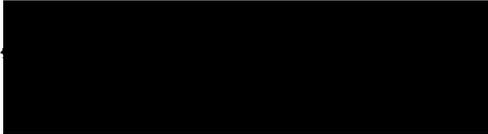


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FILE: EAC 03 199 52115 Office: VERMONT SERVICE CENTER Date:

AUG 2 2011

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

SELF-REPRESENTED

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, Vermont 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 and business. 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 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 June 24, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Classical Music Promoter."

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 claims eligibility under the following criteria.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Furthermore, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

On appeal, the petitioner submits a letter from the Association of Performing Arts Presenters (APAP) confirming that his company, FAS ARTS Management, is a member of the Association. The plain wording of this criterion, however, requires documentation establishing the petitioner's individual membership. Nevertheless, there is no evidence (such as membership bylaws) showing that the APAP requires outstanding achievement of its members, as judged by recognized experts at the national or international level.

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.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major media*. To qualify as major media, the publication should have significant national or international distribution. The petitioner submitted various articles and promotional materials, but these items are not "about" the petitioner. Rather, these materials discuss or promote the various musical performers who have contracted the petitioner's company to organize their classical music tours. The plain wording of the regulation, however, requires "published materials about the alien." If the petitioner himself is not the primary subject of these articles or is not actually named in the articles, then such articles fail to demonstrate his individual acclaim. Furthermore, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Many of the articles and promotional materials provided by the petitioner were not accompanied by a proper translation, nor has the petitioner submitted official data regarding their volume of readership. For these reasons, we find that the evidence presented by the petitioner is not adequate to show that he has been the primary subject of sustained national or international media attention.

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 petitioner submitted an informational brochure pertaining to the "First International Harpsichord Competition" in 2000. The brochure states: "The Competition will be open to instrumentalists of all nationalities [sic] as long as they can prove their date of birth. Age limit is 26. . . . The juri [sic] will be

comprised of 3 members from different countries, all of them being major personalities of the early music world.”

Under the heading “Juri” are listed the names of three music professors and the petitioner. The petitioner offers no explanation as to why the regulations state that the jury “will be comprised of 3 members,” yet four names are listed as “juri” members.

As previously noted, the regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. For example, judging the work of professional musicians is of far greater probative value than evaluating amateurs. In this instance, we note that participation in the First International Harpsichord Competition was limited to individuals age 26 and under (rather than being open to established professionals). Furthermore, the record contains no evidence regarding the number of competitors who actually participated, the size of the audience who viewed the event, or the level of media attention focusing on the competition’s outcome. We cannot ignore the statute’s demand for “extensive documentation” of sustained national or international acclaim.

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

The petitioner submitted several letters in support of the petition. We cite representative examples here.

██████████ Managing Director of the Martius-Staden Institute, states:

Throughout 2001 and 2002, I have been in permanent contact with [the petitioner], whose services in the field of classical music promotions and touring I have come to appreciate on a number of occasions. [The petitioner] has organized various concerts for our Institute [The petitioner’s] services have been marked by his outstanding professionalism and expertise as both connoisseur of classical music and tour organizer. Whenever we contracted his services as a musical promoter, he has fully responded to our needs and expectations.

██████████ Managing Director, London Mozart Players (LMP), states:

[The petitioner] organized the LMP’s first ever tour of Brazil in the Autumn of 2000, and the tour was very successful, including concerts in the most important series in both ██████████ and ██████████

* * *

[The petitioner] continues to work very actively on behalf of the London Mozart Players, and is now organizing a larger tour of South America for summer 2003, encompassing Argentina, Brazil and possibly Uruguay. From my extensive experience of work different agents throughout the world, I would say unequivocally that [the petitioner] is a leading representative of his field, with outstanding abilities in negotiation and organization.

██████████ Soprano Soloist, states that the petitioner promoted her tour in South America in 2002. She further states:

[The petitioner's] role included approaching festival organizers and promoters in Brazil, Uruguay, Argentina and Chile and offering them performances by myself with London Baroque. He has impressed me with the quality of his connections in the music world and was able to sell our program through his rapport with local promoters amidst plenty of competition (as is always the case in music), learnedly highlighting its musicological merit.

