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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JAN 19 2006**

WAC 04 201 51671

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:



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.

*Maui Johnson*

 Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the director erred in failing to issue a request for additional evidence prior to denying the petition. The most expedient remedy for any error in this regard is to consider evidence that might have been submitted in response to such a request on appeal. We will consider the newly submitted materials below.

The petitioner's initial submission referenced the petitioner's approval for classification in a similar nonimmigrant category. We note that 8 C.F.R. § 214.2(o) includes aliens who have a demonstrated record of extraordinary achievement in the motion picture or television industry. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary achievement as "a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television industry." The regulatory criteria for meeting this definition are set forth at 8 C.F.R. § 214.2(o)(3)(v) differ from those relating to the immigration classification now sought discussed below. As such, that the petitioner obtained nonimmigrant status as an alien with a demonstrated record of extraordinary achievement in the motion picture or television industry is not determinative or inconsistent with our current decision.

At the outset, we note that the regulation at 8 C.F.R. § 103.2(b)(3) requires that all foreign language documentation be accompanied by certified translations. The translations submitted in support of this petition are not certified by the translator.

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 he has sustained national or international acclaim at the very top level.

According to the Part 6 of this petition, the petitioner seeks to classify himself as an alien with extraordinary ability as a “composer for film and television.” As such, he must demonstrate eligibility in the field of film and television music composition, not merely arrangement or orchestration.<sup>1</sup> 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 that, he claims, meets the following criteria.<sup>2</sup>

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

The director concluded that the evidence submitted did not demonstrate that the petitioner personally had won any awards or prizes sufficient to meet this criterion. On appeal, counsel reiterates prior assertions and states:

However, the awards mentioned focus precisely on the project. They are characterized as “Best Film,” “Best Drama,” etc. Such awards cannot be granted to a sole recipient (as opposed to a “Best Director” or “Best Actor” award), but constitute a form of recognition for the film itself. Since music in a movie functions to accentuate and enhance the drama and underlying emotions of the film, the composer in particular is entitled to share the honors of a best film award.

Initially, attorney Doris Tse<sup>3</sup> asserted that the following accomplishments serve to meet this criterion:

1. The petitioner’s selection to attend an official ASCAP Film Scoring workshop in 2000. Ms. Tse asserts that the conference “was attended by the top names in the international Film Composition community.”
2. The petitioner’s composition work for “Legwork,” a movie that received awards at various film festivals, none of which specifically recognize the score of the film, such as Best Musical Score”;
3. The petitioner’s orchestration and arrangement for “A Day in Their Lives,” which was nominated for a Daytime Emmy for “Outstanding Main Title Theme Music”;

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<sup>1</sup> Even if the petitioner were to seek classification as an extraordinary orchestrator, we are not persuaded that orchestration is a separate field from music composition.

<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

<sup>3</sup> Ms. Tse cannot be considered to have represented the petitioner initially as she did not submit a Form G-28, Notice of Entry of Appearance. Thus, we will not refer to her as prior counsel. Regardless, the petitioner has obtained new counsel on appeal and notice of this decision will be sent to counsel as required.

4. The petitioner's role as Principal Orchestrator and Conductor for "Stolen Summer," winner of the Worldwide Screenwriting Competition Project:Greenlight;
5. The petitioner's role as Principal Orchestrator for the videogame "Medal of Honor: Rising Sun," winner of an Interactive Achievement Award;
6. The petitioner's composition for "My Grandfather . . . And the Man in the Moon," winner of Best Live Action Motion Picture at the International Film Festival in Germany; and
7. The petitioner's composition for "Runners," winner of several film festival awards, none of which focus on the score, such as "Best Musical Score."

A 1999 article in *Playback* identifies the petitioner as a participant in the ASCAP Film Scoring Workshop and indicates that the workshop is designed to "foster new composing talent." A moderator at the workshop asserted that it is a "one-of-a-kind experience in preparing composers for a career in film and television music." While the participants are selected from over 200 applicants and this workshop clearly has international recognition as an event, it is ultimately a training event for those seeking to succeed in the field. Selection is not something to which the most esteemed and renowned film composers aspire. Thus, we cannot consider this selection to be a nationally or internationally recognized prize or award.

