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U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 03 139 52892 Office: NEBRASKA SERVICE CENTER Date: MAY 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:



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*

*[Signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on March 28, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Ballet Pianist." 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 1999. 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 pianist 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.*

The petitioner submitted a certificate from the [REDACTED] (dated December 30, 1997) recognizing the petitioner "as the Performer of the Year." This award appears to be institutional in scope, rather than national or international in scope.

The petitioner also submitted a certificate acknowledging her successful performance at the [REDACTED] [REDACTED] An event program entitled "[REDACTED]" dated December 7, 2002, contains a brief biography of the petitioner, which states: "In 1992, the petitioner successfully participated at [REDACTED]" The petitioner offers no evidence to show that this certificate is a nationally or internationally recognized award, rather than simply an acknowledgment of her participation in the event.

The significance and importance of the certificates presented by the petitioner are not self-evident. The petitioner offers no supporting evidence showing that these certificates 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 her 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 certificate 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 the certificates presented under this criterion 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 her certificates were significant beyond the context of the event where they were presented.

On appeal, the petitioner submits evidence showing that she was an honoree at the 2<sup>nd</sup> Annual Chicago Immigrant Achievement Awards ceremony (presented by the American Immigration Law Foundation) that was held on March 11, 2004. This evidence came into existence subsequent to the petition'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). Aside from the issue of the date that this evidence came into existence, we note that this award is local in scope, rather than national or international in scope.

*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 level from a local publication.

The petitioner submitted an article dated April 17, 2002 published in *Today*, a Mongolian newspaper. The record, however, contains no evidence of this newspaper's national distribution. Without evidence of its significant national distribution, the petitioner has failed to show that this publication qualifies as major media. Furthermore, although the petitioner has been residing in the United States since 1999, the record contains no evidence showing that the petitioner has been the primary subject of sustained national media attention in this country. We find that the single article presented by the petitioner is not adequate to show her *sustained* acclaim in the United States or Mongolia.

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

On appeal, counsel states: "The evidence we have submitted clearly demonstrates that [the petitioner] regularly performs her music in classes and rehearsals for [REDACTED] and [REDACTED]. Such performances, however, are generally not open to the public, nor are they indicative of achievement at the national or international level.

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. The petitioner's piano performances are far more relevant to the "commercial successes in the performing arts" criterion.

Counsel argues that Citizenship and Immigration Services (CIS) did not address the nature of a Ballet Pianist's position as described in a letter from [REDACTED] General Director, [REDACTED] of Chicago. [REDACTED] states:

The field of ballet pianists is a very specific one within the genre of music. It involves playing for ballet classes, as well as performance rehearsals. The position requires . . . an ability to improvise play a very broad range of music. It is also important to note that ballet pianists do not normally participate in performances. Their role is to assist the ballet instructors in classes and preparing for performances.

Even if we were to evaluate the petitioner's performances under this criterion, in order to demonstrate sustained national acclaim as a musician, the petitioner must provide evidence showing that she has regularly performed at top national venues (such as, for example, the Lincoln Center) as the featured musician. The majority of the petitioner's performances have occurred in areas where she was residing at the time and she does not appear to have headlined those concerts or shows as the featured artist. We cannot ignore [REDACTED] observation that "ballet pianists do not normally participate in performances. Their role is to assist the ballet instructors in classes and preparing for performances." In the field of music, national acclaim is not established merely by assisting a ballet instructor in teaching classes or in preparing dancers for performances, but rather by being a primary participant in public performances that attract a substantial national audience. In this case, the petitioner has not provided adequate evidence to demonstrate that her solo piano performances enjoy a national or international reputation.

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

The petitioner submitted a letter from [REDACTED] Executive Director, [REDACTED] He states:

As a Ballet Pianist, [the petitioner] provides accompaniment to dance classes, rehearsals and performances. She is responsible for learning individual styles of teachers on the faculty and providing accompaniment, developing and maintaining the highest caliber repertoire of existing music, researching and learning new music, quickly being familiar with common ballet terminology, working with a conductor, and maintaining fundamental of instrumental music such as tempo changes.

\* \* \*

In our view, [the petitioner] has risen to the top of her field as a Ballet Pianist, and she plays a critical role in the success of the [REDACTED] of Chicago.

\* \* \*

It is surprisingly difficult to find a qualified and experienced Ballet Pianist. [The petitioner] has becomes [sic] invaluable to The Joffrey as a class and rehearsal pianist and is especially adept at playing class for the younger dancers in our apprentice program.

In a letter dated September 29, 2000, [REDACTED] states that she came to know the petitioner "through her work with [REDACTED] which was at the time located in the same building as Joffrey studios." [REDACTED] further states that range of skills possessed by the petitioner "has been virtually impossible to find in Chicago."

A letter of support from [REDACTED] indicates that he became Company Pianist for the [REDACTED] of Chicago in August of 2002. [REDACTED] further states: "The work of a ballet pianist is an extremely specialized one, and qualified and good pianists are extremely hard to find. Therefore it is vital that [the petitioner] remain with us as her work is of a nature that is difficult to match."

