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U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 282 51671 Office: CALIFORNIA SERVICE CENTER Date: **MAR 0 8 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

For Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 international acclaim necessary to qualify for classification as an alien of extraordinary ability. The petitioner filed a motion to reopen and reconsider, or in the alternative, an appeal. The director took no action on the motion, and the petition was forwarded to the AAO as an appeal pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

The director states that as the field of classical music is not native to any one country but is rather an international field, the petitioner must establish that he has sustained international acclaim. This is an erroneous interpretation of the statute and regulation. Section 203(b)(1)(A) of the Act states that aliens of extraordinary ability in the sciences, arts, education, business, or athletics who have demonstrated sustained national or international acclaim may be eligible for visa preference classification. The statute does not state that individuals in certain fields of endeavor are required to demonstrate international acclaim. The term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documentation to establish that an alien has sustained national or international acclaim in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The regulation does not provide that sustained acclaim in some fields of endeavor can only be met at the international level. By requiring musicians, or more specifically classical musicians, to establish sustained international acclaim, the director imposes a standard higher than that set by statute, and applies the criteria more narrowly than the regulation requires.

The director's decision seems to be contradictory. At one point the director states that the petitioner has failed to establish even national acclaim. At another, he states that the petitioner has met three of the evidentiary requirements but that even by meeting three of the regulatory criteria, the petitioner has failed to establish national or international acclaim. This is also an erroneous statement. Clearly, if the petitioner satisfies three of the regulatory criteria, he will qualify for the visa classification.

It is noted that the petitioner must do more than submit evidence addressing three of the criteria. The evidence in support of each criterion must qualitatively satisfy the criterion, and indicate through extensive documentation of national or international acclaim that the petitioner meets the criterion. For example, if the petitioner submitted evidence that he received local or regional awards that are not nationally or internationally recognized, such evidence would be insufficient documentation to satisfy the criterion for nationally or internationally recognized awards for excellence in the field at 8 C.F.R. § 204.5(a)(h)(3)(i). Similarly, if the petitioner submitted published material written about him and his work and these materials did not appear in professional or major trade publications or other major media, he would not satisfy the criterion at 8 C.F.R. § 204.(a)(h)(3)(iii). Because the director appears to have misapplied the regulation at 8 C.F.R. § 204.5(a)(h)(3), his decision will be withdrawn and the case remanded for consideration and entry of a new decision.

The director noted in his decision that the petitioner failed to submit evidence of advisory opinions of the petitioner's standing in the field as required in the request for evidence. While opinions from recognized

national or international experts in the filed would certainly help the petitioner's case, the regulation does not require that the petitioner submit certain forms of evidence in order to prove his case. The regulation does not require that the petitioner submit an advisory opinion as is required for the O nonimmigrant alien of extraordinary achievement in the arts at 8 C.F.R. § 214.2(o)(5)(iii).

Therefore, this matter will be remanded for consideration of the evidence in accordance with the statute and regulation. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.