██████████ asserts that his production company produced "Legwork," winner of a Platinum Award at the 36<sup>th</sup> Annual Worldfest and a "Festival Honorable Mention" at the 2003 Newport Beach International Film Festival. ██████████ asserts that the petitioner "was a big part of this success as he composed, orchestrated, and recorded the wonderful film score." As noted by the director, neither award recognizes the score specifically and the petitioner is not the recipient of either award. We are not persuaded by counsel's assertion that general awards, such as "Best Film" should be credited to the composer. As noted by the director, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the *alien's* receipt of awards or prizes. The petitioner has not demonstrated that this criterion is not applicable to composers. For example, the record contains evidence of Daytime Emmy awards that relate specifically to the music and are awarded to the composer. As the petitioner has not received such an award, he cannot meet this criterion.

The petitioner submitted a plaque from the Academy of Television Arts and Sciences certifying that "A Day in Their Lives" received a 2002 Daytime Emmy nomination for "Outstanding Main Title Theme Music." The individual honored is ██████████. As stated above, the plain language of the pertinent regulation requires evidence of the *alien's receipt* of awards or prizes. As such, the petitioner cannot be credited with another individual's nomination for an award.

The record establishes ██████████ the Project:Greenlight Contest for his screenplay for "Stolen Summer" in 2001. The record contains no evidence that the petitioner contributed to the screenplay or, for that matter, to the score prior to the screenplay's selection for Project:Greenlight. The movie was not produced until after selection for the project. Moreover, the compact disc for "Stolen Summer" credits Danny Lux with the original score.

██████████ asserts that the company is the largest independent video game company in the world and that the "Medal of Honor" franchise is a major contributing factor to the company's success. The "upcoming" version, "Medal of Honor: Rising Sun," is the first to have a soundtrack recorded at Sony Picture's scoring state with a 90-Piece symphonic orchestra. ██████████ confirms that the petitioner was the "head orchestrator" of the musical score. The record contains another letter affirming that the petitioner performed a "majority" of the orchestrations by the actual composer of the score, ██████████. The record contains no evidence that the petitioner personally received an award or prize for his work on this project.

The record lacks evidence that the petitioner personally received an award or prize for the music he composed for "My Grandfather . . . And the Man in the Moon."

██████████ asserts that the score was extremely important to the film and that the petitioner was the only composer able to complete a high quality score. He states, "I am convinced that a big part of Runners' success has to be credited to [the petitioner's] beautiful score." Information on Cinema Now's Internet site confirms that "Runners" was selected for the 2001 Angel City Film Festival and the 2001 Dances with Films. It also won "Best Film," "Best Director" and "Best Actor" at the 2001 Phoenix Film Festival. Once again, the industry awards prizes for film scores. Thus, an award in a broader category that was not specifically presented to the petitioner is insufficient.

In light of the above, the petitioner has not established that he meets 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.*

██████████ initially asserted that the petitioner meets this criterion through his membership in the American Society of Composers and Publishers (ASCAP), the largest performing rights licensing organization in the world; the American Federation of Musicians, Local 47, the largest entertainment organization in the world with nearly 120,000 members; and the German Copyright Society (GEMA).

The petitioner submitted a letter from GEMA welcoming him to membership and noting that the petitioner would need to subsequently apply for the next level of extraordinary membership. The translation of the letter is not certified. The accompanying Internet materials assert that GEMA represents the rights of all composers, lyricists or music publishers. While the web page submitted includes a link to "all you need to know about membership from registration to payment deadlines," the linked pages are not attached and there is no indication in the materials submitted that membership is exclusive.

The Internet materials for ASCAP reflect that its membership includes 160,000 composers, songwriters, lyricists and music publishers of every kind of music. Like GEMA, ASCAP "protects the rights of its members by licensing and distributing royalties." ASCAP, while boasting distinguished members, also includes "thousands of writers in the earlier stages of their careers."

The director concluded that the petitioner had not established that GEMA is an exclusive association or that he is a member of ASCAP or Local 47. On appeal, the petitioner submits his ASCAP membership card reflecting membership since "2004" and evidence of his membership in Local 47 since May 20, 2003.

The petitioner also submits evidence that affiliated GEMA members need only submit an application and fee. Extraordinary members must submit five original manuscripts of works that have already been performed in public, broadcast or reproduced and distributed. Full membership can be attained after five years as an extraordinary member. As stated above, the invitation to membership submitted initially indicates that the petitioner was not yet even an extraordinary member. Submitting an application and fee are not outstanding achievements. Moreover, having five works performed in public, broadcast or distributed is merely evidence of an ability to work in the field. Such achievements are not outstanding. Finally, even full members need only demonstrate a certain number of years of experience, also not an outstanding achievement.