The petitioner also provided some promotional materials in support of the petition. An informational booklet from the [REDACTED] of Chicago lists [REDACTED] as "Company Pianist" and the petitioner as simply "Pianist." An informational booklet from the School of Ballet Chicago lists [REDACTED] "Principal Pianist" and the petitioner as "Rehearsal Pianist."<sup>1</sup> As is evident from their job titles, it is apparent that [REDACTED] and [REDACTED] served in a more prominent role than that of the petitioner. We accept that the petitioner is a

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<sup>1</sup> The director's notice of denial incorrectly spells [REDACTED] last name as [REDACTED]. On appeal, counsel states: "The CIS decision also refers to letter from a [REDACTED] however, we have not submitted a letter such a person." Contrary to counsel's observation, the director's decision, while mentioning [REDACTED] title, does not refer to a "letter" from [REDACTED]. The director's observation in regard to [REDACTED] was based on the informational booklet from the School of Ballet Chicago.

“qualified and experienced” ballet pianist; however, it has not been shown that she has earned a reputation in this country outside of the Chicago area.

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 her role within the entire organization or establishment and the reputation of the organization or establishment. In the present case, the petitioner has not provided adequate evidence showing that her role for the [REDACTED] of Chicago is tantamount to a leading or critical role for this organization in the same manner as that of the artistic director, the conductor of the orchestra, the ballet performers, or the Chairman of the [REDACTED] of Chicago Board of Directors, for example. The relative importance of the role of these individuals far exceeds that of the petitioner. Furthermore, the record does not indicate that the petitioner has consistently exercised substantial control over creative or personnel decisions executed on behalf of the [REDACTED] of Chicago or [REDACTED]. We further note that it is primarily the work of the artistic director and the ballet performers, rather than any individual musician, on which the reputation of the Joffrey Ballet rests.

For the above reasons, we find that the evidence presented does not adequately establish that the petitioner has performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim.

*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 program or concert cannot meet the plain wording of the regulation. The record contains no evidence of documented “sales” or “receipts” to show that 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. Nor is there any evidence of compact disc or record sales of the petitioner’s music.

In this case, the petitioner has failed to demonstrate that she 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.

On appeal, counsel asserts that CIS should consider the “expert opinion letters” as “comparable evidence” pursuant to 8 C.F.R. § 204.5(h)(4). That regulation allows for the submission of comparable evidence, but only if the ten criteria “do not readily apply to the petitioner’s occupation.” Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the alien’s field. Of the ten criteria, more than half readily apply to the petitioner’s occupation. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence.

In regard to letters of support, we cannot ignore that all but one of the petitioner’s witnesses were from the Chicago area. If the petitioner’s reputation is not widely known outside of Chicago, then it cannot be concluded that she has earned national acclaim as a pianist.

The sole exception, an advisory opinion letter from [REDACTED] resident, [REDACTED] states:

We have reviewed the Draft I-129 Petition and supporting documentation regarding your request for our advisory opinion on behalf of [the petitioner].

Based on the new and applicable statutory and regulatory requirements, it is our advisory opinion that the evidence presented clearly establishes that [the petitioner] is a Pianist of extraordinary ability . . . . This artist therefore meets the recently revised standards of distinction in the arts to qualify for an O-1 visa.

[REDACTED] does not indicate that he was aware of the petitioner's reputation as a musician prior to reviewing the draft I-129 petition. An advisory opinion is required for a non-immigrant O-1 petition, but is not required in this proceeding. Extraordinary ability in the arts in the non-immigrant context means distinction, which is not the same as sustained national or international acclaim.<sup>2</sup> Even if the petitioner were to provide evidence of an approval of an O-1 nonimmigrant visa petition filed in her behalf (which she has not), such evidence does not in any way compel CIS to approve a subsequent immigrant visa petition under section 203(b)(1)(A) of the Act. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or binding precedent that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien beneficiary already holds an O-1 visa.

An opinion from a national expert who was not previously aware of the alien, and is simply reviewing a resume or list of accomplishments, cannot establish national or international acclaim. Such a letter may, in fact, simply reinforce the conclusion that the alien is not well-known in the field, by demonstrating that the alien's reputation did not precede the specific request for a recommendation.

While the witnesses have stated in general terms that the petitioner is a respected and highly skilled ballet pianist, there is no consensus that the petitioner enjoys a national reputation in the United States, Mongolia, or any other country. In regard to the petitioner's last appearance on Mongolian television dating back to 1997, such evidence is not adequate to demonstrate *sustained* national acclaim in that country. In this case, the petitioner appears to have earned a reputation that is mostly limited to the localities in which she has resided and worked.

The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the performing arts field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every performer who has appeared on stage, or who has gained the respect of her local colleagues based on her instructional capabilities as a highly-skilled ballet pianist, has earned sustained national or international acclaim. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This

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<sup>2</sup> Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes nonimmigrant O-1 criteria less restrictive for a beneficiary in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without demonstrating national or international acclaim.

Review of the record does not establish that the petitioner has distinguished herself as a pianist to such an extent that she may be said to have achieved sustained national or international acclaim. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.