfied three of the regulatory criteria required for classification as an alien of extraordinary ability. Pursuant to the statute and regulations as they are currently constituted, the petitioner qualifies for the classification sought.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the totality of the evidence establishes an overall pattern of sustained national acclaim and extraordinary ability in the field of music. The petitioner has also established that he seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has overcome the stated grounds for denial and thereby established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.