

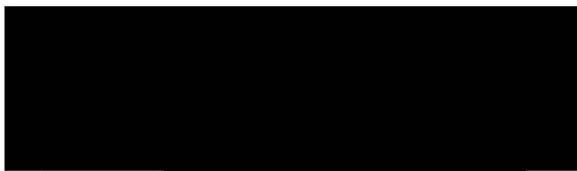
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Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **MAY 19 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.

3 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 submits additional reference letters. For the reasons discussed below, we find that the petitioner has not overcome the director’s concerns.

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.

In Part 6 of the petition, the petitioner indicated that the proposed employment was as a musician, composer and arranger. In response to the director’s request for more recent documentation, the petitioner submitted evidence suggesting that he works mostly as a sound designer and sound engineer. Specifically, while some references attest to the petitioner’s assistance composing, all of the program

credits provided are as a sound designer or sound engineer. As quoted above, section 203(b)(1)(A)(ii) requires that the petitioner seek to continue working in his area of expertise. While musicians, arrangers and composers may share knowledge of music with sound designers and engineers, they rely on a different set of basic skills and, thus, are not the same area of expertise. As such, the petitioner cannot rely on recognition as a musician, arranger or composer to demonstrate acclaim as a sound designer and sound engineer and vice versa.

The initial appeal was filed accompanied solely by a short cover letter and the brief and evidence that supported the nonimmigrant visa petition filed in behalf of the petitioner more than two years earlier.¹ The nonimmigrant visa petition classified the petitioner in a similar nonimmigrant classification. The immigrant and nonimmigrant regulatory requirements for aliens of extraordinary ability in the arts, however, are very different. The nonimmigrant regulations at 8 C.F.R. § 214.2(o)(3)(ii) define extraordinary ability in the arts (including the performing arts) as simply “distinction,” which is further defined as follows:

Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulations relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, define extraordinary ability in any field 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.” The eligibility criteria set forth at 8 C.F.R. § 204.5(h)(3) for immigrants and at 8 C.F.R. § 214.2(o)(3)(iv) for nonimmigrants, are significantly different. As such, the petitioner’s approval for a non-immigrant visa under the lesser standard of “distinction” is not evidence of his eligibility for the similarly titled immigrant visa. Regardless, each petition must be adjudicated on its own merits under the regulations that apply to the benefit sought. Thus, the petitioner’s eligibility will be evaluated under the ten regulatory criteria relating to the immigrant classification, discussed below.

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 relates to the following criteria.²

¹ An attorney signed the petition as the preparer and submitted a cover letter but no brief of his own. The petitioner did not, however, submit a Form G-28 Notice of Entry of Appearance for this attorney. As such, the petitioner must be considered self represented.

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

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

In the initial cover letter, attorney [REDACTED] asserted that the petitioner "has received significant awards and honors for her [sic] outstanding talents." The 2001 brief that accompanied the nonimmigrant petition does not mention such awards and the initial evidence submitted, the evidence that supported the nonimmigrant petition, does not include any awards.

In response to the director's request for additional evidence, the petitioner submitted two awards. Specifically, the petitioner submitted a February 2000 "Certificate of Merit" from the Israeli Ministry of Immigrant Absorption expressing appreciation for the petitioner's performance for "the project Relocating the South Lebanese Army Refugees." The petitioner also submitted a certificate from the Israeli Ministry of Culture recognizing the petitioner as "The Extraordinary Composer for the Year 2000." The certificate recognizes the petitioner's composition of "Rolling" as performed by singer Ricky Gal.

The director concluded that awards from 2000 could not establish sustained acclaim as of the date of filing, October 10, 2003, and that the petitioner had not established the significance of the awards, such as the pool of competitors, the number of awards given and the criteria used. The appeal does not address this criterion and we concur with the director. Specifically, the certificate of merit appears to be more akin to a letter of appreciation rather than an award for excellence. While the title of the Extraordinary Composer of the Year certificate is more impressive, it is the petitioner's burden to establish that the award is nationally recognized. The record contains no such evidence, such as coverage of the issuance of the award in the national Israeli media.

