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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 03 012 51572 Office: CALIFORNIA SERVICE CENTER Date: MAR 31 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, 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 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.

The petitioner is a musician whose specialty is the duduk, a wooden flute used in Armenian folk music. Counsel states that the petitioner "is considered to be one of the top ten Duduk players in the world. He has performed throughout the world, including several performances at the Hollywood Bowl. . . . He is currently involved in a number of projects and musical ensembles such as the highly acclaimed Axiom of Choice, and Winds of Passion of which he is a founding member."

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.*

A certificate from the Aurora Awards, "An International Competition Honoring Excellence in the Film and Video Industries," shows that Art Mokatz and 3rd Millennium Entertainment won a Gold Award for "original music" in the film "10½ Min. of Absolution." Mr. [redacted] states in a letter that the petitioner participated "in my movie sound track project." This evidence does not document *the alien's receipt* of any prize. It documents Art Mokatz's receipt of a prize. Furthermore, the record does not establish the significance of the Aurora Awards, although this issue is of less importance because the petitioner did not receive any Aurora Awards.

The Armenians In Music and Film Association presented the petitioner with a [redacted] award at the Annual Armenian Music Awards in 1999. This is not an Armenian award, but rather an American award, presented by a Los Angeles-based organization. It appears that the vast majority of musicians in the United States are *a priori* excluded from consideration because they are not Armenian.

A photograph in the record shows a crystal sculpture, showing a silhouette of a kangaroo and an Armenian-language inscription which is translated as "To the Well-Known Musician / [the petitioner] / From Organization of Armenian Youth / [redacted] / Sydney, Australia." A photograph of a plaque shows a wind instrument (possibly a clarinet or a duduk), musical notes, and an Armenian inscription which is translated as "To [the petitioner] / From the Armenian Community of Germany / Munich 1992." The record does not show that either of these is a prize or award at all, let alone one that is nationally or internationally recognized. The record does not show that anyone in Australia or Germany, outside of Armenian expatriate communities there, has even heard of the petitioner, let alone considers him to be among the most highly acclaimed in his field.

> *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.*

[redacted] chairman of Zartonk Cultural Inc., states that the petitioner "has been a founding member of our Folk Ensemble." The letterhead of Mr [redacted] letter reads "Hayastan Armenian Folk Orchestra." This letter does not show that the orchestra is an "association in the field," or that membership in the orchestra requires outstanding achievements as judged by recognized national or international experts. As a founder of the ensemble, the petitioner's membership would seem to be assured, rather than subject to stringent conditions. Mr. [redacted] letter shows only that the petitioner, like many musicians, is a member of a local orchestra or ensemble.

> *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.*

A 2000 article in the *Los Angeles Times* reviews a concert performance by Axiom of Choice. The article appears to be a fairly typical review of a local performance. The article states that "the group . . . is centered around the work of guitarist [redacted] and singer [redacted]." The article mentions the petitioner only once, in the context of a list of other band members, and thus cannot reasonably be said to be "about the alien" as the regulation requires.

Three articles, from *AIM*, the *Los Angeles Times*, and an unidentified publication, review an August 1999 performance by the Armenian Festival Ensemble at the Hollywood Bowl. None of these articles mentions the petitioner by name, and thus by no rational standard are they "published materials about the alien." An issue of *Hollywood Bowl* appears to be a program distributed to concertgoers, rather than a circulated publication that is available elsewhere. Three paragraphs are devoted to the Armenian Festival Ensemble but the petitioner's name does not appear. He, like the rest of the group, appears unnamed in a group photograph.

The petitioner is clearly the subject of an article in *Armenian Arts*. The petitioner has not, however, shown that this publication constitutes "major media" with national or international circulation.

A 1988 publication from the Armenian SSR State Ethnographic Museum lists Armenian duduk players. The publication includes the petitioner's photograph and roughly two pages of text devoted to him. In 1988, Armenia was not an independent nation (as shown by the petitioner's participation, in 2000, in a ninth anniversary celebration of Armenian independence), and there is no indication that this publication, printed in the Armenian language, was distributed throughout the Union of Soviet Socialist Republics.

