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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: NOV 28 2005  
SRC 04 055 52173

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.

*Mari Johnson*

*R* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, counsel submits a brief and one additional supporting document. We uphold the director's decision for the reasons discussed below.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a Ukrainian Folk musician. The petitioner initially submitted supporting documentation including evidence of his education, one recording in the Ukraine, photographs of his performances, his employment at the [REDACTED] in Florida, and six letters of recommendation. In response to the director's Request for Evidence (RFE), the petitioner submitted additional support letters, copies of certificates and diplomas presented to the petitioner abroad, and an excerpt from an article which mentions the petitioner. On appeal, counsel submits a brief and one additional recommendation letter. Counsel's contentions and the evidence submitted on appeal do not

overcome the deficiencies of the petition and the appeal will be dismissed. We address the evidence submitted and counsel's claims in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not listed below.

*(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner claims to meet this criterion by virtue of winning the Fourth All-Russian Competition of Young Jazz Musicians. The record contains a "Diploma of the Third Degree" presented to the petitioner as the winner of this competition by the Ministry of Culture of the Russian Federation, the All-Russia Musical Society, and the Administration of Rostov-Na-Donu City. The document is dated May 4 – 7, 1991. The record contains no evidence of the significance of this achievement or documentation that it is a nationally or internationally recognized prize or award granted to musicians at the top of their field, rather than limited only to young musicians. In addition, this certificate was presented to the petitioner in 1991, over 12 years before this petition was filed, and does not demonstrate sustained acclaim. Accordingly, the petitioner does not meet this criterion.

*(iii) Published material 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.*

As evidence of his eligibility under this criterion, the petitioner submitted a two-sentence excerpt from an undated article by an unidentified author from an unidentified source that mentions the petitioner in a list with seven other musicians. The submitted excerpt does not comply with the regulation, which clearly states that evidence submitted under this category must include the title, date, and author of the material. In addition, the article merely mentions the petitioner's name without substantively discussing his work or career and is not about the petitioner as required by this regulatory criterion. Finally, the record does not identify the source of this article or establish that the source is a professional, major trade publication or another form of major media.

[REDACTED] a singer who works with the petitioner, states that "[t]here have been many articles in Newspapers [sic], which confirm that Anatoliy is recognized as outstanding in the field of Ukrainian folklore music, and is one of a very small percentage who have risen to the top of his field." Yet the record contains no evidence of any newspaper articles concerning the petitioner and his work apart from the aforementioned excerpt. Accordingly, the petitioner does not meet this criterion.

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

As evidence of the petitioner's eligibility under this criterion, counsel cites the petitioner's compact disc recording and recommendation letters. The record contains copies of the petitioner's recording as a member of a musical group, but the petitioner submitted no evidence that this recording was widely distributed and played on radio stations, was critically acclaimed, significantly influenced other Ukrainian musicians, or otherwise made an original artistic contribution of major significance to his field.

The record contains 14 recommendation letters from friends and colleagues of the petitioner and other individuals who have worked with him or are familiar with his achievements. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the

alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

██████████ a pianist and faculty member of the Royal Conservatory of Music in Toronto, states that he has seen the petitioner perform at the Sugar Rush Café and that the petitioner's "expertise in Ukrainian folk music is an artistic contribution of major significance in the field." ██████████ explains that the petitioner "has made a major impact by incorporating the traditional Ukrainian folk music with contemporary musical instruments and styles. Thus, there is a wider following for Ukrainian music and a greater appreciation for Ukrainian folk music." Yet Mr. Serebryany does not specify how the petitioner has made an impact with his music other than stating that the petitioner's performances "educat[e] the cultural needs of the community and enhanc[e] the audiences' appreciation for Russian and Ukrainian folk music." ██████████ does not state, and the record does not document, that the petitioner is the only or a leading Ukrainian musician who incorporates traditional music into contemporary instruments and styles. The record also does not corroborate Mr. Serebryany's assertion that the petitioner is responsible for a wider following and greater appreciation for Ukrainian music. Andrey Bahmat, a professional Russian musician who has watched the petitioner perform, repeats verbatim Mr. Serebryany's comments regarding the petitioner's contribution to his field. This repetition indicates that the language is not the authors' own and limits the probative value of their letters.