██████████ Professor for Violin at the Hanover University of Music, and Leader of the Hanover Chamber Orchestra, states that the petitioner promoted tours for the orchestra in South America in 1998 and 2002. ██████████ further states:

Some of the 20 concerts he has organized for the Hanover Chamber Orchestra were part of big series in musically important towns such as Sao Paulo, Buenos Aires and Montevideo but some were in smaller cities, and were considered as cultural mission. These concerts in small towns were something of a very high cultural value since many of the people in the audience had never attended a classical music performance in their lives. This was very important in terms of building up a cultivated audience in a country of very high poverty rate and also in terms of cultural exchange between Brazil and Germany. It was done in a very original manner, using very innovative promotional strategies.

While assisting in cultural exchange programs is certainly admirable, there is no indication the petitioner's role as a promoter and tour organizer rises to the level of a major national or international contribution. In regard to the petitioner's supporting role in bringing such events to fruition, Professor ██████████ states: "[The petitioner's] critical role included organizing and promoting concerts of the Hanover Chamber Orchestra, booking the concerts, taking care of all financial aspects of the tour, looking after musicians and taking care of travel arrangements, and he has done with [sic] excellent skills." There is no evidence showing that such activities have had a lasting influence or a substantial national or international impact in the music industry.

We accept that the petitioner possesses unique skills and knowledge pertaining to the promotion of classical music events in South America. However, being an effective classical music manager does not constitute an original contribution of *major* significance in the music industry. The preceding letters indicate that the petitioner has successfully collaborated with local promoters in coordinating classical music concerts for his clients, but his ability to significantly impact the music industry in general has not been adequately demonstrated.

In this case, the letters of support offered by the petitioner were all from individuals who have utilized his services. This fact indicates that while the petitioner's efforts are valued by his clients, others outside of those with whom he does business are largely unaware of his work. With regard to the personal recommendation of individuals who directly utilize the petitioner's services, the source of the recommendations is a relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim beyond his immediate client base. Such letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. Section 203(b)(1)(A)(i) of the Act requires extensive documentation

of sustained national or international acclaim. Evidence in existence prior to the preparation of the petition is of greater weight than letters prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. If the petitioner's reputation is mostly limited to his clients, then he has not achieved national or international acclaim regardless of the expertise of those witnesses.

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

The AAO has consistently found that this particular criterion is more appropriate for the visual arts (such as sculpting and painting) rather than for public performance. Not every criterion is applicable to every occupation. We find it implausible for the petitioner to argue that the concerts and performances he organizes constitutes the display of his own work (rather than being primarily the work of the performers). Nevertheless, acclaim is generally not established by the mere act of booking a public appearance, but rather by attracting a substantial audience. The record contains no quantitative evidence showing that the petitioner's bookings drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not utilize the petitioner's services.

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

On appeal, the petitioner argues that he "played a critical role in the success of the ensembles that toured under his auspices." We note, however, that the petitioner was never a member of these organizations. Simply performing a logistical or promotional function for an organization is not presumptive evidence of a "leading or critical role" for that same organization.

The petitioner further states: "Obviously, these ensembles were successful due to the quality of their performances and musicianship as well as the excellent reviews they obtained. Nevertheless, this all could not have occurred without the extraordinary efforts and abilities of the petitioner." A similar argument could be made, however, in regard to the airline pilot who flew the plane in which the ensembles traveled to South America or the workers who built the stages upon which the ensembles performed. Organizing occasional foreign music tours for various performers and ensembles is not tantamount to a *sustained* leading or critical role on behalf of those organizations. There is no indication that the ensembles or performers offering letters of support utilize the petitioner's services for the majority of their annual performances (including those in their native countries) rather than simply for their performances occurring in South America, for example. Nor has the petitioner presented evidence to establish that the overall success of these musical ensembles is primarily attributable to the petitioner's talents.

We find that the petitioner's evidence is not adequate to demonstrate that he performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted some recent financial agreements executed between him and his clients. The petitioner, however, offers no basis for comparison to show that his remuneration is significantly high in relation to other promoters in the music industry.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself 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 the 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.