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.

In the initial cover letter, Mr. David asserted that the petitioner had "received critical acclaim for her [sic] musical talents in national and international newspapers and publications." The brief for the nonimmigrant petition asserts that the petitioner "has achieved international recognition for achievements evidenced by critical reviews in major newspapers, media or other publications." The brief goes on to assert, however, that the petitioner meets this criterion through television performances and his composition of radio jingles. The petitioner submitted reference letters and newspaper articles about performers or productions with which he was affiliated that acknowledge his participation. The petitioner did not address this criterion in response to the director's request for additional evidence.

The director concluded that the petitioner had not submitted articles written about him or other major media coverage. The evidence submitted on appeal does not relate to this criterion.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii), unlike the similarly worded nonimmigrant criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), requires that the published material be “about” the alien. The petitioner did not submit full and complete translations of the newspaper articles. Nevertheless, the 1997 newspaper article appears to be primarily about Ms. [REDACTED], with the petitioner named only as an accompanying musician. The petitioner is also named in a 1991 newspaper photograph caption as the composer of the song “Without You.” The full article is not part of the record. The petitioner was also named in *Yedioth America* as the accompanist for [REDACTED] at an Israeli New Year’s celebration in New Jersey. These materials are not “about” the petitioner. Moreover, minimal media coverage in 1991, 1997 and 2000 is not evidence of sustained acclaim in 2003. Finally, the record contains no evidence that any of the above articles appeared in major media. Regarding *Yedioth America*, newspapers in a language that the majority of the population cannot comprehend are not typically major media.

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 initial cover letter asserted that the petitioner “has achieved international acclaim for her [sic] unique and original singing, musical theater and variety of performance talents.” The record contains no evidence that the petitioner is a singer. As the nonimmigrant criteria do not include this criterion, the nonimmigrant petition brief submitted initially does not address this criterion. The director acknowledged the submission of reference letters from colleagues and associates of the petitioner, but concluded that the record lacked letters from well-known U.S. experts, established institutions and appropriate U.S. governmental agencies testifying to the petitioner’s impact in the field. On appeal, the petitioner submits additional reference letters. We will consider all of the reference letters below.

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 widespread acclaim and skill 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. 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.

██████████, one of Israeli's "leading ladies of rock" according to the *Jerusalem Post Magazine*, asserts that the petitioner is her "first priority as [a] keyboard player" when she tours. She praises his "combination of Middle Eastern Influence and Western world music styles." Finally, she asserts that the petitioner composed a song for her new album. The record includes promotional materials for Ms. ██████████ identifying the petitioner as her "steady keyboard player." Similarly, ██████████, another Israeli artist, asserts that the petitioner played keyboards on her album, contributing to its success. The petitioner is also the credited keyboard player for a concert by ██████████.

██████████, an Israeli songwriter, asserts that he has composed hundreds of hit songs and translated Broadway musicals into Hebrew. Mr. ██████████ indicates that he recently worked with the petitioner and "enjoyed his extraordinary musical ability and talent." Mr. ██████████ asserts generally that the petitioner "has made [a] significant contribution to [the] development of music (both main stream and electronic.)"

██████████, a television host and radio disc jockey (DJ), asserts that the petitioner composed jingles for the radio show and did the music for the Internet late night show "Night Mice." The petitioner is credited with the opening music for the show. Similarly, Meir Hadad, Program Director for Radius 100FM in Israel, asserts that the petitioner composed a "very complicated set of Jingles" for the station.

██████████, an Israeli singer, composer, producer and artistic director who boasts 300 hit songs for himself and others, praises the petitioner's talent and asserts that the petitioner has contributed to the projects on which he has worked. An article in *Yedioth America* reflects that the petitioner accompanied Mr. ██████████ on the piano at a New Year's celebration for Israelis in New Jersey.

Professor ██████████, a musician who has recorded 20 compact discs, asserts that he was supposed to be the music director of the musical "Dorian Grey" and secured the petitioner's services as the rhythm section arranger and pianist for the show. Mr. ██████████ asserts that the petitioner's work gave the show a "unique sound." The petitioner worked as a "coach and as a keybord [sic] player" at the Prague State Opera's performance of the show in 2000 according to Ingebor Zadna, Production Manager of the opera company.

