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U.S. Citizenship  
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FILE:

SRC 05 185 50906

Office: TEXAS SERVICE CENTER

Date: JUN 29 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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. In the denial, the director stated that translations were not part of the record.

On appeal, the petitioner submits new evidence. The petitioner asserts that the translations were not previously submitted due to prior counsel’s “misrepresentation.” Thus, we presume that the petitioner is now self-represented. The director, however, erred in concluding that the record did not contain translations.

Any appeal based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel’s ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1st Cir. 1988).

The petitioner did not provide any evidence of her agreement with prior counsel or that prior counsel had been afforded an opportunity to respond to the petitioner’s allegations. The petitioner also did not indicate whether she had filed a complaint with the appropriate authorities. In light of the above, the petitioner has not established any ineffective assistance by prior counsel. Regardless, the basis of the claim of ineffective assistance of counsel, that prior counsel failed to submit the required translations, is not supported by the record. Contrary to the director’s statements on this issue, translations were included in the initial submission.

As stated above, the director erred in concluding that the petitioner failed to submit the required translations initially. This error relates to the awards and published materials criteria, set forth at 8 C.F.R. § 204.5(h)(3)(i), (iii). For the reasons discussed below, however, while we withdraw the director’s findings regarding translations, we uphold the director’s ultimate finding that the petitioner does not meet at least three of the regulatory criteria. Rather, we find that while the petitioner submitted persuasive evidence for two criteria, awards and display, 8 C.F.R. § 204.5(h)(3)(i), (vii), even that evidence is from 1997 or earlier. As such, it is not indicative of *sustained* acclaim in 2005, when the petition was filed.

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. We note that the petitioner has resided in the United States since November 1997, according to Part 3 of the petition. In order to demonstrate eligibility, she must demonstrate *sustained* acclaim as of June 2005, when the petition was filed.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a vocalist/musicologist. 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, she claims, meets the following criteria.<sup>1</sup>

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

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The petitioner initially submitted her 2002 First Place – Third Year College Women certificate issued by the National Association of Teachers of Singing (NATS), South Florida Chapter and six Spanish-language certificates from 1993 through 1997. The petitioner did not submit individual translations for each certificate. Rather, the petitioner submitted an English summary of the certificates. The translations reveal that the certificates all recognize the petitioner's participation in various events, but do not suggest that the petitioner won any awards or prizes.

Professo [REDACTED] of Colombia University asserts that the petitioner "participated in the most important Andean Folk Music Festival before leaving Colombia, where she was selected as a winner of the Mono Nuñez Prize (Mono Nuñez is the name of the festival)." Professo [REDACTED] indicates that the festival was in "the early 1990's." The only certificate translation to reference "Mono Nuñez" provides:

FUNMUSICA certifies that [the petitioner] participated in the II meeting on Musical Interview celebrated during the 4, 5 and 6 days of June 1996 in the Hacienda El Paraiso – Valle del Cauca, in the XXII festival "Mono Nuñez," lasting 22 hours.

Nothing in the translation indicates that the petitioner won any prize at this festival. The news articles reveal that the petitioner was a finalist at the VIII Festival de la Cancion in 1982, a winner at the Third Festival of Sought Colombia Golden Conqueror in 1987, a second place winner at the 1988 Mono Nuñez, the winner of the Golden Pipintá at the Pasillo Festival in 1992, and a winner at the First National Competition of Bambuco in 1992.

[REDACTED] Executive President of FUNMUSICA, asserts that the petitioner was a member of the duo Ad-Libitum. According to Mr. [REDACTED]

Among the duo's achievements are: first prize at the VII Festival Universitario de Duetos (1992), first prize at the XIV Concurso Nacional de Duetos "Hermanos Moncada" (1992), first prize at the III Festival Nacional del Pasillo "Hermanos Hernandez" (1993), first prize and Winner of Winners at the II Concurso Nacional del Bambuco [REDACTED] (1993) and first prize in the New Expression Category at the XX Festival Nacional "Mano Nuñez."

In response to the director's notice of intent to deny, prior counsel asserted that the petitioner had already documented her receipt of the "Mono Nuñez" prize at "the most important Andean music festival." Prior counsel referenced Professo [REDACTED] letter.

The director concluded that the petitioner had not submitted translations of her Spanish-language certificates and concluded that the NATS certificate was not nationally or internationally recognized. On appeal, the petitioner submits letters from [REDACTED] Executive Director of FUNMUSICA and [REDACTED], a member of the "Mono Nunez" technical committee. Both Mr. Tascon and Mr. [REDACTED] assert that the petitioner won the Mono Nuñez prize in 1994. Mr. [REDACTED]

asserts that the award included a cash prize of 2,000,000 pesos (approximately \$2,420). None of the award certificates are dated 1994 and none of the published materials reference any festivals in 1994.

Executive Director of the National Competition of the Bambuco, asserts that the petitioner won first place at this competition in 1992, where she received 1,000,000 Colombia Pesos (\$1,210). Executive Director of the National Festival of the Colombian Pasillo affirms that the petitioner won first prize at this festival in 1992.

While the petitioner participated in festivals through 1997, she does not appear to have won any prizes or awards after 1994, other than the student award issued by a local Florida chapter of NATS. Thus, the petitioner has not established that she meets this criterion with evidence of *sustained* acclaim in 2005.

*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 for the first time on appeal. The petitioner resubmits evidence that she is a member of Local 655 of the American Federation of Musicians (AFM) of the South Florida Musicians Association and submits materials about the association. The association represents 100,000 professional members. The record contains no evidence that the association requires outstanding achievements of its members. Rather, it appears to be a union open to those working in the field. An ability to work in one's field, even a competitive field, is not an outstanding achievement.

