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U.S. Citizenship
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FILE:

[REDACTED]

EAC 05 213 51584

Office: VERMONT SERVICE CENTER

Date: OCT 12 2006

IN RE:

Petitioner:

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 cursive script that reads "Mai plinson".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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, the petitioner argues that his evidence satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 earned sustained national or international acclaim at the very top level.

This petition, filed on July 21, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a show manager, musician, performer, and teacher.

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 pertaining to the following criteria.

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

The petitioner submitted two diplomas issued by the Ministry of Education of the Armenia Soviet Republic on February 16, 1981 "for participating in the art-self creative festival of school pupils of Trans-Caucasus Republics dedicated to the XVI setting of Communist Party of Soviet Union." There is no evidence showing that these diplomas are nationally or internationally recognized awards for excellence, rather than simply an acknowledgment of the petitioner's participation in the festival. We note that the petitioner was age 12 when he received these diplomas. It has not been shown that the petitioner faced competition from throughout his field, rather than his approximate age group within that field. Awards limited to children are not adequate to demonstrate that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). Further, the record includes no evidence showing that the petitioner's awards were widely recognized beyond the context of the event where they were presented.

The petitioner also submitted two certificates of appreciation issued to him by the U.S. Army and the U.S. Marine Corps for his service as driver for the Georgia Train and Equip Program. The petitioner's work as a driver, security guard, and contractor for the U.S. military base in Krtsanisi, Georgia, however, is unrelated to music, the field of endeavor in which the petitioner seeks classification as an alien of extraordinary ability.

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 order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant language. An alien would not earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted a photograph of the Martve folk choir of which he was member appearing on the front page of the January 1, 1984 issue of *The Emblem* newspaper. We note that the petitioner was one of more than 30 boys pictured in this photograph. There is no evidence showing that the petitioner's name was mentioned in this newspaper. The plain wording of this criterion, however, requires "published materials about the alien." If the petitioner is not specifically named in the material, then it fails to demonstrate his individual acclaim. Further, there is no evidence showing that this publication had substantial national readership. Thus, the petitioner has not established that he meets this criterion.

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

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 regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. For example, serving as a judge for a national competition involving professional musicians is of far greater probative value than serving as a judge for a local competition involving amateurs or children.

In response to the director’s request for evidence, the petitioner submitted a June 10, 2005 letter from the Tbilisi 7th Music School stating: “[The petitioner] systematically participated in orchestra department, as the member of entrance and state examinations, carried professional consultations to school teachers and pupils [sic].” We do not find that evaluating music students at a local school is evidence of national or international acclaim.

The petitioner’s response also included a letter from [REDACTED] Folklorist, Choir Director, and Professor at the State Institute of Culture, Georgia, stating: “[The petitioner] was a member of jury of the competitions in folk songs in the Republic.” This brief, vague letter, however, provides no information about the specific competitions for which the petitioner served as a jury member.

The preceding letters of support are not adequate to demonstrate that the petitioner meets this criterion. The plain wording of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” Regarding the petitioner’s activities at the Tbilisi 7th Music School and as a member of the jury for folk song competitions, the absence of contemporaneous evidence of the petitioner’s participation is a significant omission from the record. The record includes no evidence of the school examinations conducted by the petitioner, the event programs or promotional material related to the folk song competitions for which he served as a jury member, the names of the individuals he evaluated, and their level of expertise. Without evidence showing that the petitioner’s activities involved evaluating experienced music professionals at the national or international level, we cannot conclude 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 petitioner submitted several letters of support. We cite representative examples here.

[REDACTED] Professor of Tsbilisi State Conservatory, Georgia, states:

[The petitioner] is a talented and many-sided young musician. In his teenage years he sang in the famous boys’ folk choir “Martve” with Anzor Erkomaishvili – the prominent Georgian musician in charge. Apart from this [the petitioner] participated in numerous concerts held in Tbilisi, as well as in other cities.

[The petitioner] practices viola class at Tbilisi State Conservatory. He performed as a successful soloist and ensemble member at various concerts. After graduating Tbilisi State Conservatory, [the petitioner] performed in the Radio and TV Symphonic Orchestra of Georgia for several years and participated in plenty of concerts. Besides, [the petitioner] gave private music lessons and was known as an extremely proficient teacher

I have my pleasure to recommend [the petitioner] as a highly professional musician, having all necessary experience to conduct either excellent pedagogic or performing activities.

Associate Professor of Tsbilisi State Conservatory, Georgia, states:

I have known [the petitioner] since his studentship when he studied at viola department of V. Sarajishvili Tbilisi State Conservatory. His teacher was [redacted] – a prominent musician, an unchallenged member of State String Quartet of Georgia, famous in our country as well as in Russia and Europe.