An article from 1988 reviews a concert performance in Auckland, New Zealand. The name of the publication is not provided, and therefore we cannot determine whether or not the article appeared in major media as the regulations require. The translation is incomplete, and therefore the petitioner not shown that he is the focus of the entire article.

> *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.*

A certificate signed by G.A. [redacted], vice director of the Armenian State Philharmonic Society, states that the petitioner "was the Chairman of the Board of the Competition-Festival of the Armenian Folk Arts which took place in April 1998." There is no explanation as to how this activity amounted to judging the work of others; counsel simply states that the certificate satisfies the criterion.

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

The petitioner submits several witness letters. Yatrika M. Shah-Rais, music programmer of the Skirball Cultural Center in Los Angeles and host of "Global Village" on KPFK Radio, states that the petitioner "has consistently shown excellence and outstanding accomplishments" as a musician, and "is currently the most active duduk player living in the United States." Though she offers general praise for his musical skills, Ms. [redacted] does not specify any particular artistic contributions of major significance that the petitioner has made in his field, nor does she indicate that the petitioner is nationally or internationally acclaimed. Ms [redacted] asserts that she is "a member of the World Music Screening Committee of the Grammy Awards," but she does not state that any of the petitioner's recordings have received serious consideration as Grammy contenders.

[redacted], who calls himself "one of the foremost Armenian folk musicians," taught the petitioner at the [redacted] Conservatory. Mr. [redacted] calls the petitioner "today's top duduk performer and teacher with his unique signature style," and he states that the petitioner's "name is well-known and recognized."[1] These general statements, once again, do not demonstrate any specific contribution of major significance. No witness cites any particular composition, recording, or technique that is widely recognized not only by individuals in Los Angeles and by the petitioner's own former teachers, but throughout the field.

Numerous other witnesses assert that the petitioner is a highly skilled "master" of his instrument. Technical skill, however difficult to attain, is not in and of itself a contribution of major significance. The witnesses do not state that the petitioner is nationally or internationally acclaimed. Furthermore, almost every witness who provides any indication of his or her location is in or near Los Angeles, consistent with a predominantly local reputation, further concentrated within the Armenian community there.

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[1] With respect to recognition of the petitioner's name, we note that the record contains numerous variations of both the petitioner's given name and surname.

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

Counsel states that the petitioner's concert appearances satisfy this criterion. The wording of the regulation appears to be more applicable to visual arts such as painting and sculpture; every live concert performance is a kind of "display," but clearly not every concert musician is extraordinary. The regulations contain a separate criterion specifically for the performing arts, but the petitioner does not claim to have satisfied that criterion.

One of the "displays" is said to be a 1999 concert at the Hollywood Bowl. As stated elsewhere in this decision, there is no evidence that the petitioner was a spotlighted artist at that concert.

An October 2000 letter from [redacted] Armenia's Consul General in Los Angeles, thanks the petitioner "for your participation in the national festivity organized by the Consulate General on the occasion of the 9th anniversary of the Independence of the Armenian Republic." There is no indication that the petitioner's performance was a central element of the "festivity"; rather, the petitioner's "art was greatly conducive to creating a truly festive atmosphere and providing a proper level of the activity." Furthermore, the petitioner has not shown that a festival, organized by a local consulate, rises to the level of a nationally or internationally significant event, rather than an occasion primarily of interest to Armenians in the Los Angeles area.

Vatsche Barsoumian, president of the Lark Musical Society, Glendale, California, states that in 1998, the petitioner "was invited to take part in a major performance of Minstrel-Bardic music concert organized by Lark in southern California." Once again, there is no evidence that this event was of more than local importance. A musician does not earn sustained national or international acclaim simply by performing in public.

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

Counsel maintains that the petitioner's performance at the legendary Hollywood Bowl easily satisfies this criterion. The record shows that the Armenian Festival Ensemble performed at the Hollywood Bowl on August 15, 1999. The record, however, does not demonstrate that the petitioner was a featured performer at that event. As noted further above, published reviews of the concert single out other individual musicians, but not the petitioner. The record shows that the event was the "World Festival '99 concert," with Armenian music comprising only a fraction of the program, shared with three other acts. The Armenian Festival Ensemble was the first act to perform, which is generally not the practice with the "main attraction," and the *Los Angeles Times* review states "the starring role belonged to the Clouds," referring to a gospel music group, the Mighty Clouds of Joy. The title of the *Times* article is "Clouds of Joy Lift Spiritual Fest."