The materials submitted on appeal reveal that ASCAP membership for composers need only demonstrate "one work regularly published." Again, this requirement only demonstrates that the applicant is able to work in the field and is not evidence that ASCAP requires outstanding achievements of their members. Moreover, ASCAP has a higher level of membership, Honorary Membership, limited to those who have "rendered to the art or industry of music, or to this Society, a notable or conspicuous service." We need not inquire as to how the society interprets "notable or conspicuous," however, as the petitioner is not an Honorary Member.

The record lacks evidence of the membership requirements for Local 47. Local 47, however, appears to be a union. Typically, unions, even in competitive industries, are not considered to be exclusive associations that require outstanding achievements of their members.

In light of the above, the petitioner has not established that he meets 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 director concluded that the materials submitted were not demonstrated to have appeared in major media and were not primarily "about" the petitioner. On appeal, counsel reiterates the previously submitted evidence and concludes that the petitioner meets this criterion "based on the substantial amount of mass media coverage of [the petitioner] and his work." In considering the evidence below, we reiterate that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material "about the alien . . . relating to the alien's work." It is insufficient that the materials merely reference the alien, they must be "about" him. Moreover, independent journalistic coverage is far more persuasive evidence indicative of acclaim than press releases or promotional materials.

Initially, the petitioner submitted a May 2004 letter from [REDACTED] Klassik Radio Broadcast Station in Germany, the largest privately funded radio station of its kind reaching over 1,000,000 listeners, thanking the petitioner for an interview for their program special from Hollywood. The letter does not indicate how many composers were interviewed for the special, how long it was or its focus. As such, we cannot determine whether the special was primarily about the petitioner.

In addition, the petitioner submitted several reviews. A 1995 article in *Berliner Filmnews* reviews "My Grandfather . . . and the Man in the Moon." The review asserts that the petitioner's music adds to the film's extraordinary experience. The uncertified translation indicates that the publication has a distribution of 350,000.

A 1996 review in the German publication *PC Intern* of the Sigikid educational computer game series. The review credits the petitioner with the music for the series, asserting that the products “sound very professional.” Several reviews of the musical “Metropol,” either undated or dated in 1993, mention the petitioner and his music for the show favorably. The reviews appear in local newspapers and in the *Stuttgarter Nachrichten* and the *Stuttgarter Zeitung*, both national newspaper with circulations of 550,000 and 650,000 according the uncertified translations.

The petitioner did not submit certified translations of the German articles as required by the regulation at 8 C.F.R. § 103.2(b)(3) or evidence to support the assertion regarding the publication’s distribution. Regardless, the above reviews are not about the petitioner.

A 2002 review of “Legwork” in an unidentified publication asserts that the movie “is equally well-served by a funky, restrained soundtrack from” the petitioner. A review posted on the Muskegon Film Festival’s Internet site asserts that viewers of “Legwork” should “pay close attention to the subtle score by” the petitioner. The review characterizes the score, especially during the end credits, as “beautiful.”

A 2004 article posted at [www.music4games.net](http://www.music4games.net) discusses the recording of the music for “Medal of Honor: Rising Sun,” but does not mention the petitioner except to list him as one of four orchestrators in the credits that follow the article. [REDACTED] A review of the soundtrack at [www.tracksound.com](http://www.tracksound.com) lists six orchestrators, including [REDACTED]. The record contains other similar articles from other gaming Internet sites. [REDACTED] gives “Medal of Honor: Rising Sun” a “Best of Show” in the multi-platform category in its E3 2003 Game Awards, but does not mention the music in its review.

The petitioner further submitted a 1999 article in *Playback* about the ASCAP Film Scoring Workshop. The article includes a photograph of the petitioner captioned with the petitioner’s name and status as a participant.

We note that it is inherent to field of performing arts to be reviewed. Evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim. It remains, none of the above reviews are about the petitioner.

The petitioner is the subject of an article that appeared in the *Stuttgarter Amtsblatt*, but the name and circulation of only 27,000 suggests that this publication is local to the city where the petitioner was born. Thus, this article did not appear in major media and cannot serve to meet this criterion.

The petitioner’s bio appears in a program for a concert of music he composed. A program is printed, but does not constitute published material.