Irina Fredericks, the petitioner's friend and colleague, affirms that the petitioner is "an extremely talented musician." Ms. Fredericks states that "[h]is ability to express the true emotion of the songs he performs is amazing. In addition to it, [he] is able to sing songs in different languages, such as Russian, Ukrainian, English, Spanish, and Italian. This allows him to reach out for [sic] people across various cultural backgrounds and satisfy any music preferences." Ms. Fredericks' letter attests to the petitioner's talent and versatility, but does not show that he has made original, major contributions to his field.

Larisa Birman, a professional musician; Michael Rozenshteyn, Serguei Kouvchinnikov and Elena Sosnovskaya, friends of the petitioner, also praise the petitioner's talents and describe him as one of the best musicians in Florida and one of the most popular musicians in Miami. Ms. Postemksa, who sings with the petitioner at the Sugar Rush Café, further explains that the petitioner "plays and sings Russian, and Ukrainian songs, both contemporary, and historical folk. [His] talents allow him to uniquely serve the cultural needs of the community." Other letters similarly praise the petitioner's musical skills and performances at the Sugar Rush Café.

On appeal, the petitioner submits a letter from V. Krot, Deputy Chief of the Administration of Joint Domestic Property of Territorial Associations of the Vinnitsa Regional Council in the Ukraine. Deputy Chief Krot does not explain how he is familiar with the petitioner's achievements; state that his official position is in any way related to Ukrainian music, arts or culture; or otherwise explain his qualifications to assess the petitioner's work. Deputy Chief Krot's description of the petitioner's "artistic contribution of major significance in the field" also repeats nearly verbatim the description found in the letters of Vadim Serebryany and Andrey Bahmat, further detracting from this letter's probative value.

While the recommendation letters indicate that the petitioner is a talented musician, they do not demonstrate that he has made original, major contributions to his field. The record is also devoid of any evidence that the petitioner's accomplishments have had a significant impact in his field. The petitioner submitted no evidence, for example, that his recording and performances were critically acclaimed, that other musicians have been especially influenced by his work or other documentation that he has had a substantial impact in his field. The record contains a diploma granted to the petitioner for his composition "Fireworks" at "the third international jazz review-concert of the students of musical schools and lycee." A second certificate states that the petitioner "is being rewarded" for his direction of a folklore ensemble at the Second International Children's Competition-Festival of Jazz Parnas. Although these two documents are undated and do not identify the location of the concert and festival, they were clearly issued at student and youth musical events. As discussed under the first criterion, the record also documents the petitioner's award at the Fourth All-Russia Competition of Young Jazz Musicians in 1991, over 12 years before this petition was filed. The record contains no evidence substantively corroborating the significance of these accomplishments and documenting how they constitute major contributions to the petitioner's field. Moreover, the certificates were all presented to the petitioner at student or youth musical events and do not demonstrate the requisite sustained acclaim. The relevant recommendation letters further indicate that the petitioner has gained only limited recognition for his work within the Eastern European community in the region of Southern Florida and has not achieved national acclaim for his work in the United States.

The evidence submitted does not show that the petitioner has made original contributions of major significance to his field in a manner consistent with sustained national acclaim in the Ukraine or the United States or sustained international acclaim. Accordingly, the petitioner does not meet this criterion.

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

Counsel claims that the petitioner meets this criterion because he submitted evidence that he "performed his artistic talents [sic] as a Ukrainian Folk Guitarist/Singer at concerts and clubs showcasing other musical performers." Counsel conflates the submission of evidence relevant to this category with the actual satisfaction of this criterion. While the record documents some of the petitioner's performances, frequent performances are intrinsic to a musician's occupation and duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself.