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

Initially, the petitioner submitted published materials about festivals in which she participated, most of which mention her by name. Most of the articles were published between 1982 and 1993, with a single article published in 2002 and another article in 2004. The petitioner also submitted two compact discs purportedly of her radio interviews.

In response to the director's request for additional evidence, the petitioner submitted a letter from Director of the Department of Libraries and Arts, asserting that the newspapers in which the above articles appeared were the main newspapers for the cities they served: Bogotá, Pereira, Cali and Manizales. According to Mr. the petitioner also appeared on Caracol Radio, the "[m]ost important radio station in Colombia."

The director concluded that without translations, no analysis of the evidence was possible. On appeal, the petitioner submits her own translations, which she certified. As discussed above, however, the original submission included translations. Thus, we withdraw the director's finding to the contrary.

Nevertheless, all of the articles from 1982 through 1993 are about specific events in which the petitioner participated. None of those articles are "about" the petitioner. The 2002 article is in *El Nuevo Herald*, a Florida publication. The record lacks evidence that this publication enjoys a national circulation. The 2004 article appears in *El Tiempo*, a Bogotá paper. While Mr. [REDACTED] asserts that this paper is the "main newspaper" for Bogotá, the record lacks evidence that it enjoys a national circulation. Moreover, the one-paragraph article appears in the "People" section. The petitioner has not established that this section appears in a nationally circulated edition.

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

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

Initially, prior counsel asserted that the petitioner has been "repeatedly credited with pioneering a movement that uniquely combines classical symphonic and operatic music with traditional Colombia folk music." Ms. [REDACTED] asserts that the petitioner's repertoire allows for the "possibility of bridging Colombian Andean music with European classical music." (Emphasis added.) The petitioner also submitted letters from her colleagues in Florida and Ohio who praise her skill. They do not explain how she has impacted her field at the national level. Professor [REDACTED] asserts that the petitioner has procured Colombia folk melodies for him to edit that he intends to perform with the petitioner as a guest soloist. He further asserts that the petitioner will be his representative in Colombia, using his teaching methods. These statements do not suggest an original contribution to the field of opera or folk singing that is recognized nationally as having major significance. [REDACTED] Consul General of Colombia in Coral Gables, Florida, asserts that the petitioner contributed to Colombian culture, but does not explain how singing traditional folk songs is original or how it constitutes a contribution of major significance.

In response to the director's request for additional evidence, Mr. [REDACTED] asserts that the petitioner has mastered and integrated two distinct types of music and that she has contributed to Colombian culture.

The director concluded that Mr. [REDACTED] did not provide his credentials and that the remaining witness letters did not identify specific contributions. On appeal, the petitioner asserts that the letters submitted are sufficient to demonstrate that she meets this criterion. She submits a new letter from [REDACTED] founder of Concurso Nacional del Bambuco, a nonprofit organization to promote traditional Bambuco music. He discusses her awards at Bambuco festivals and asserts that her contribution is that "she has raised the quality level of performance at this event and sustains the Musical Tradition of Colombia for posterity."

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)).

In evaluating the reference letters, we note that letters containing mere assertions of "extraordinary" skill, widespread acclaim or vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. 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. We concur with the director that the letters do not identify specific contributions and explain how those contributions have had a demonstrable impact on the field. 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.*

Initially, prior counsel asserted that the petitioner's work "has been the subject of numerous presentations." He references "numerous concerts and recitals at venues across the United States and abroad." The exhibit list notes that the petitioner's resume details the petitioner's "numerous performances." In response to the notice of intent to deny, prior counsel asserted that the newspaper articles and letters from Ms. [REDACTED] and Mr. [REDACTED] support the petitioner's eligibility under this criterion. The petitioner also submitted programs for the petitioner's performances.

The director concluded that the evidence of the petitioner's presentations did not set her apart from others in her field. On appeal, the petitioner lists evidence that relates to this criterion.

This criterion most clearly applies to the field of visual arts. It is inherent to the field of performing arts to perform on stage. Not every performance is an artistic exhibition or showcase. The evidence for a performing artist must be evaluated as to whether it is comparable with the exclusive exhibitions designed to showcase an artist's work that would serve to meet this criterion in the visual arts.

The Colombian festivals where the petitioner performed are persuasive evidence relating to this criterion. Since arriving in the United States in 1997, however, the petitioner has performed at

churches and other local venues in Florida and Ohio where she resided. Thus, the evidence submitted to meet this criterion is not evidence of sustained acclaim at a national level in 2005.

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

Prior counsel asserted that the petitioner's performances at prestigious venues serve to meet this criterion. The director did not directly address this criterion. The petitioner no longer claims to meet this criterion on appeal. Not every performer at a prestigious venue plays a leading or critical role for that venue. Far more persuasive evidence for a musical performing artist would be evidence of ticket sales at these venues as required under the commercial success criterion set forth at 8 C.F.R. § 204.5(h)(3)(x). Moreover, as discussed above, the record lacks evidence that the petitioner has performed at venues with a national reputation after arriving in the United States in 1997.

In light of the above, the petitioner has not established 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 asserts for the first time on appeal that her prize money serves to meet this criterion. We have already considered the petitioner's prizes above pursuant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(i). Prize money is not remuneration for services. As such, these awards cannot also be considered under this criterion. Moreover, the petitioner submitted evidence of general minimum monthly salaries for comparison purposes. At issue is not whether the petitioner earned remuneration greater than the minimum remuneration for all Colombians, regardless of field. At issue is whether the petitioner's remuneration compared with the highest paid vocalists in Colombia.

In light of the above, 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 as a vocalist/musicologist 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 as a vocalist/musicologist, 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.