On appeal, counsel references the petitioner’s bio as it appears on the International Movie Database (IMDB) website. The petitioner has not established that IMDB distinguishes between the numerous actors and crew represented on the site who have worked on films or televisions shows in any minor capacity in permitting bios. Moreover, it appears the bios are not the result of independent journalistic coverage.

In light of the above, the petitioner has not established that he 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.*

initially asserted that the petitioner meets this criterion through his participation as a guest lecturer at the University of Southern California where he provided "critique and mentorship of students' work." lists another lecture given by the petitioner and finally notes that the petitioner has assisted with auditions for parts in the musical, "Metropol," for which the petitioner composed the music.

The petitioner submitted a 1996 letter from the Goethe Institute requesting, according to the uncertified translation, that the petitioner appear as a guest speaker during a weeklong workshop at the institute. The University of Southern California also requested that the petitioner appear as a guest lecturer for aspiring film composers. Finally, Theaterhaus invited the petitioner to participate on the audition jury for "Metropol," a musical for which the petitioner composed the music.

The director concluded that the petitioner's appearances as a guest lecturer did not involve judging the work of others and that his participation in an audition jury was not indicative of national or international acclaim. On appeal, counsel does not challenge the director's conclusions regarding the petitioner's appearances as a guest lecturer. Rather, counsel asserts that the petitioner's duties on the audition jury of "Metropol" are sufficient to meet this criterion. Counsel asserts that these duties involved judging the work of others in an allied field and that the regulation at 8 C.F.R. § 204.5(h)(3)(iv) does not require evidence of the significance of the alien's judging responsibilities. Counsel asserts that the guest lecture appearances should be considered as "comparable evidence" pursuant to the regulation at 8 C.F.R. § 204.5(h)(4).

The ultimate statutory standard is sustained national or international acclaim. In order for that standard to have any meaning, the evidence submitted to meet a given criterion must be indicative of or consistent with such acclaim in order to satisfy the criterion. For example, every teacher evaluates his students. We cannot conclude, however, that every teacher meets this criterion based solely on his occupation as a teacher. Similarly, every director, including those at the community theater level, selects the casts for his productions. We cannot conclude that every director meets this criterion based solely on his occupation as a director.

It is more persuasive that composing is an allied field to performing as a musician than acting. Even if we were to conclude that musical actors are in an allied field to composing, it is not clear that serving on an audition jury is evaluating the "work" of the auditioning actors. Rather, an evaluation is being made as to the actors' suitability for specific roles. Far more persuasive evidence of judging the work of others would be serving on a select committee that nominates actors for acting awards based on a *completed work*, such as for Tony or Academy awards.

Moreover, being asked to serve on an audition jury for a musical for which the petitioner composed the music is not nearly as indicative of the petitioner's recognition in the field as a request to serve as an outside expert on such a jury for an unrelated musical. The record lacks sufficient evidence regarding the significance of the production that we can conclude that the invitation to serve on this jury is indicative of or consistent with national or international acclaim as a composer.

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence where the criteria are not "readily applicable." We are not persuaded in this matter that this criterion or the criteria in general are not readily applicable to the petitioner's field.

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

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

The director concluded that the evidence submitted did not establish that the petitioner's original contributions to the film music industry are of major significance. On appeal, counsel discusses the skills required for an orchestrator, which is not at issue. We do not contest the petitioner's talent in the field. A petitioner, however, must establish eligibility through objective evidence of acclaim as opposed to subjective evidence of talent. Counsel then reiterates the various projects on which the petitioner worked. We do not contest that the petitioner's compositions are original. At issue is whether they are of major significance. Counsel asserts that the petitioner's work on award winning projects and "wide array of orchestration credits" serves to establish that the petitioner's contributions are of major significance. We will evaluate the letters below.

Initially, [REDACTED] chronicles the petitioner's film credits and notes his nonimmigrant status as an alien of extraordinary ability. As stated above, the criteria for aliens in the motion picture industry seeking nonimmigrant classification as an alien of extraordinary ability are significantly different than the criteria for those seeking the immigrant classification of the same name. *Compare* 8 C.F.R. § 214.2(o)(3)(v) *with* 8 C.F.R. § 204.5(h)(3).

[REDACTED] a composer and conductor in the film industry, indicates he has worked with the industry's top composers including [REDACTED]. While [REDACTED] explains the talent needed as an orchestrator and praises the petitioner's work that he [REDACTED] supervised, he does not identify the petitioner as a peer of the acclaimed film composers he names. [REDACTED] indicates that he served as supervising orchestrator on "Hollywood Homicide," which had a "team of orchestrators" including the petitioner.

