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FILE:

[REDACTED]  
EAC 02 266 50021

Office: VERMONT SERVICE CENTER

Date: JUN 17 2005

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, 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 (AAO) 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 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 August 17, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a "musician." On appeal, counsel states: "The [petitioner] is a musician specializing in a *specific area of* traditional Indian music: drumming, particularly the Tabla."

The statute and regulations require the petitioner's acclaim to be *sustained*. The record reflects that the petitioner has been residing in the United States since 1991. Given the length of time between the petitioner's arrival in the United States and this petition's filing date, it is certainly reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a national reputation as a tabla drummer in this country.

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 pertaining to 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.*

We note here that the plain wording of this criterion requires "nationally or internationally recognized" prizes or awards for excellence in the field. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his individual prizes and awards.

The petitioner submitted the following:

1. May 26, 1996 Achievement Award from a school in Kalamandir, New Jersey
2. January 2, 2002 Honorary Award from a school in Sangeetangan, New York
3. March 2, 2002 "Best Tabla Player" Award Certificate from the "Bengali Community of Los Angeles"
4. November 19, 1989 "Award for Achievement in Excellent Performance" from the Department of Music at the University of Maryland, Baltimore County
5. June 15, 1997 Certificate of Achievement for participation in a music show in the "Greater Metropolitan New York" area
6. April 8, 2000 Certificate of Recognition for "Outstanding Performance in Indian Music" from the "Shoukhin, Bengali Cultural Group of New Jersey"
7. December 8, 2000 Certificate of Appreciation from "Sadarang Annual Program"
8. October 1988 certificate "for achievement in excellent Tabla performance during the Durga Puja Festival" (submitted in response to the director's request for evidence). On appeal, the petitioner submitted an October 25, 2004 letter from the "Government of Tripura State of India" stating: "In 1988, [the petitioner] . . . was awarded Sangeet Visharad for the best tabla Performance in Durga Puja festival sponsored by the Council for Cultural Relation, Government of Tripura."
9. Newspaper article (submitted on appeal) published in *Ekhon Somoy* in New York on December 28, 2004 stating: "[The petitioner] started his lesson at the age of eight . . . . Later he used to accompany his elder sister in tabla and achieved the gold medal at the All Bengal music competition in India. After the high school, he got training from the maestro of [redacted] Halder." The record contains no contemporaneous first-hand evidence as to when the award was issued.
10. May 23, 2004 "Honorarium" certificate issued by the Sadarang School of Music, New York and New Jersey (provided in response to the director's request for evidence)

Items 1 through 8 above are reflective of local, institutional, or regional recognition, rather than national or international recognition. We note that several of the certificates presented to the petitioner were issued on pre-printed, fill-in-the-blank, form-style documents, suggesting multiple recipients. In regard to item 9, it appears that the petitioner faced competition limited to his approximate age group (school age children) rather than from throughout his entire field. Such a competition offers no meaningful comparison between the petitioner

and the most experienced and practiced musicians in the field. In regard to item 10, this evidence came into existence subsequent to the petitioner's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971).

The significance and importance of the awards presented by the petitioner are not self-evident. The petitioner offers no supporting evidence showing that his awards constitute top honors in the music field at the national level. It should be emphasized that the petitioner must submit documentary evidence showing the degree of recognition accorded to his awards. The evidence provided does not indicate the number of other musicians who competed against the petitioner for these awards, the criteria used in determining recipients, or the level of media coverage associated with the award presentations. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that his awards enjoy significant national or international stature. Simply alleging that an award is nationally or internationally recognized cannot suffice to satisfy this criterion. In this case, the petitioner has not shown that his awards are widely recognized beyond the organization that presented them.

*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, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, 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, counsel states: "The Center Director accurately found the record contains no evidence that the [petitioner] holds memberships which require outstanding achievements of their members."

*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 general, 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. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a

particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>1</sup>

The petitioner submitted several local articles appearing in Bengalese language newspapers published in New York. It has not been shown that any of these publications have a substantial national readership beyond the Bengali community of New York. There is no specific data regarding their volume of U.S. readership. Because the overwhelming majority of the U.S. population does not read or comprehend Bengalese, it has not been shown that articles appearing in such publications constitute published material in the "major media."

On appeal, the petitioner submits two articles from *Ekhon Somoy*, a Bengalese language weekly newspaper published in New York. These articles were both dated December 28, 2004. The petitioner also submitted an English language article dated February 23, 2005 appearing in the *Weekly Bangla Times*, which is also published in New York. The petitioner also provided a ten-sentence article dated April 13, 2005 about him and a person named "Chandan" appearing in *Bikeler Pratadin*. A letter from [REDACTED] Circulation Manager, Pratadin Publication Private Limited, states that this Bengali daily evening newspaper has a circulation of "80,000 according to the latest report of the Newspaper Society of India." We note here that the preceding articles all came into existence subsequent to the petition's filing date. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak* at 45. Evidence that did not exist as of the filing date cannot retroactively establish eligibility as of that date. Even if we were to accept the 2005 article in *Bikeler Pratadin* (which we do not), it has not been shown that this publication has significant national distribution throughout the country of India (rather than circulation limited to a particular region).

In this case, there is no evidence showing that the petitioner has earned sustained acclaim in the national media of the United States or India.

*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.*

To satisfy this criterion, the competition or contest must be on a national or international level and involve accomplished music professionals. For example, judging professional musicians at a national competition is of far greater probative value than judging a regional youth competition.

The petitioner submitted a letter from [REDACTED] who states:

Certified that [the petitioner] . . . was an examiner of Tabla and other Drum instruments in our All-Bengal examinations held during April '87 & June '89.