Counsel also asserts that the petitioner played a leading or critical role at the above-mentioned celebration at Armenia's Los Angeles Consulate General. As noted above, the significance of this event has not been established, and the petitioner has not shown that the Los Angeles Consulate General of the Republic of Armenia is an organization or establishment with a distinguished reputation, in comparison to other consulates general throughout the United States or the world.

[redacted] of Skirball Cultural Center states that the petitioner "is the first *duduk* player of the Armenian ensemble Winds of Passion," and previously "was the Director and soloist for T. Altounyan Armenian State Ensemble of Folk Singing and Dancing." [redacted] identified above, states that in 1977, the petitioner "took my place as the head duduk soloist in Tatul Altounian State Ensemble of Song and Dance." The record contains no other information about this ensemble to establish that it has a distinguished reputation. The burden remains on the petitioner to establish the distinguished reputations of these entities. We note the absence

of primary evidence from the entities themselves for which the petitioner is said to have performed in a leading or critical role.

Walter Zooi, director of communications at California Institute of the Arts, states:

> In my capacity as executive producer of *Thornton Center Stage*, a weekly radio program heard locally on 91.5 fm on KUSC, I created a program that focused on the music of Armenia and featured live and recorded performances by [the petitioner]. This program received the greatest number of listener responses in the show's history and indicates the universal appeal [of] his artistry.
>
> Music faculty here at CalArts have been singularly impressed with the unique qualities of [the petitioner's] musicianship and are making plans to have him give masterclasses at the School of Music in the Fall, 2002 semester.

The petitioner has not shown that *Thornton Center Stage* is nationally or internationally distinguished, or even that it is broadcast outside of Los Angeles. Teaching a class at an arts institute is not a leading or critical role; it is, rather, a routine duty of the faculty there. Furthermore, the petitioner had not taught the class yet as of the date of the letter, nor is there any indication of a firm commitment to do so. The petitioner cannot satisfy a regulatory criterion based on "plans" for a future activity.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, the petitioner has submitted additional letters and published materials. Most of these letters are from members of the Armenian community in the Los Angeles/Glendale area. Such letters, regardless of their quantity, are not, and cannot be, first-hand evidence of acclaim outside of the Armenian community in the Los Angeles/Glendale area. Recognition in a local ethnic enclave is not national or international acclaim. Similarly, the petitioner documents recent concert appearances, nearly all of them in the Los Angeles/Glendale area, mostly at Armenian cultural centers. One concert, in October 2002, took place at the University of Washington, Seattle.

Laura Connelly-Schneider, program manager for jazz and world music at the Hollywood Bowl, states "[w]ithout [the petitioner's] leadership and unique ability to perform on the duduk . . . there would not have been such a superlative performance" by the Armenian Festival Ensemble in 1999. We have already established that the ensemble was not the principal attraction at the 1999 concert, and the Hollywood Bowl's own promotional materials from the time of the concert do not even mention the petitioner's name.

Art Mokatz asserts, in a new letter, that the petitioner's "original music for 10 ½ Minutes of Absolution earned that project a 2001 Gold Award. While the award was officially given to the film's producer, and the production company, 3rd Millennium Entertainment, it acknowledges [the petitioner's] outstanding work." Mr. Mokatz also provides background information about the Aurora Awards. None of this information shows that the awards are nationally or internationally recognized, nor does it change the fact that the petitioner did not receive the award. There is no evidence that these awards received any significant publicity, and even if they had, the petitioner's name is not on the award and thus no acclaim would have arisen from the award.

A new certificate from G. [redacted] of the Yerevan Cultural Center states that the petitioner "was elected the chairman of the jury for the 1998 competition-festival of Armenian folk songs and dances." This clarification of the earlier certificate appears to be sufficient to establish the petitioner's participation as a judge of the work of others.