[REDACTED] praises the petitioner's enthusiasm, reliability and innate ability, but concludes only that the petitioner has "great potential." [REDACTED] further states that he "would very much like to see [the petitioner] further his career and hope that I will soon see him on his way to greatness." Thus, [REDACTED] does not place the petitioner as one of the very few at the top of the field.

[REDACTED] composer of scores such as "South Park" and "Kim Possible" asserts that the petitioner is a "very important part of my scoring crew" and praises the petitioner's skill. [REDACTED] continues, however, that if "given the chance, I am certain he will be an excellent film and tv [sic] composer." [REDACTED] concludes that the petitioner has a "very promising career in the film industry." Thus, [REDACTED] also does not place the petitioner as one of the very few at the top of the field.

Similarly, [REDACTED] praises the petitioner's score for "Danke America," praised by audiences and critics alike. But [REDACTED] concludes only that the petitioner "is one of the most promising composers in Hollywood today. He was been working with the best and will continue to do so, most likely joining the ranks of the truly great film composers of our time." Such language does not imply that the petitioner is already one of the very few at the top of the field. Even the letter from the German radio station that interviewed the petitioner asserts that he is "a great upcoming composer."

██████████ a film composer for over 50 feature films and the petitioner's former teacher, places the petitioner among the top "ten students" and praises the petitioner's "solid command of knowing how an orchestra works." ██████████ continues:

[The petitioner] is the kind of person that one really wants to see succeed in this business. I know that he had been dreaming about moving to L.A. and becoming a film composer at a much earlier age than I ever did. That he packed up his bags and moved away from Germany at such a young age is a testament of his insatiable desire. I think [it] is only fair that he be allowed to stay here and pursue his dream.

While the letter is dated June 7, 2000, four years before the petition was filed, ██████████ clearly did not place the petitioner at the top of the field at that time. Thus, at best, this letter has minimal value in evaluating the petitioner's career as of the date of filing.

As discussed above, ██████████ affirms that the petitioner was the "head orchestrator" of the musical score for the as of yet unreleased "Medal of Honor: Rising Sun," the first video game to have a soundtrack recorded at Sony Picture's scoring state with a 90-Piece symphonic orchestra. ██████████ further asserts that Electronic Arts Los Angeles, the largest independent video game company in the world, can attribute its success to the "Medal of Honor" franchise. It appears, however, that the success of the franchise was already assured due to versions created and distributed prior to the petitioner's association with the company.

As noted above, ██████████ is the composer of the score for "Medal of Honor: Rising Sun." ██████████ affirms that the petitioner, who had previously worked with ██████████ performed a "majority" of the orchestrations. ██████████ asserts that the petitioner is "a valuable and unique talent that enriches all of us in the entertainment community."

██████████ a film composer and orchestrator who is listed as a fellow orchestrator in the credits for many of the petitioner's major projects, asserts that composers typically struggle for years before working at the studio level. We will not, however, narrow the petitioner's field to those with his level of experience. The petitioner must compare with the most experienced and renowned composers.

██████████ asserts that the petitioner provided services for Centrifuge Films, a subsidiary of Zeal Pictures. Specifically, the petitioner "provided several new compositions, made all musical arrangements, conducted the orchestra and supervised the recording process" for a Storck Group project.

██████████ affirms that the petitioner composed and arranged music for Storck's 100<sup>th</sup> anniversary, helping to make it a great success when presented to 5,000 employees and guests. The petitioner communicated the "values and emotions that are part of our company as well as our brands in his compositions." The record does not reflect that the music for this project has been recognized in the field as notable. Thus, this information simply confirms that the petitioner is able to work in his field of endeavor and satisfy his clients.

As discussed above, ██████████ asserts that the petitioner "was a big part of" the success enjoyed by "Legwork," which won two film festival awards. ██████████ notes that the petitioner composed, orchestrated and recorded the film score. It remains, however, that "Legwork" did not receive any awards specific to the score, although such awards exist in the industry.

Brandon Roberts, a composer and conductor, affirms that the petitioner was brought to China as the head orchestrator in charge of overseeing all score preparation, part accuracy and final publishing for “Hi, Frank,” a Chinese/American collaboration. [REDACTED] asserts that the film has become “critically acclaimed in both China and the United States.”