As evidence of the petitioner's eligibility under this category, counsel cites the three certificates presented to the petitioner at the Third International Jazz Review-Concert of the Students of Musical Schools and Lycee, the Second International Children's Competition-Festival of Jazz Parnas, and the Fourth All-Russia Competition of Young Jazz Musicians in 1991. As discussed above under this fifth criterion, the record contains no corroborative evidence of the significance of these events or the petitioner's performances. Some of the recommendation letters mention the petitioner's receipt of these certificates, but do not substantively discuss their significance.

Counsel also references two newspaper advertisements for the Sugar Rush Café that include photographs of the petitioner and other performers. The record shows that the Sugar Rush Café is a Russian restaurant in Sunny Isles Beach, Florida that caters to an Eastern European clientele and features musical performances. Although the petitioner submitted letters from two individuals attesting to the "distinguished reputation" of the Sugar Rush Café, neither of these individuals is a musician or is involved with the music industry. The record contains

no evidence that the [REDACTED] is widely recognized as a prestigious musical venue, performance at which would reflect national acclaim.

Finally, Deputy Chief Krot and [REDACTED] both state that, as a member of the group [REDACTED] the petitioner "performed over 20 concerts in Ukraine, which were organized by the Ministry of Culture," but the petitioner submitted no corroborative documentation of these concerts. The record contains no evidence that the petitioner has performed at major national or international musical festivals or concerts in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

On appeal, counsel states, "The beneficiary has performed in a leading or critical role for organizations of distinguished [sic]. He has performed in a leading role for Sugar Rush, Barhatniv Sezon, and the Ministry of Culture, which are organizations or establishments with distinguished reputations." The record does not support this claim.

The relevant evidence shows that, at the time of filing, the petitioner was employed by the [REDACTED] on a one-year contract to perform six times a week at the restaurant. Several of the recommendation letters affirm the petitioner's successful performances at this restaurant, but do not establish that he plays a leading or critical role for the restaurant as a whole. The unsigned letter from the petitioner's employer regarding the petitioner's P-3 status also does not state that the petitioner will perform a leading or critical role for the [REDACTED]. Letters from a former police officer and the president of a real estate company state that they are "personally familiar with the [REDACTED] and nightclub. It is an organization with a distinguished reputation. . . . It is, by far, the best nightclub specializing in Russian and Ukrainian music in the southern United States." The authors of these letters do not state their qualifications for assessing the reputation of the [REDACTED] and the record contains no independent evidence to corroborate the alleged reputation of this establishment.

The record documents the petitioner's former membership in the musical group [REDACTED] in the Ukraine and contains a copy of one compact disc recorded by this group, but the record is devoid of any evidence that [REDACTED] "was critically acclaimed or otherwise achieved a distinguished reputation in the Ukraine or abroad. Moreover, the only reference to the time of the petitioner's work with this group is the date of the compact disc recording in 1997, six years before this petition was filed. Hence, even if "Barhatniy Sezon" had a distinguished reputation, the petitioner's role does not reflect sustained acclaim.

Although Deputy Chief Krot and [REDACTED] assert that the Ukrainian Ministry of Culture organized the petitioner's performances with [REDACTED] the record does not document these performances or the petitioner's role, if any, with the Ukrainian Ministry of Culture as a whole. Finally, an undated document from the Vinnitsa Region State Administration of the Management of Culture certifies that the petitioner was "an artistic administrator at the Vinnitsa Philharmonic [sic] Society" and "the administrator of two music bands." Counsel claims this document evidences the petitioner's leading role with the Vinnitsa Region State Administration of the Management of Culture, but the document is undated and uncorroborated by any evidence of its significance. Moreover, even if the petitioner had a leading or critical role, it was for a regional administration and does not demonstrate national acclaim.

While the record verifies his work as a musician for various entities, the evidence submitted does not show that the petitioner performed a leading or critical role for distinguished organizations or establishments in a manner consistent with sustained national or international acclaim. Accordingly, he does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner is a talented Ukrainian musician. However, the record does not establish that the petitioner has achieved sustained national or international acclaim placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.