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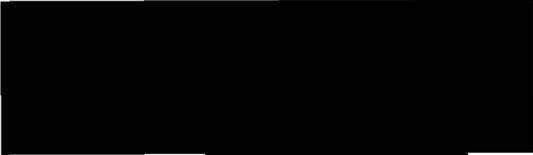
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U.S. Citizenship
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FILE: [REDACTED]
EAC 04 232 50260

Office: VERMONT SERVICE CENTER

Date: APR 14 2006

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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner asserts that research on and performance of Georgian folk music is in an area deemed important by the United Nations. The director, however, did not question the importance of preserving Georgian music. At issue is the petitioner’s acclaim in the field. The petitioner also asserts that at least two of her reference letters were from independent experts in the field. The petitioner mostly relies on reference letters and unsupported assertions to the exclusion of the primary evidence required by the regulations. While the director’s decision would have been more helpful to the petitioner had the director focused on this lack of primary evidence rather than a perceived lack of independence on the part of the petitioner’s references, we concur with the director that the letters are insufficient to establish the petitioner’s eligibility. Significantly, the director’s request for additional evidence properly advised the petitioner of all of the possible regulatory criteria and the evidentiary requirements to meet those criteria. The director lists those criteria again in the final decision. Despite being repeatedly informed of these criteria, the petitioner has never explained which criteria she claims to meet.

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

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a researcher of polyphonic folk music, composer and teacher. Elsewhere the petitioner refers to herself as an ethnomusicologist and singer. 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 never explained which criteria she claims to meet. The criteria follow.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The record contains no evidence relating to this criterion.

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 is a founding member of the Mzetamze choir. We are not persuaded that choirs constitute exclusive associations for which recognized national or international experts judge the achievements of prospective members. Thus, while we will consider the petitioner’s role with this choir below, her participation in the choir cannot serve to meet this criterion.

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.

The petitioner submitted excerpts from reviews of Mzetamze’s performances. None of the excerpts mention the petitioner by name. The petitioner does not submit copies of the actual reviews themselves accompanied by certified complete translations as required under the regulations at 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also failed to submit evidence of the circulation of any of the publications in which these reviews purportedly appeared.

First, the petitioner has not submitted primary evidence of these reviews, copies of the reviews themselves. The petitioner has also failed to establish that these reviews are unavailable. As such, she cannot rely on secondary evidence or affidavits. 8 C.F.R. § 103.2(b)(2). Moreover, the petitioner does not submitted secondary evidence or affidavits attesting to the existence of these reviews. Rather, she submits a list of excerpts prepared by an unknown source. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). Second, the reviews of the choir in which the petitioner sings are not primarily about the petitioner. As stated above, the petitioner has not established that they even mention her by name. Finally, without evidence of the circulation of the publications, the petitioner has not established that they constitute major media.

In light of the above, the petitioner has not established that she meets this criterion.

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 has taught music. Where judging the work of others is inherent to a given occupation, merely working in that occupation is insufficient to meet this criterion. For example, every teacher judges the work of her students. Thus, the petitioner's occupation as a music teacher cannot serve to meet this criterion. [REDACTED] Manager of the International Centre for Georgian Folk Song, asserts that the petitioner "consults folklore ensembles, masters of folk musical instruments, individual performances; managers expeditionary and scientific-research activity of young specialists." Without additional specifics, we cannot determine whether these responsibilities go beyond her teaching duties and, thus, could serve to meet this criterion.