[REDACTED] a film and television composer, affirms meeting the petitioner while working on “Balto II,” where the petitioner worked as an orchestrator. [REDACTED] further collaborated with the petitioner on “Medal of Honor.” [REDACTED] concludes that the petitioner’s “unique and significant contribution to the local film industry is well worthy of note.”

[REDACTED] a film and television composer, asserts that the petitioner orchestrated his compositions for “Halloween: Resurrection,” “Stolen Summer,” and “John Doe.” [REDACTED] states:

[The petitioner] has the unique ability of being one of a few orchestrators that have technical knowledge of electronic composing and orchestration. He is able to come into my facility and electronically orchestrate in my studio. This allows [the petitioner] to enhance my compositions in my studio using the actual sounds and orchestral samples that I use. [The petitioner] is able to seamlessly orchestrate and complete my work without any further involvement of my time. If I were to use someone without these abilities, it would occupy much more of my time to incorporate their hand written orchestrations into my work. [The petitioner] is at the top of my list for this kind of work.

[REDACTED] indicates that the petitioner is “a solid part of my team.” [REDACTED] indicates that he and the petitioner have collaborated on music for several network and cable television station shows broadcast all over the United States, including the History Channel’s “A Day in Their Lives,” which was nominated for a 2002 Daytime Emmy for “Best Main Title Theme Music in a Television Show.” [REDACTED] attests to the petitioner’s “rapid and constant growth” and characterizes him as [REDACTED] “protege.”

As is clear from the above discussion, the most renowned film composers who have provided reference letters do not rank the petitioner as their peer. Rather, they praise his experience, skill and knowledge and see him as an up and coming talent. Moreover, we are not persuaded that orchestration has the same potential as original contributions to the field of film scoring as composing does. As stated above, IMDB places orchestrators under “miscellaneous crew” while composers get their own category. While the petitioner has orchestrated on major motion pictures, his actual compositions have been much more limited in impact. The record simply does not establish that the petitioner’s composition achievements rise to the level of contributions of major significance in the film composition industry. Thus, the petitioner has not established that he meets this criterion.

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

Initially, [REDACTED] asserted that the showcasing of films for which the petitioner composed or orchestrated music at film festivals serves to meet this criterion. The director concluded that the petitioner’s occupation is linked to the film industry and that the petitioner had not demonstrated that his work is the centerpiece at prestigious venues. On appeal, the petitioner submits evidence of orchestral performances of his work by a prestigious symphony prior to the date of filing. As noted by counsel on appeal, exclusive showcases of performing arts can

serve as comparable evidence to meet this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). We are thus persuaded that he has now established that he meets this criterion.

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

Initially, ██████ asserted that the petitioner has served in a leading or critical role for every company that has produced a video game or film for which the petitioner has composed or orchestrated music and every major cable network that has featured a program or film for which the petitioner has composed or orchestrated music. The director concluded that the petitioner's roles in the film industry did not rise to a level that could serve to meet this criterion. On appeal, counsel asserts that the petitioner played a leading or critical role for Electronic Arts and Pianella Music.

At issue for this criterion are the nature of the role the petitioner was hired to fill and the reputation of the entity that hired him. While the petitioner has worked on several films with distinguished reputations, we are not persuaded that the role of orchestrator is either leading or critical such that it is indicative of national or international acclaim. For example, ██████ indicates that he served as supervising orchestrator on "Hollywood Homicide," which had a "team of orchestrators" including the petitioner. As stated above, ██████ the film's composer concludes only that the petitioner has "great potential." ██████ further states that he "would very much like to see [the petitioner] further his career and hope that I will soon see him on his way to greatness."

The credits for the petitioner's more significant projects list more than one orchestrator. The only major motion picture to credit the petitioner as the sole orchestrator, "Halloween: Resurrection," lists a music supervisor. The original score for that film is credited to ██████. Serving on a team of orchestrators supervised by a supervising orchestrator is simply not a leading or critical role beyond the obvious need for the film to employ competent orchestrators. We note that IMDB, the Internet database cataloguing film credits, lists "orchestrators" under "Miscellaneous Crew," while composers have their own listing.

The petitioner submitted compact discs of his film music. The petitioner submitted no evidence of the discs' commercial success.

As stated above, the petitioner was brought to China as the head orchestrator in charge of overseeing all score preparation, part accuracy and final publishing for "Hi, Frank," a Chinese/American collaboration. ██████ asserts that the film has become "critically acclaimed in both China and the United States."

