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FILE:  Office: NEBRASKA SERVICE CENTER Date: SEP 09 2005

IN RE: Petitioner: 
Beneficiary: 

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 Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title.” A director may revoke the approval of a petition on notice “when the necessity for the revocation comes to the attention of this Service.” For the reasons discussed below, we find that the visa petition was initially approved in error and we uphold the director’s revocation of that approval.

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 musician. The record indicates that the petitioner was employed as a composer and musical performer in Egypt since 1993. The petitioner submitted initial evidence including documentation of his membership in and recognition by professional associations, awards and certificates presented to the petitioner for his musical compositions and contributions, performance contracts for hotels in Egypt and other countries, and two letters from U.S. establishments expressing interest in hiring the petitioner. The petition was initially approved.

On June 28, 2004, the director issued a Notice of Intent to Revoke (NOIR) the petition. In response, petitioner's former counsel submitted a brief and 36 exhibits including additional evidence regarding the petitioner's awards, musical association membership, performances, two cassette tapes and one compact disc of his musical recordings, and three videotapes of his work, performances and television interviews. The director determined that the initial evidence and additional documentation submitted in response to the NOIR did not establish the requisite sustained acclaim. Self-represented on appeal, the petitioner submits a letter and copies of documents previously submitted, but no new evidence. We address the initial and subsequent evidence along with the claims of the petitioner and his former counsel in the following discussion of the regulatory criteria relevant to the petitioner's case.

(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 initially submitted certificates from the NCR corporation and the SURE art corporation congratulating him for his creation and composition of "the golden Album" that took "the best Album for 1999." In his NOIR response, the petitioner submitted a letter from [REDACTED] Chief Executive Officer of the [REDACTED] Newspaper, explaining that the petitioner "was awarded the title of Best Music Composer for the year 1999, for his Album entitled [REDACTED] at the International Art Contest sponsored by the [REDACTED] Newspaper. [REDACTED] explains that "[h]undreds of Arab artists participate in this contest, where their work is evaluated for one week by a qualified committee of great artists from the Arab World." The NOIR response also includes a copy of the 1999 contest announcement stating that the contest is for "professional Artists" and is open only to Egyptian artists who are members of the Association of Music Professions and Performing Arts or the Association of Writers and Authors, or to foreign artists who obtain prior approval from one of these associations. The announcement states that the "total value of the wards [sic] is approximated by [sic] 2 million Egyptian Pounds, which will be distributed among the winners, the ending ceremony and the award distribution will be broadcasted live on ART Music Channel on 11/30/1999. The record also contains a photograph of the petitioner with his Best Album award and an audiocassette tape of his "Dahab" album.

The petitioner also initially submitted a certificate presented to him by [REDACTED] The Egyptian Radio and Television Manager," in appreciation of the petitioner's "efforts done in creating and composing the song [REDACTED] which has took [sic] the best song for year 1997. And also for providing [REDACTED] the best composer for the same year." In his NOIR response, the petitioner also submitted a certificate from the Second International Video Clip Oscar Festival presented to the petitioner "for his marvelous efforts in music composing of the song [REDACTED] which won the International Video Clip Oscar for the year 2000." An article from the August 9, 2000 edition of *Al-Shabaka* magazine explains that the festival "was sponsored by the governor of S [REDACTED] Brigadier General [REDACTED] 87 participating art works were screened down to 19 by the judging committee headed by Composer [REDACTED]" In a list of the awards presented, the article states, "Best music composing award for Artist [REDACTED] from Egypt." The article further

notes, "The audience was surprised by the absence of Artist [REDACTED] Shedeed whose award was received by Artist [REDACTED] singer of the award winning song for best music composing [REDACTED] Artist [REDACTED] was absent due to his trip to the United States of America." The petitioner also submitted a musical video of the song [REDACTED] as performed by [REDACTED] and in which the petitioner appears playing the accordion, as well as an interview of the petitioner and [REDACTED] broadcast on Egyptian Television Channel Five.

