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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

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

[redacted]

File: LIN-02-176-51897 Office: Nebraska Service Center Date: JAN 02 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]

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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

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

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

The petitioner submitted his certificate of First Prize at the Chopin Piano Competition sponsored by the Jerusalem Rubin Academy of Music and Dance in 1997; a certificate reflecting that the petitioner was a winner at the 2000 World Piano Competition in Cincinnati, Ohio, sponsored by the American Music Scholarship Association; a certificate as a quarterfinalist at the 1994 11th Gina Bachauer International Piano Competition in Salt Lake City; a letter from the San Antonio International Competition advising the petitioner of his 5th place ranking in 2000; an announcement declaring that the petitioner won the 1995 Francois Shapria Competition sponsored by Kol Israel Voice of Music and the America Israel Cultural Foundation; and a "diploma" from the Rostov State Music Institute confirming the petitioner's First Prize at the Sixth Northern Caucasus Region Competition for the senior students of the Music Colleges Piano Division in 1988. The petitioner's witnesses also reference a youth competition at which the petitioner won top prizes.

The director requested evidence as to the significance of the above competitions, noting that at least one of the competitions was restricted by age. In response, the petitioner submitted a letter from Dr. Paul C. Pollei, Artistic Director of the Gina Bachauer International Piano Foundation asserting that the petitioner competed in the 19-32 age group. Dr. Pollei explains that auditions were held in several countries, narrowing the 200 applicants to 50 competitors. He asserts that "the purpose of an international music competition is to determine and identify excellence and offer enhancements in the form of prizes and career opportunities for the highest-level musicians."

The petitioner also submitted a letter from Ruth Gurwitz of the San Antonio International Competition, asserting that all piano competitions have age limitations. Ms. Gurwitz further asserts that their age limitation, 20-32, "is probably one of the broader age requirements you will find in the world of competitions." While Ms. Gurwitz asserts that reaching the finals "attests to [the petitioner's] superior musical ability," she acknowledges that he did not win one of the top three prizes, but, rather, was ranked fifth.

The director noted that the petitioner appeared to have only competed in age restricted competitions and, thus, not against the most experienced pianists nationally or internationally. Nevertheless, the director concluded that the petitioner had met this criterion. We cannot agree. The only competitions about which the petitioner submitted evidence regarding their significance are ones where the petitioner did not receive third prize or better. The record contains no evidence regarding the significance of the remaining competitions at which the petitioner did receive awards. The petitioner's references imply that there are no competitions where the most experienced and acclaimed pianists compete because the competitions are designed to further the career of talented but not yet acclaimed musicians. Assuming this implication to be true, the inapplicability of this criterion does not necessitate a finding that the petitioner meets the criterion.

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

The petitioner submitted evidence that he performed at the World's Rising Star series in 2002 at the Irving S. Gilmore International Keyboard Festival associated with the Ravina Festival in Kalamazoo, Michigan; the Third Hamamatsu International Competition in an unknown year; at Saint Mary's College Moreau Center Little Theater in South Bend, Indiana in 2000; the 2000 San Antonio International Competition at the Ruth Taylor Concert Hall at Trinity University; the 2001 D'Angelo Young Artists Competition at Mercyhurst College in Pennsylvania; the 1995 Arthur Rubinstein International Piano Master Competition in Tel-Aviv, Israel; the 1997 Festive Concert at the Sherover Hall Jerusalem Theater; and three other venues in Israel. The petitioner also performed at the competitions at which he won awards, listed above.

Apparently accepting that recitals can serve as comparable evidence to meet this criterion, which is designed for visual artists, the director requested evidence that the petitioner had been showcased as a top pianist, as opposed to a "rising star." In response, Juanita E. Nash, Director of Operations for the Irving S. Gilmore International Keyboard Festival, asserting that the petitioner received "rave reviews" at the event. She continues that "performers are selected on the basis of outstanding talent" based on a noncompetitive process and that "we only choose the very best pianists." Finally, she states Alexander Toradze, the petitioner's mentor at Indiana University, South Bend, was involved in the selection of pianists. An article on the Toradze Studio indicates that, in fact, most members of the studio participated at the Gilmore festival.

The director concluded that the petitioner had not been featured as a pianist who had already risen to the top of the field. On appeal, counsel notes that the petitioner has performed at "world-wide venues."

Neither the petitioner nor counsel has explained how piano recitals are comparable to visual art exhibits. We note that 8 C.F.R. § 204.5(h)(3)(viii) and (x), regarding playing a leading or critical role and commercial success in the performing arts, are more related to the petitioner's field. Yet, the petitioner does not claim to meet either criterion.

Assuming piano recitals are comparable to visual art exhibits or showcases, when considering evidence to meet this criterion submitted by visual artists, this office consistently notes that it is inherent to the field of visual arts for an artist to display his or her work. Similarly, in order to earn a living as a pianist, it is inherent to perform at recitals. What is relevant is the significance of the venue where the alien's work is on "display."