I taught [the petitioner] a course of Georgian and Foreign Musicology, which he passed successfully. His Conservatory period was preceded by 7 years at a general music school and graduating of Music College N 2, where he was taking piano and violin classes. Thus, [the petitioner] masters three musical instruments – viola, violin and piano.

The Conservatory course also implies participation in ensemble and orchestra classes as a result of which the student acquires skills of performing in chamber ensembles, as well as in symphonic orchestras. [The petitioner] is proficient in both of these aspects.

It is worth mentioning that [the petitioner] sang in famous Georgian State Folk Choir “Martve” taking most successful concert tours worldwide. [redacted] – the founder and the leader of “Martve” is a widely recognized artist, excellent expert of Georgian folk music. He conducted scrupulous selection of the members for the ensemble and taught them numerous Georgian folk songs. Hence, within the period of his stay with “Martve” [the petitioner] had learnt and performed a vast repertoire of Georgian folk songs, which refined his musical taste, expanded his mental outlook and liberalized him.

I would also like to draw your attention to other musical preferences of [the petitioner]. His interest in music and performance skills was so profound that he learnt playing other instruments as well, namely tuba and percussion instruments. Another musical skill of [the petitioner] is his ability of improvisation on various instruments and arrangement, absolute pitch and subtle taste.

Finally, to sum up this letter of recommendation I state to the best of my knowledge that [the petitioner] is a many-sided musician, instrumentalist, singer, ensemble player, improvisator and arrangement specialist, which makes his talent and capacity most prominent.

Anzor Erkomaishvili states:

[The petitioner] was recognized as one of the best singers of folk songs and master in a young generation. Since 1980 [the petitioner] singed [sic] at children's public chorus "Martve" founded by me. Later he actively tried for studying folk songs and for populism for years. He systematically participated in expeditions for finding folk songs. He singed [sic] in the different ensembles. He successfully headed to [sic] the ensembles of folk songs.

The preceding letters indicate that the petitioner is a talented singer and musician, but they fail to specifically identify his original contributions of major significance in the music field. The evidence submitted by the petitioner is not adequate to demonstrate that his work has had a significant national or international impact. We accept that the petitioner is a talented vocalist and musician, but the record lacks independent evidence demonstrating that his contributions have significantly influenced his field. For example, there is no evidence showing the extent of the petitioner's influence on other professionals in the music industry. The mere fact that the petitioner has performed for a reputable youth choir, played multiple instruments, or sang folk songs does not demonstrate that such activities are nationally or internationally acclaimed as having major significance in the field. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed at the national or international level, we cannot conclude that it constitutes a contribution of major significance. 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.

The petitioner submitted concert programs from 1978 and 1982 relating to his childhood musical performances and two posters announcing his musical performances at the Tbilisi Conservatory's "Little Hall" in 2001 and 2002. This particular criterion, however, is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. It is inherent to the occupation of musician to perform before an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's concert performances are far more relevant to the "commercial successes in the performing arts" criterion. The petitioner has not 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.

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a letter of support from Zaza Azmaiparashvili, Chief Conductor and Art Leader, Tbilisi State Theatre, stating:

[The petitioner] came to us – Radio and TV Orchestra of Georgia – when he was very young musician. Despite, he could take his place at the first stand of viola group by his diligence, wish and professionalism. Later he reservedly became concertmaster of viola group.

* * *

He played in instrumental ensembles with great pleasure and arranged solo concerts.

There is no evidence showing that the Radio and TV Orchestra of Georgia has earned a distinguished reputation or evidence establishing the relative importance of the petitioner's role when compared to that of other performers and concertmasters from this organization. Regarding the petitioner's role for the Martve boys' choir, the evidence of record is not adequate to distinguish the petitioner from the thirty or so other members who sang for this youth choir. The letter of support from Anzor Erkomaishvili does not provide sufficient detail as to how the petitioner's role was more important than that of the other young performers. In this case, we find the petitioner has not established that he performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim. Thus, 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.

The aforementioned letter of support from Zaza Azmaiparashvili states: "And when average wage of orchestra concertmasters amounted to 160-180 GEL, [the petitioner] was appointed high wage amounting to 725 GEL." The record, however, includes no supporting financial documentation (such as payroll records or income tax forms) showing the petitioner's actual earnings for any given period of time. 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)). Nor has the petitioner submitted documentary evidence of the source of the average wage data cited in Zaza Azmaiparashvili's letter. Nonetheless, Zaza Azmaiparashvili's use of "average" wage data is not an appropriate basis for comparison. The petitioner must submit national wage data demonstrating that his compensation places him at the very top of his field rather than above average in his field. *See* 8 C.F.R. § 204.5(h)(2). 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.

This criterion calls for commercial success in the form of "sales" or "receipts"; simply submitting event programs and posters announcing the petitioner's performances cannot meet the plain wording of the regulation. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Thus, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.