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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 22 2005
EAC 03 112 51446

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:

[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.

Robert P. Wiemann

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 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.

On appeal, counsel asserts that the evidence is sufficient to meet or surpass the regulatory criteria with little focus on which criteria and how. Counsel further notes that the petitioner is the beneficiary of a nonimmigrant visa in a similar classification. We do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis on the evidence of record. Moreover, 8 C.F.R. § 214.2(o)(3)(iv), relating to nonimmigrant aliens of extraordinary ability in the arts, provides for entirely different criteria than those for the immigrant classification discussed below. Thus, the beneficiary could meet the nonimmigrant criteria and not the ones necessary for immigrant classification.

Counsel fails to address some of the director's valid concerns, such as the fact that the published materials are not "about" the petitioner, as required. Nevertheless, while the petitioner could have bolstered his case by presenting the evidence in a manner that addresses the regulatory criteria, we are satisfied that the petitioner enjoys the necessary national or international acclaim necessary for eligibility.

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 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 Music Director/Pianist/Vocal Coach. At the time of filing, the petitioner worked for the Virginia Opera Association. 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. Initially, the petitioner asserted that she met two criteria,¹ although she discussed one of the criteria twice. The director considered the evidence for these two criteria and the evidence submitted relating to, but not establishing, a third criterion.² Given the petitioner's failure to explain which three criteria he claims to meet, we cannot fault the director for failing to conclude that the petitioner meets three. On appeal, counsel asserts that the petitioner meets four criteria as well as having submitted "comparable evidence" pursuant to 8 C.F.R. § 204.5(h)(4). Counsel's explanation of which four criteria the petitioner meets, however, is vague and not particularly helpful. Nevertheless, considering all of the evidence submitted as it may relate to any of the ten criteria, we are persuaded that the petitioner meets the following three criteria.

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

The petitioner did not initially claim to meet this criterion and the director did not address it. On appeal, counsel quotes a letter from an Otolaryngologist who praises the petitioner's coaching techniques, concluding that the petitioner "has made significant contributions to the international community as well as our country in his many years of studies and teaching." While this letter is not as persuasive as counsel asserts, the remaining letters adequately demonstrate the petitioner's national reputation in his field of music.

The petitioner's colleagues at the Virginia Opera Association praise his abilities as an accompanist and vocal coach, noting that he was hired during a national audition. Howard Bender, Festival Director for the TodiMusicFest in Portsmouth, Virginia, asserts that he was aware of the petitioner's reputation and included the petitioner in the festival's musical staff.

Dr. Karen Kan-Walsh, a professor at Northwestern, discusses the duties of an accompanist, who must enable to singer to learn the music, coach diction and impart cultural idiosyncrasies of execution. In addition to succeeding in these areas, the petitioner also "accomplishes this in an efficacious manner that reveals his communication skills, psychological acuity and musical talent."

Executive Director of V.O.I.C. Experience and a former faculty member at Northwestern University, praises the petitioner's talent and character. Ms. notes that former students seek to continue working with the petitioner. The record contains letters by some of the petitioner's highly distinguished students in support of this assertion. For example, Mignon Dunn, a leading mezzo-soprano with the Metropolitan Opera Association, asserts that after observing a performance by the petitioner, she requested the

¹ Published materials about the alien and playing a leading or critical role for an entity with a distinguished reputation pursuant to 8 C.F.R. § 204.5(h)(3)(iii), (viii).

² The awards and prizes criterion at 8 C.F.R. § 204.5(h)(3)(i).

petitioner to accompany her, whereupon he became her “unofficial teaching assistant.” Ms. Dunn further asserts that the petitioner has accompanied her internationally and that “there is always a waiting list of students and professional musicians who want to work with him.” She concludes that where the petitioner has worked internationally, the “contributions he has made have been invaluable.” Other students provide similar praise of the petitioner.

We acknowledge that the letters are primarily from those who have worked with the petitioner. The authors, however, are highly distinguished members of the field who have sought out the petitioner’s services based on his national or international reputation. Moreover, in support of these letters the petitioner submitted programs and fliers documenting the petitioner’s performances accompanying these singers at significant venues. In this matter, given the record as a whole we are satisfied that the evidence discussed above is consistent with the petitioner’s national or international acclaim as a vocal coach.

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

The petitioner did not initially claim to meet this criterion and the director does not discuss it. On appeal, counsel does not specifically state that the petitioner meets this criterion. We find that this criterion clearly applies to those in the visual arts. Nevertheless, where a criterion does not readily apply, a petitioner may submit comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). We note that it is inherent to the field of performing arts that the artist performs before an audience. Not every performance is an artistic exhibition or showcase. Nevertheless, the programs and fliers reveal that the petitioner has performed at exclusive showcases of opera and other music. The petitioner received equal billing with the singers he accompanied. Thus, we are persuaded that the petitioner meets this criterion.

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

As stated by counsel, the record includes letters and programs attesting to the petitioner’s critical role for the Virginia Opera Association and media coverage demonstrating the association’s distinguished reputation nationally. The petitioner has also played critical roles for other nationally known entities. As such, we withdraw the director’s finding that the petitioner did not establish that he meets this criterion. We are satisfied that he does.

In review, while not all of the petitioner’s evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has 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.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.