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

The petitioner submits letters from friends and colleagues attesting to her knowledge and talent. They attest to Mzetamze's release of compact discs and the petitioner's authorship of articles published and presented. The record confirms her employment as a teacher and a cultural research laboratory assistant. Mr. [REDACTED] asserts that the petitioner "works in programs of note, catalogization [sic] and classification of folk models, creation of computing versions of data base." A joint letter from [REDACTED] and [REDACTED] at the Georgia Ministry of Culture confirms that the petitioner has researched polyphonic music, is a "prominent interpreter of traditional folk art songs of Georgian women" and founded Mzetamze. Rusudan Tsursumia, Director of the Traditional Polyphonic Research Center at the Tbilisi Folklore University, confirms that the petitioner authored "tens of published articles" and participated in "various symposia and conferences." Primary evidence to support this assertion would constitute the first pages of the published articles and programs for the symposia and conferences listing the petitioner as a presenter. The petitioner has not demonstrated that such evidence is unavailable. Thus, she cannot rely on secondary evidence, which she has also not

submitted. Moreover, without establishing that secondary evidence is unavailable, she cannot rely on affidavits. 8 C.F.R. § 103.2(b)(2).

In response to the director's request for additional evidence, the petitioner submitted new letters. Dr. [REDACTED] President of the Georgian Ensemble of New York, asserts that [REDACTED] has promoted the recognition of the role of Georgian women in traditional folk music. The letter, however, includes bold text requesting that the petitioner (by name) "please verify." Thus, it is not clear that Dr. [REDACTED] has any first hand knowledge of the petitioner's influence. Finally, the petitioner submitted letters from music professionals who have attended the petitioner's workshops or cultural exchanges with the petitioner.

The director concluded that the record lacked evidence regarding how the wider musical community received the petitioner's articles and that the letters were not from independent experts in the field.

On appeal, the petitioner asserts that she has never worked with Mr. [REDACTED] or Dr. [REDACTED]. She submits materials from Internet sites discussing Mr. [REDACTED] and his choir [REDACTED] suggesting that [REDACTED] enjoys some recognition for revitalizing Georgian folk music.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). It can be expected that a contribution of major significance in the field of folk music research and preservation would be apparent from the production of authoritative tomes, media coverage of projects preserving or revitalizing folk music or similar objective evidence.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

Mr. [REDACTED] letter is extremely vague and general with little explanation of how the petitioner has impacted her field. Contrary to the petitioner's assertion that Dr. [REDACTED] is an independent reference, Dr. [REDACTED] specifically states that he conducted fieldwork with the petitioner in Georgian villages. While Dr. [REDACTED] attests to the petitioner's work with

Mzetamze, release of compact discs and presentations, he does not explain how the petitioner's work is an original contribution of major significance.

Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. The record lacks evidence that the petitioner's articles are routinely assigned in ethnomusicology classes or cited as authoritative. The record also lacks evidence of media coverage of research or preservation projects lead by the petitioner. Finally, the record lacks evidence that the petitioner's compact discs have greatly influenced folk musicians in Georgia. Thus, the petitioner has not established that she meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As stated above, the petitioner submitted her own self-serving list of articles and conferences. The petitioner also submitted general attestations affirming her publication and presentation record, but failed to submit copies of the first pages of the articles and programs crediting her with presentations. The director noted the lack of evidence regarding the significance of the publications or conferences.

The petitioner does not address the director's concern on appeal and we concur with the director. Of more concern, however, is the lack of evidence that the petitioner's articles even exist. Thus, the petitioner has not established that she meets this criterion.

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

The only documented concert in the record is a concert at the East Craftsbury Presbyterian Church. The petitioner has not established that this concert constituted the type of exclusive showcase of folk music contemplated by the regulation. As such, the petitioner has not established that she meets this criterion.

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

The petitioner is a founding member of Mzetamze. The record, however, lacks evidence, beyond the unsubstantiated opinions of the petitioner's references, that Mzetamze enjoys a distinguished reputation nationally. It can be expected that a choir with such a reputation will be able to demonstrate significant ticket or compact disc sales and media attention. The record lacks such evidence. As such, the petitioner has not demonstrated that she meets this criterion.

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

The petitioner submitted her tax returns for 2004 reflecting business income of \$10,360 and no additional income. The petitioner has not established that this income is significantly high for services in her field. Thus, the petitioner has not established that she meets this criterion.

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

The petitioner claims to have performed on compact discs. The petitioner, however, failed to submit evidence of those discs or their sales numbers. Thus, the petitioner has not established that she meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself in her field to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent in her field, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. 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.