Some of the evidence submitted in response to the director's notice concerns events which took place after 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 director denied the petition, discussing the various regulatory criteria at 8 C.F.R. § 204.5(h)(3) and explaining why the petitioner has not met them. On appeal, counsel claims that the denial "is based on erroneous application of an overly broad concept of 'field,'" specifically "the ambiguously large field of music as a whole." Counsel argues that different genres of music (e.g., classical and rock) are effectively different "fields," and "instrumentalists should be judged according to the type of instrument they play." Therefore, counsel argues, the petitioner should be judged among duduk players, rather than among all musicians.

Certainly it is too broad to classify the petitioner simply as a "musician" and then demand comparison to everyone from Yo-Yo Ma to Eric Clapton. A reasonable narrowing of the scope of consideration, however, does not diminish the fundamental burden of proof. If we limit comparison to other duduk players, as counsel demands, the petitioner must still demonstrate national or international acclaim. In the event that there are no nationally or internationally acclaimed duduk players, a given alien does not achieve acclaim by default simply by being better known than any other duduk player. The criteria at 8 C.F.R. § 204.5(h)(3) still apply, and those criteria must be seen through the prism of *extraordinary ability* and *sustained national and international acclaim*. Counsel states that the "[p]etitioner has submitted evidence establishing him as one of the top duduk masters in the world." The record, however, contains insufficient evidence to support such a claim. At best, the petitioner has located a handful of witnesses who declare that the petitioner is among the world's top duduk players. Such statements cannot carry the same weight as objective, first-hand evidence, or the "extensive documentation" demanded by the plain wording of the statute at section 203(b)(1)(A)(i) of the Act.

More importantly, in the context of this appeal, the director's decision does not appear to be based on an overly broad definition of the petitioner's field. Rather, the director's decision is broken down by individual criteria, with explanations of why the petitioner's evidence, on its face, is insufficient to meet those criteria. There is no general comparison between the petitioner and all other musicians, and therefore counsel seems to object to a finding that the director never made.

Counsel then turns to the individual criteria. With regard to 8 C.F.R. § 204.5(h)(3)(v), pertaining to original artistic contributions of major significance, counsel states that the director did not give sufficient consideration to letters from "accomplished and influential professionals." As noted above, these letters do not represent a cross-section of the music industry, or even the much smaller sphere of the Armenian folk music industry. Again, as noted above, the letters do not clearly indicate any specific contribution of major significance. The letters merely indicate that the petitioner is a skilled and successful musician. Musical skill is not inherently an original contribution of major significance.

Counsel asserts that the director did not give due weight to evidence of the petitioner's work as a judge. Based on the evidence of record, we concur with this argument. While this evidence is minimal, what there is of it is consistent with the petitioner's activity as a judge at a national competition in Armenia in 1998. At the same time, we note that whatever national-level reputation the petitioner may have had in Armenia does not appear to have followed him to the United States. The statutory/regulatory standard is *sustained* acclaim; past acclaim does not create a permanent entitlement to the "extraordinary ability" classification.

Counsel objects to the director's finding that the petitioner's concert appearances do not constitute artistic displays or showcases. Counsel cites 8 C.F.R. § 204.5(h)(4), which permits the submission of "comparable evidence" when the standard criteria do not apply to a given field. There are, however, already criteria that pertain to concert appearances. The petitioner has claimed to have satisfied one of these, regarding leading or critical roles for distinguished organizations. Also, 8 C.F.R. § 204.5(h)(3)(x) calls for "[e]vidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." Despite the claim that the petitioner is among the most successful duduk players in the world, the petitioner has made no claim under the "commercial success" criterion. The very existence of the "leading role" and "commercial success" criteria shows that merely appearing on stage is not sufficient to establish extraordinary ability or sustained acclaim. The "comparable evidence" clause does not nullify the above argument.

Counsel states that the director "reluctantly concedes that Petitioner meets the criteria regarding published material about his work. However, in addressing the issue, the [director] complains that the evidence does not refer to Petitioner as extraordinary." The relevant paragraph in the director's decision reads, in full:

> As evidence of meeting this criterion petitioner has submitted copies of newspaper articles published in local newspapers and the Los Angeles Times. After review of the articles provided by the petitioner, it does not establish that petitioner is extraordinary as a musician. The article in the *Los Angeles Times* talks mainly about the Armenian Festival at the Hollywood Bowl. It shall be noted that on the articles the applicant has provided to the Service, none of them provide evidence that the applicant is extraordinary as a musician. This criteria has been met.