A second certificate, entitled "Certificate of Recognition" and submitted with the NOIR response, was presented to the petitioner by the Administration of [REDACTED] Festival for Radio and Television Productions to thank him for his "distinguished work for the program music of the movie [REDACTED] which won the gold prize for the year 2001." The record contains no evidence of the significance of this festival or whether the petitioner was identified on the referenced "gold prize."

The NOIR response also includes a letter dated August 4, 2004 from the Association of Radio and Television in Cairo, Egypt certifying that the petitioner "carried out numerous performances for the Radio and Television which ranked first in contests and polls which take place every year." The letter lists eight "variety programs" which won first place awards for best music and composing from 1996 to 2000. The petitioner submitted videotapes of excerpts of these programs featuring his musical compositions. The Association's letter then lists four songs which won awards for best musical composition, best duet and best song, all of which were composed by the petitioner and two of which were sung in duet by the petitioner and two other artists. The submitted videotapes contain musical videos of three of these songs. Finally, the Association's letter lists three television series which won awards for best program music which was composed by the petitioner. An excerpt from one of these series featuring the petitioner's music is included on one of the submitted videotapes. The petitioner's role in another of these series is verified by a "Certificate of Recognition" presented to the petitioner by the Association for his "efforts in composing and executing the program music for the series [REDACTED] which won the honor category prize in Cairo Fifth International Festival of Radio & Television for the year 1999." As noted by the director, the Association's letter provides only secondary evidence of the listed awards. In addition, the letter fails to specifically identify the yearly "contests and polls" which resulted in the awards.

The record also contains numerous certificates of appreciation presented to the petitioner by various organizations for his musical work. The petitioner submitted no evidence that any of these expressions of gratitude constitute nationally or internationally recognized prizes or awards for musical excellence.

In sum, the record demonstrates that the petitioner received nationally recognized awards for his 1999 album [REDACTED] and his composition of the song [REDACTED] which won awards in 1997 and 2000. Certificates and letters from the granting authorities verify the petitioner's receipt of these awards. The petitioner also received media coverage in Egypt in connection with the latter awards. This evidence demonstrates sustained national acclaim and thus satisfies this criterion.

(ii) 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.

The petitioner claims to meet this criterion through his association with the American Federation of Musicians (AFM), the Arab Republic of Egypt Musical Profession Syndicate (ESM), and the Broadcasting and Television Union at Alexandria, Egypt.

The petitioner initially submitted a copy of a letter dated August 24, 2000 from [REDACTED] and addressed to the petitioner's first counsel. The letter is captioned, "O-1 Visa Consultation on Behalf of [REDACTED]". The letter states that that AFM's advisory opinion is that the petitioner is "a pianist of extraordinary ability . . . Accordingly, we have no objection to the granting of this petition." The letter does not state that the petitioner is an AFM member. In addition, the submitted printouts from AFM's website do not document the Federation's membership criteria or state that outstanding achievements are prerequisite to AFM membership.

The record contains a copy of the petitioner's ESM Associate Membership card. In his NOIR response, the petitioner submitted a letter from [REDACTED] ESM Director, who explains that although many Arab artists seek to join the ESM, "only qualified artists with distinguished art history or holding distinguished art skills are accepted where high artists and musicians conduct a lot of tests before membership is granted. Members of the Egyptian Association of Music Professions are allowed to work in all Arab and Non-Arab countries since it is a universal association and recognized by all countries of the world." On appeal, the petitioner states that ESM membership thereby requires both "proficiency and outstanding ability as well" because applicants are first evaluated for proficiency and then "go to a higher committee to demonstrate the outstanding ability." Yet the ESM letter does not corroborate this alleged two-tier testing and the petitioner submits no additional supporting evidence on appeal. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, even if the record documented this "outstanding ability" requirement, AFM membership would still not meet this criterion because the regulation specifies that an association must require outstanding achievements of its members, not just outstanding ability or talent. The submitted evidence indicates that AFM membership is a professional credential which allows musicians to work in Egypt and other countries, but the documents do not demonstrate that outstanding achievements are prerequisite to AFM membership. Accordingly, the petitioner's AFM membership does not meet this criterion.