That said, we acknowledge that the petitioner has some composition credits. As discussed above, the petitioner composed, orchestrated and recorded the film score for "Legwork," which won two film festival awards. As also discussed above, ██████ asserts that the petitioner "was a big part of" the film's success.

████████ a composer, asserts that he was commissioned to compose the overture for the grand opening of the 2002 Olympic Winter Games and that he relied on the petitioner to orchestrate the work. ██████ asserts that the opening was "a huge success" and that the chairman of Samsung "requested his own personal copy of the music." ██████ concludes that the petitioner "has a very bright future" and "will be a fine addition and worthwhile contributor to a healthy and vibrant musical community here in Los Angeles."

As discussed above, [REDACTED] asserts that the company is the largest independent video game company in the world and that the "Medal of Honor" franchise is a major contributing factor to the company's success. The success of the franchise, however, preceded the petitioner's work on the "Rising Sun" version. The "upcoming" version, "Medal of Honor: Rising Sun," is the first to have a soundtrack recorded at Sony Picture's scoring state with a 90-Piece symphonic orchestra. [REDACTED] asserts that the petitioner was the "head orchestrator" of the musical score. The 2004 article posted at www.music4games.net, however, merely lists the petitioner as one of four orchestrators in the credits that follow the article. The composer and conductor is listed as [REDACTED]. A review of the soundtrack at www.tracksound.com lists six orchestrators, including [REDACTED]. The names are not in alphabetical order, suggesting they are listed in order of contribution, yet the petitioner's name appears fourth. In his own letter, [REDACTED] merely affirms that the petitioner performed a "majority" of the orchestrations. As discussed above, the record as a whole suggests that the role of composer is far more significant than the role of orchestrator. While a skilled orchestrator makes the composer's job easier, we are not persuaded that all of the orchestrators for this game played a leading or critical role for the company that produced the game as a whole.

On appeal, [REDACTED] asserts that the petitioner has "taken over the role of lead orchestrator" for [REDACTED] last three projects. While a person may have a distinguished reputation, we are not persuaded that this criterion can be met by playing a leading or critical role for a person. The petitioner has not established that Pianella Music is anything more than [REDACTED] personal corporation representing his own trade. We are not persuaded that [REDACTED] decision to incorporate removes our concern regarding playing a leading or critical role for a person rather than an organization or establishment. The organization or establishment would appear to be the movie itself. We are not persuaded that an orchestrator plays a leading or critical role for the movie as a whole.

In light of the above, the petitioner has not established that he 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.*

Initially, [REDACTED] asserted that the petitioner's "normal rate of compensation" is \$60,000 per project, placing him "within the highest echelon of Composers, Orchestrators, Arrangers and Musicians in the international field of film composition." The petitioner submitted a letter from [REDACTED] "a close business associate" affirming that the petitioner is one of the finest composers, orchestrators and arrangers, with a regular rate of compensation is not less than \$60,000 per project.

The director concluded that the record lacked evidence that would allow a comparison with other members of the field. On appeal, the petitioner submits evidence that the median earnings of salaried music directors and composers were \$31,310 in 2002. The highest 10 percent earned more than \$67,330. In California, the 2003 median wages for music directors and composers was \$27,500. The top 10 percent is listed as \$77,900.

Without the petitioner's tax documentation, it is not possible to determine the petitioner's annual wages, as opposed to his remuneration per project. Moreover, it is insufficient to establish that the petitioner earns more than the median wage. He must demonstrate that his wages compare with the top wages in the profession, including the composers for major motion pictures. The record lacks this data. Thus, the petitioner has not demonstrated that he 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.*

Counsel asserts for the first time on appeal that the petitioner meets this criterion. Counsel notes the commercial success of the films and videogames on which the petitioner has worked and the importance of music to the filmmaking process. We are not persuaded that the petitioner, as part of a team of orchestrators on the films that have earned commercial success, can be credited with the commercial success of the films. Even the composer would have a tenuous claim just based on the commercial success of the film. While music is essential in filmmaking, we are not persuaded that it is the music that is ultimately responsible for a film's commercial success. More persuasive for the composer would be evidence the commercial success of the soundtrack, evidence not present in the record of proceedings. Thus, the petitioner has not established that he 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 himself as a composer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as an orchestrator and composer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.