He also acted as a Judge in the All-India competitions held in the years 1990 & 1991 and earned a good reputation in performing his duties both as an examiner and a judge of our organization.

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<sup>1</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

On appeal, the petitioner submits a letter from [REDACTED] Secretary, Mallhar Institute of Music Dance & Art, who states: "I am pleased to confirm that [the petitioner] . . . participated as a Judge in Tabla competition in both children and adult categories in our All Bengal Music Competition held on January 29, 2002."

Aside from the single sentence in the letter offered [REDACTED] the two sentences in the letter from [REDACTED] the record contains no further information regarding the above competitions. We cannot ignore the statute's demand for "extensive documentation" of sustained national or international acclaim. The record contains no contemporaneous evidence of the petitioner's involvement as a judge at these competitions. We note the absence of published material or publicity surrounding these competitions. Evidence in existence prior to the preparation of the petition is of greater weight than letters of support prepared especially for submission with the petition. We further note that the above letters lack significant details about the competitive events judged by the petitioner. While the letter from [REDACTED] specifically states that the petitioner evaluated "adult categories," it does not indicate the level of expertise of the adult participants evaluated by the petitioner (i.e.- novice, amateur, or professional). Without evidence showing that the preceding competitions involved professional musicians and were national in scope, we cannot conclude that the petitioner meets this criterion.

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

The petitioner initially submitted several letters of support, mostly from individuals from South Asian cultural groups in the northeastern United States. These letters describe the petitioner as a talented performer.

On appeal, the petitioner submits additional letters of support from musicians verifying that they have performed with the petitioner at one time or another, from Bengali cultural groups in cities such as London, Montreal, New York, and Singapore, and from others in New York familiar with the petitioner's music.

A representative example is the letter from [REDACTED] New York, who states:

This letter confirms that [the petitioner], a highly professional rhythm (Tabla, i.e. Indian Drums) player well known in the New York, New Jersey, and Connecticut tri state region, performed in a concert sponsored by me, with the legendary music director and singer [REDACTED] on October, 2003, at Corpus Christi Church, Queens, New York.

The petitioner, however, must demonstrate that his reputation extends beyond the tri-state region mentioned in the above letter to the national level as well. [REDACTED] does not indicate that the petitioner is nationally or internationally acclaimed, nor does he refer to the petitioner as "legendary" in the same manner as he does with [REDACTED]

The brief witness letters provided in support of this petition describe the petitioner as an accomplished musician, but they offer no information as to how the petitioner's individual contributions have significantly influenced the music industry. For example, the petitioner's performances have not been shown to have greatly influenced other successful Indian or American musicians. The issue here is not the skill level, professional experience, or quality of the music performed by the petitioner, but, rather, whether his past

endeavors would qualify as a contribution of major significance in the performing arts. In this case, there is no evidence showing the extent of the petitioner's influence on other professionals in the music industry.

The letters of support verifying the petitioner's performances at various geographic locations may demonstrate a degree of interest in his music, but such performances are certainly not unusual for a professional musician. Because performing at a variety of venues is a routine expectation of a professional musician, such activity is not adequate to significantly distinguish the petitioner from almost all others in his field at the national or international level. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential or acclaimed at the national or international level, we cannot conclude that he meets this criterion.

*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 visual artists (such as sculptors and painters) rather than for those in the performing arts. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

Even if we were to accept the petitioner's performances under this criterion (which we do not), in order to demonstrate sustained national acclaim as a musician, the petitioner must provide evidence showing that he has regularly performed at top national venues (such as, for example, the Lincoln Center) as a featured musician. The majority of the petitioner's performances occurred in the region where he resides and in most cases he does not appear to have headlined those concerts or shows as the featured artist. In the music industry, acclaim is generally not established by the mere act of appearing in public, but rather by being a primary participant in performances that attract a substantial national audience. In this case, the petitioner has not provided adequate evidence to demonstrate that his performances enjoy a national or international reputation.

We find that the petitioner's musical performances are far more relevant to the "commercial successes in the performing arts" criterion.

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

In order to establish that the alien performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel asserts that the petitioner satisfies this criterion, but she does not specifically identify the distinguished organizations for which the petitioner has played a leading or critical role. Without citing specific documentary evidence in the record to support her claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The evidence of record does not indicate that the

petitioner has consistently exercised substantial control over creative or business decisions executed on behalf of any organization in the music industry. Nor is there any indication of the relative importance of the petitioner's role to that of the other individuals employed by the organizations for which he has worked. After reviewing the letters of support and the local newspaper articles provided in support of the petition, we find no evidence to support the conclusion that the petitioner has earned national or international acclaim by performing in a leading or critical role for a distinguished organization or establishment.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The regulation calls for commercial success in the form of "sales" or "receipts"; simply documenting the petitioner's participation in a musical recording or concert cannot meet the plain wording of the regulation. The record contains no evidence of documented "sales" or "receipts" to show that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

In regard to "sales" of the petitioner's cassettes and compact discs, the petitioner submitted a letter from Music 2000 of Calcutta, India dated April 2, 2005 indicating that from April 2004 to March 2005 one of the petitioner's music compilations sold 6,780 compact discs. This evidence, however, came into existence subsequent to the petition's filing date. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak* at 45. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. Even if we were to accept this evidence (which we do not), when one considers the sheer size of the Indian and U.S. populations, there is no indication that 6,780 compact discs sold constitutes commercial success in the music industry. In this case, the petitioner has not submitted any evidence of record, cassette, or compact disc sales of his music prior to the petition's filing date.

In conclusion, we find the petitioner 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 as a musician 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.