The petitioner initially submitted a certificate and a letter purportedly from the Broadcasting and Television Union at Alexandria that allegedly evidence the petitioner's accreditation as a "musical executor." However, these documents were submitted with uncertified English translations. Hence, we cannot determine if they support the petitioner's eligibility under this criterion. See 8 C.F.R. § 103.2(b)(3). On appeal, the petitioner did not submit certified translations of these documents or any other evidence of his membership in this union. 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.

The petitioner initially submitted five articles as evidence under this criterion. Three of these articles are accompanied by uncertified English translations. Without complete and certified translations of these documents, we cannot determine if they support the petitioner's eligibility under this criterion. See 8 C.F.R. § 103.2(b)(3). A fourth article is accompanied by an incomplete English translation which does not identify the

title, date, author or source of the article as required by the regulation. *See* 8 C.F.R. § 204.5(h)(3)(iii). A fifth article is accompanied by an English translation that does not include the date or author of the original article. In addition, the record contains no evidence that any of these articles were published in professional, major trade publications or other major media. Consequently, none of these five articles satisfy this criterion.

In his NOIR response, the petitioner's prior counsel cited five additional articles as evidence under this category. Two of these articles, (one included in the July-August, 2004 edition of [REDACTED] magazine and the other printed in the August 1, 2004 edition of [REDACTED] newspaper in Michigan), were published after the petition was filed and consequently cannot be considered. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The remaining three articles discuss the petitioner and his work, but the record contains no evidence that they were published in professional, major trade publications or other major media. The NOIR response also contained videotapes of five interviews with the petitioner purportedly broadcast on "Egyptian TV, Channel 5 during the period 1995 – 1999." Yet the videotapes were submitted without certified English translations of the interviews as required by the regulation at 8 C.F.R. § 103.2(b)(3). The NOIR response also included a letter dated September 15, 2004 from Radio and TV Orient Chief Executive Officer, [REDACTED] states that the petitioner has "been featured on our programs numerous times," but the record contains no evidence to corroborate this claim. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Consequently, none of the articles or television interviews submitted with the NOIR response meet this criterion.

On appeal, the petitioner submits copies of six articles previously submitted and claims "[p]lus so many others" evidence his eligibility under this category. Yet the petitioner submits no additional evidence of published materials about himself and his work on appeal. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Accordingly, the petitioner does not meet this criterion.

(iv) 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 did not claim eligibility under this criterion, but the record contains relevant evidence which merits brief discussion. The petitioner submitted a "Certificate of Appreciation" awarded to him by the Management of [REDACTED] Education, Alexandria, Egypt "in appreciation for his continuous effort in the Musical Activities and teaching the childrens [sic] for the academic year 1989/1990, also, for his achievement of winning the first place in the country level in training the children." The record also contains a document dated November 23, 1999 from the Institute of Arab Music certifying that the petitioner was "commissioned to work as a piano instructor since 1994." While musical instruction requires judging the work of students, 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, or in a substantial proportion of positions within that occupation. The petitioner submitted no evidence that he has judged the work of other musicians in his field in a manner significantly outside the general duties of his teaching positions and reflective of national or international acclaim. Accordingly, he 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.