In context, the above paragraph does not appear to be a concession. Rather, it appears that the assertion that the criterion "has been met" is the result of a typographical error. This is not baseless speculation. Regarding another criterion, under which the petitioner had made no claim at all, the director stated "[t]he petitioner has not submitted any evidence that he commands a high salary as an individual. This criteria has been met." Obviously, the petitioner cannot meet a criterion if he submitted no evidence. Thus, the decision demonstrably contains an instance where the director erroneously stated that a criterion "has been met," when in context the director clearly meant that it "has *not* been met."

Certainly, a published article about an alien need not contain the word "extraordinary." At the same time, however, we must consider the source and the content of each article. As discussed in greater detail above, the articles submitted by the petitioner all fall short of the regulatory standard. Some derive from minor, local publications, or from unidentified publications, whereas other articles contain little or no mention of the petitioner. The only publication that arguably constitutes major media is the *Los Angeles Times*, with a review that mentions the petitioner only once, while identifying others as the leaders of the group. This article is a review of a local performance, and such reviews are hardly the exclusive domain of nationally known musical acts.

Counsel maintains that the petitioner has performed in leading and critical roles for "such renowned venues a[s] Skirball Cultural Center," although the record contains no evidence that the Skirball Cultural Center is renowned primarily as a concert venue, or that only top acts perform there. Counsel then lists "the Armenian Consulate General in the U.S.; The Armenian Folk Orchestra; [and] Armenian Society of Los Angeles," in between repeated protests that the director unfairly concluded that the petitioner "performs mainly for the Armenian population." Apart from a single concert in Seattle, the petitioner's performances in the United States appear to have been limited to the Los Angeles area. Whatever percentage of concertgoers was

Armenian, the petitioner's reputation in the United States (where he has resided for several years) is almost entirely limited to a small area of California.

Finally, with regard to memberships in associations, counsel states that the director "ignores evidence of Petitioner's membership in the Altounyan Ensemble . . . as well as his membership in the Armenian Folk Orchestra in the United States." It remains that the petitioner has not shown that either of these groups is a qualifying association under 8 C.F.R. § 204.5(h)(3)(ii).

Counsel claims that the director impermissibly relied on "extemporaneous and derogatory evidence not within the record, without allowing petitioner an opportunity to rebut such evidence." Counsel does not identify this evidence. Instead, counsel states "it is unacceptable that the Service . . . asserts that its 'objective documentation of record does not support the contention' that Petitioner meets the required criteria. . . . Petitioner deserves to know the source of this 'objective' determination." The director did not indicate that "objective documentation" from some outside source contradicts the petitioner's claims. Rather, the director stated that the "objective documentation *of record*" (i.e., the petitioner's own documents) do not support the petitioner's claims. The director appears to have used the term "objective documentation" to distinguish it from *sub*jective materials such as witness letters.

Counsel also claims that the use of "adverse evidence . . . is evident through the cursory decision in the case; derogatory comments regarding the evidence," and dismissal of the witness letters. Counsel asserts "[g]iven the superficial treatment of the record, and the lack of any substantive analysis in its decision, it can only be assumed that the Service's decision is entirely based on the adjudicator's extemporaneous feelings about the case and/or Petitioner." This argument is utterly unfounded. Counsel seems to imply that the petition is so obviously approvable that only an adjudicator's bias could explain an otherwise inexplicable denial. The director's decision contains numerous references to the evidence of record. Review of that evidence reveals ample grounds for denial. There is no reason to believe that the denial resulted from a malicious act by a rogue adjudicator. Furthermore, "adverse evidence" or "derogatory evidence" refers to actual evidence, obtained from some source other than the petitioner, that is unfavorable to, or contradicts, the petitioner's claim. An adjudicator's personal bias does not represent "adverse evidence." In any event, the director's decision was based neither on bias nor on evidence from outside the record. Rather, the petitioner's own evidence fails, on its face, to meet the regulatory standards set forth at 8 C.F.R. § 204.5(h)(3).

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 duduk player 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.