The only venue about which the petitioner provides information is the Gilmore festival. As stated above, it appears that the petitioner's mentor helped select the pianists and that most of Mr. Toradze's students participated. The record contains no evidence that the Rising Star segment of the festival is designed to showcase the most experienced, acclaimed pianists in the United States. Thus, the petitioner's participation in that segment is not indicative of or uniquely consistent with national or international acclaim. As stated above regarding awards, the competitions at which the petitioner has performed are principally designed to advance the careers of talented but as yet unknown musicians.

We acknowledge that the petitioner has won awards and performed at recitals. While we have determined that the petitioner has not established the significance of these awards and recitals, we note that even if we concluded that the petitioner minimally met both of the above criteria, for the reasons discussed below, he falls far short of the third criterion claimed.

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

The petitioner submitted a 1996 article about his unpublicized concert and selection to compete at an international competition in Leeds, "a sort of a musical Olympic event," published in the *Haaretz,*[1] an Israeli National Newspaper according to the translation, and an article in *The Salt Lake Tribune* announcing all 20 "young" competitors in the Gina Bachauer competition who made it to the quarterfinals. The article's focus is on a local "boy" who made the cut and the elimination of a Cuban competitor whose visa was initially "snarled." In addition, the petitioner submitted a 2000 article in the *South Bend Tribune* reviewing music performed at the Toradze Piano Festival. The article reviews several performers and the petitioner is only discussed in the final paragraph. Finally, the petitioner is pictured in a photograph in *The Post* with a caption identifying him as the winner of fourth place at the World Piano Competition in Cincinnati, Ohio, and two other competitors in the photograph as finalists.

In his request for additional documentation, the director stated that the above articles were insufficient evidence to meet this criterion. In response, the petitioner submitted two reviews published in *The New York Times*. The reviews are of recitals where several pianists played and only one sentence in each article is devoted to the petitioner.

The director noted that the two reviews in *The New York Times* were published after the date of filing and could not establish the petitioner's eligibility as of that date. On appeal, counsel reiterates that the petitioner was featured in *The New York Times*. We concur with the director that the petitioner does not meet this criterion. A petitioner must establish eligibility as of the date of filing, and evidence relating to events after that date cannot be considered. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Moreover, those articles are not primarily about the petitioner and, thus, cannot meet the plain language requirements of the pertinent regulation. The only article primarily about the petitioner is the one that appeared in *Haaretz*. The petitioner did not submit any evidence that this publication has a national circulation, including the section of the paper in which the article was featured.[2] Regardless, the article was from 1996. We cannot conclude that a single article from six years prior to the filing date of the petition demonstrates sustained acclaim up until the date of filing.

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[1] The translator provides the English spelling of this newspaper as "HaEretz." According to the paper's English language website, the transliteration of its name is "Haaretz."

[2] While it is the petitioner's burden to establish the paper's circulation, a review of the paper's website reflects that it is a daily paper with a maximum daily distribution of 95,000. The site does not indicate whether that circulation is national.

Witness letters

The petitioner submitted several witness letters providing praise of his abilities. 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.

Moreover, as stated by the director, only one of the letters unconditionally rates the petitioner at the top of his field. Juanita Nash, Director of Operations for the Gilmore festival, states in her first letter that the petitioner is "truly a rising star" and that he should be allowed to complete his studies. The record contains no explanation for why the petitioner would need to study in his field if he is already at the pinnacle of that field. Gyorgy Sandor, on the faculty at the Julliard School, praises the petitioner's talent but states that he "may achieve an excellent music career." Dr. David Barton, Assistant Dean for Instruction at the School of the Arts at Indiana University, South Bend, asserts that the petitioner is one of the best young pianists and compares him with other students in his program. Lawrence Rapchak, Music Director for the Northbrook Symphony Orchestra, states that "of the promising young pianists whom I have heard, I believe that the caliber of his playing places him in the highest level of this very competitive field." Joseph Horowitz, a former music critic for *The New York Times* characterizes the petitioner as "a young pianist of the first rank," who "deserves to continue his studies." Maya Pritsher, Cultural Editor and Critic for a Russian-language newspaper in the United States, states that the petitioner "is one of the most interesting performers in today's international music world."

The petitioner's mentor, Alexander Toradze, states that the petitioner is "among the best representatives of the young generation of pianists." We note that Mr. Toradze recorded all five Prokofiev concertos, acclaimed by critics as "definitive." He has also performed on other successful recordings as well as having appeared with every major North American and international orchestra. Mr. Toradze's accomplishments suggest that the top of the petitioner's field is considerably higher than that achieved by the petitioner.

The remaining letters simply provide praise of the petitioner's talent. Only George Steel, Executive Director of the Miller Theater at Columbia University, asserts that the petitioner has "risen to a level of skill above most other pianists in the world." The remainder of the record does not support this one subjective opinion of the petitioner's position in the field.

Finally, on appeal, James Davidson, Senior Pastor of the Coalbush United Methodist Church in Indiana, submits a copy of a letter sent to Senator Richard Lugar. In the letter, Dr. Davidson describes the petitioner's philanthropic activities. While commendable and not to be discouraged, these activities simply have no bearing on the petitioner's eligibility.

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 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 indicates that the petitioner shows talent as a pianist, 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.