The petitioner also did not claim eligibility under this criterion, but the record contains relevant evidence which merits discussion. An undated article from *Good Night Magazine* explains, "Although [the petitioner has been] in the business for over twenty years, and although so many tried to imitate him, yet, with his high feelings and talent he managed to keep his own enhanced words and music composure. Usually a song is forgotten after [a] few minutes when it is heard for the first time, with [the petitioner] it is different, it is so easy to remember and live with his outstanding songs and music." Another partial translation of an undated article from an unidentified source submitted with the petition as Exhibit 23 reports that the petitioner is "the first composer of his generation to take up singing professionally" and that he "always presents innovative ideas for the music industry. . . . [He] has been the exemplary music distributor who does not put on a display of his gadgets as much as serves the spirit of the tune. He has rejected commercial tunes and has focused instead on creating very elegant melodies." While these articles discuss the petitioner's musical contributions, the record does not state the date of these articles or show that they were featured in nationally or internationally circulated publications. Hence, we cannot determine whether the articles evidence the petitioner's contributions in a manner consistent with the requisite sustained acclaim.

In an undated letter submitted with the petition, [REDACTED] owner of [REDACTED] Restaurant in Cleveland, Ohio, explains that she has hired many musicians and is interested in employing the petitioner because he "is a singer/songwriter whose exceptional vocal quality and diverse. Song [sic] writing ability make him an artist worth listening to. [The petitioner] creates a unique musical blend of melodic pop by placing a strong emphasis on the song itself[,] song writing is his passion. [He] delivers songs that are both moving and memorable." The record does not establish, however, that [REDACTED] is an expert in Egyptian or Middle Eastern music, rather than a restaurant owner who has hired many Middle Eastern musicians to perform at her establishment. Her assessment of the petitioner's musical accomplishments is thus of little probative value.

With his NOIR response, the petitioner submitted other materials that discuss his musical contributions. The article entitled "Face to Face" and published in the January, 1995 edition of *Al-Khalij* magazine describes the reporter's reaction to one of the petitioner's performances in Bahrain: The petitioner produced "the finest old music with modern distribution. I found the magic of the east combined with the creativity of the west. . . . This was the first time I ever saw Artist [REDACTED] and his music band 'Shurouq,' which signifies a new sunrise over the world of Arabic music." Yet the record contains no evidence that *Al-Khalij* is a nationally or internationally circulated magazine, publication in which would reflect national or international acclaim. In addition, this article was published in 1995, six years before this petition was filed, and does not by itself demonstrate sustained acclaim. The videotapes submitted with the NOIR response include five interviews with the petitioner and other musicians purportedly broadcast on "Egyptian TV, Channel 5." Yet the interviews were not translated and we consequently cannot determine if they support the petitioner's eligibility under this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the petitioner also describes two compositions that he considers "the most sensitive in my career and the most successful national acclaim I performed [sic]." The petitioner explains that in 1996 the Egyptian president [REDACTED] was visiting Ethiopia where he was attacked in an unsuccessful assassination attempt. The petitioner states that the "Director of the Egyptian Radio and Television Union contacted me at 2:00 PM (15 minutes after the attempt) and I was asked to do the Following: [sic] 1. Compose a soundtrack for the scenes of the attempt 2. Compose a song for a group of Egyptian singers to congratulate the president for his survival. Both of those musical works I have done were broadcasted over all national TV channels all the time during which the media were covering the event." The record contains a videotape of "National Song

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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

The record contains copies of four employment contracts demonstrating that the petitioner was hired to perform music at hotel bars, restaurants and one entertainment club for the sum of 250 Egyptian pounds for three months, 40 Egyptian pounds per night, \$220 per day, and \$750 per week. Yet the petitioner submitted no evidence that his remuneration was significantly higher than other Middle Eastern musicians or comparable to such musicians at the very top of their field. Accordingly, he does not meet this criterion.

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

The record indicates that the petitioner's album, "Dahab" won an award as Best Album of 1999 in Egypt and that several of his compositions performed by other singers were highly popular in Egypt. However, the petitioner submitted no evidence of his commercial success in the form of record or compact disc sales, as required by the regulation. Accordingly, the petitioner does not meet this criterion.