██████████ asserts that the petitioner wrote and arranged the music for two of his theater company's most successful shows. The petitioner also submitted evidence of several performances, including at the Memorial Service Commemorating the Fifth Anniversary of the Assassination of Prime Minister ██████████ and the Memory of ██████████.

The above references attest to the petitioner's reputation in the field as the source of their interest in obtaining his services. The prestige of the performers reveals that the petitioner did enjoy a notable reputation as a pianist, arranger and composer in Israel up to 2000.

In a May 25, 2001 letter, [REDACTED], a Broadway composer, asserts that she has known of the petitioner for two years and that several composers are interested in collaborations with the petitioner. The petitioner submitted similar letters from composer [REDACTED], musical company manager [REDACTED], actress Jane Summerhays and produce [REDACTED]

The director requested evidence of the petitioner's acclaim as a musician, arranger and composer after 2001. In response, the petitioner submitted some evidence of composition work for Sound [REDACTED] and evidence of an interest in his work from City Lights Media Group. Most of the new evidence, however, is his credits as a sound designer and sound engineer. The petitioner submitted no evidence of any collaborations with Ms. [REDACTED], Ms. [REDACTED], Mr. [REDACTED], Ms. [REDACTED] or Mr. [REDACTED]

On appeal, the petitioner submits additional evidence of his sound design and sound engineering work. He also submits a letter from composer/producer [REDACTED] asserting that he has collaborated with the petitioner as composers. He does not identify the compositions or discuss their success. [REDACTED] manager and mother of Skye, asserts that the petitioner's "input" was central to the success of Skye's demo compact disc. Ms. [REDACTED] does not indicate, however, that Skye's success has extended past local clubs. Sachar Gilad, a record producer and engineer, asserts that the petitioner has played keyboards on several of production projects. Mr. [REDACTED] does not identify the projects or provide compact discs crediting the petitioner with this work. Moreover, if the above projects were after the date of filing, they cannot be considered evidence of the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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). While the petitioner appears to have been developing a national reputation in Israel, the record does not establish that he has sustained any acclaim after 2001. The petitioner does not appear to have participated in any of the collaborations contemplated when the nonimmigrant visa was filed. Rather, as of the date of filing, his work in the United States appears limited to mostly sound design and sound engineering with some original composing for advertisements. The record does not reflect a demonstrable impact on the field of music, especially after 2000.

In light of the above, the petitioner has not established that he meets this criterion through evidence indicative of *sustained* acclaim.

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

The petitioner submitted the reference letters discussed at length above. Clearly, some of the musicians with whom the petitioner has performed enjoy a nationally distinguished reputation in Israel. While the reference attest to the importance of the petitioner's role for these artists, the record lacks promotional materials for the artist that feature the petitioner more prominently than the other session musicians or reviews that single out the petitioner's performance. Composing jingles for a radio station or an advertisement company is not a critical role for the station or company beyond the obvious need of a radio station to have jingles and an advertisement company to employ competent composers. Thus, we are not persuaded that the petitioner 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.

██████████ of Richman Business Management, which filed the nonimmigrant visa petition in the petitioner's behalf, asserted in support of that petition that the petitioner would earn a minimum of \$750 per week from live performances and collaborations. In support of the instant immigrant petition, filed more than two years later, the petitioner has submitted no evidence of his income or data that would allow us to compare the petitioner's income with the highest wages in the field. Thus, the petitioner has not established 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.

In her 2001 letter, Ms. ██████ asserts that the petitioner composed a song for her new album, which she expected to be a hit. The record contains no evidence that this song did, in fact, become a commercial success.

██████████ asserts that she sought out the petitioner to play keyboards on her album, which, she asserts, "already has success." The record contains no evidence of that success, such as compact disc sales data. The portions of the reviews submitted do not single out the keyboards as particularly noteworthy.

In light of the above, 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 musician, arranger and composer or as a sound designer and engineer 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 a musician, arranger 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.