The record demonstrates that the petitioner meets only the first criterion and thus has not established the sustained acclaim requisite to classification as an alien with extraordinary ability. In his NOIR response, the petitioner's prior counsel contended that the petition should not be revoked for two reasons. First, prior counsel claimed that CIS policy mandates deference to prior approvals unless there was a material error with the approval or there has been a substantial change in circumstances, none of which were present in this case. In support of his position, prior counsel cited a CIS policy memorandum on the extension of nonimmigrant petitions. Memo. from ██████████ Assoc. Dir. For Operations, U.S. Citizenship and Immig. Servs., to Serv. Ctr. Dirs. And Reg. Dirs., *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, (Apr. 23, 2004). This memorandum applies only to nonimmigrant petitions and is inapplicable to this case which concerns a petition for immigrant status under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A).

Second, prior counsel claimed that the petitioner "was granted an 'O visa,' which requires virtually the same proof of extraordinary ability." Although the words "extraordinary ability" are used in the Act for both the nonimmigrant O-1 classification and the first preference employment-based immigrant classification, the applicable regulations define the terms differently for each classification. The O-1 regulation explicitly states that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines 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). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2 (3)(iv)(A), but the immigrant classification requires actual receipt of awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear regulatory distinction between these two classifications, the petitioner's prior receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability.

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 was a successful musician and composer in Egypt. However, the record does not establish that the petitioner had achieved sustained national or international acclaim placing him at the

entitled 'Hawalik,'" which was composed by the petitioner and accompanies scenes of President Mubarak addressing cheering crowds. Yet the record contains no evidence that this work was broadcast on "all national TV channels" in Egypt. The record also contains no evidence of the petitioner's purported soundtrack for scenes of the assassination attempt. The petitioner states that his work "can be authenticated with all the details of the event from the Egyptian Radio and Television Union," but he submits no such authentication on appeal despite the fact that the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

The record indicates that the petitioner has had a successful musical career based on his distinctive compositions. However, much of the submitted media coverage of the petitioner is not translated or was only partially translated. The record also does not document that the submitted magazine articles, television interviews and "national song" were circulated or broadcast across Egypt or internationally. Thus the record does not establish that the petitioner's work has been recognized as making major contributions to his field in a manner reflective of the requisite sustained 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.

The petitioner submitted videotapes of his musical compositions for various television programs in Egypt, many of which won awards as confirmed by the letter from the Egyptian Association of Radio and Television submitted with the NOIR response (and discussed above under the first criterion). Numerous certificates of appreciation and two media articles submitted with the NOIR response confirm that the petitioner composed music for Egyptian and Syrian television programs. However, the broadcast of television programs with musical themes composed by the petitioner is not equivalent to the display of the petitioner's work at artistic exhibitions or showcases (such as professional concerts or musical festivals) because the focus of the broadcast is the television program, not the petitioner's music.

The record also contains evidence that the petitioner performed at various establishments throughout the Middle East and in the United States including the Mercure Hotel in Alexandria, Egypt; the El-Waha Hotel in Syria; the Al-Arz Hotel in Lebanon; the Weiner Haus Hotel in Beirut; and the [REDACTED], Oasis, and Gulf hotels in Bahrain. The record also shows that at the time of filing the petitioner was employed by the Top of the Flats entertainment club in Cleveland, Ohio. The NOIR response includes a letter from the Director of the Dubai International Marketing Festival inviting the petitioner to perform at the festival in March 2000, but no evidence of the petitioner's actual performance at this festival.

The record does not demonstrate, however, that the petitioner has performed at concert halls or other venues dedicated to musical performances. Instead, several employment contracts submitted with the petition show that the petitioner was hired to perform at hotel bars and restaurants and the record contains no evidence that Middle Eastern musicians at the very top of their field regularly perform at such commercial establishments. Accordingly, the petitioner's performances at hotels and an entertainment club do not reflect national or international acclaim as a musician and he does not meet this criterion.

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