

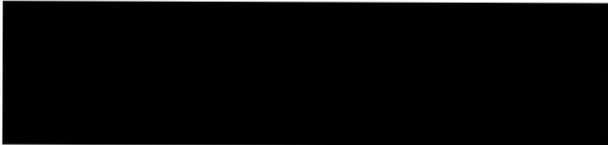
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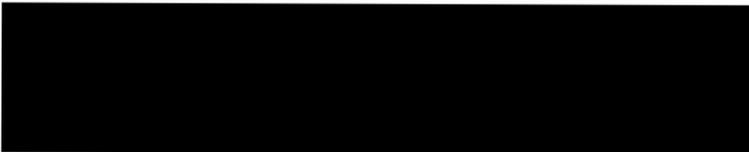


FILE: SRC 03 243 50508 Office: TEXAS SERVICE CENTER Date: **SEP 06 2006**

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:



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 employment-based immigrant visa petition was denied by the Director, Texas 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. 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 argues that the petitioner meets the regulatory criteria for classification as an alien of extraordinary ability and that “the extensive documentation presents [the petitioner] as being at the top of his field.”

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 September 8, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a Bengali vocalist and music director. The statute and regulations require the petitioner’s acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since 1996. Given the length of time between the petitioner’s arrival in the United States and the petition’s filing date (more than seven years), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a musical performer in this country.

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 the following:

1. "Award of Appreciation" from the Bangladesh American Literary, Art, and Cultural Association (BALACA) stating: "In Recognition Of Your Musical Performance, March 16, 2001, Houston, Texas."
2. Certificate from Jessore City College stating that the petitioner won first place in the Annual Literary and Cultural Competition for students in the Tagore Song category (April 23, 1978)
3. Certificate from Jessore City College stating that the petitioner won first place in the Annual Literary and Cultural Competition for students in the Nazrul Song category (April 23, 1978)
4. Certificate from Jessore City College stating that the petitioner won first place in the Annual Literary and Cultural Competition for students in the Modern Song category (April 23, 1978)
5. Certificate stating that the petitioner won first place in the Tagore Song category at the "District Cultural Evening" held by the local government of Jessore (March 1980)

In regard to items 2, 3, 4, and 5, we find that these awards reflect local recognition rather than national or international recognition. Regarding items 1 through 5, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition beyond the presenting organizations. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), however, specifically requires that the awards or prizes be nationally or internationally *recognized* and it is the petitioner's burden to establish every element of a given criterion. 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)). In this case, there is no supporting documentation from the awarding entities or print media to establish that the petitioner's awards are nationally or internationally recognized. Thus, 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 general, 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. An alien would not earn acclaim at the national or international 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 what counsel claims are “magazines” that include the petitioner’s photo, a few sentences about his musical career, or a description of his music (Exhibit 7). The aforementioned materials appear to be event programs rather than published material from magazines. The petitioner’s evidence does not identify the title of the magazines, their dates of publication, or the authors of the printed material as required by this criterion. Further, there is no evidence showing that these “magazines” qualify as major media.

The petitioner also submitted two articles appearing in the March 2, 2001 issue of *Weekly Deshbarta*, a local Bengali newspaper published in Houston, Texas. This first article, which mentions the petitioner’s name only once, is primarily about a celebration held at the University of Houston in honor of International Language Day rather than about the petitioner and his work. The second article, which also mentions the petitioner’s name only once, promotes an upcoming BALACA meeting at which the petitioner was scheduled to perform. The petitioner has not shown that *Weekly Deshbarta* has substantial national readership beyond Bengali readership in Houston. Because the overwhelming majority of the U.S. population does not read or comprehend Bengali, it has not been shown that an article appearing in such a publication constitutes published material in “major media.”

On appeal, the petitioner submits an additional article from a local Bengali newspaper discussing an event that took place “on April 9, Sunday, 2005 at the local Lions Club auditorium.” This event took place subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, this evidence will not be considered within this proceeding.

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 petitioner submitted correspondence dated April 14, 1993 reflecting that he was one of six performers who participated in a cultural exchange program between Bangladesh and India called “Bhromara.” While the petitioner may have participated in this program, there is no evidence showing that his individual involvement had a significant national or international impact. The burden is on the petitioner to demonstrate that his original work related to this exchange program rises to the level of a contribution of major significance in the field of music.

 President, Federation of Bangladesh Nationals, Oklahoma City, states:

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.

[The petitioner] is a renowned singer who sings traditional Bengali songs including “Tagore Song” (songs written and composed by Rabindranath Tagore – a Nobel Laureate). He attends at every cultural events [sic] sponsored by the organization. He performs traditional music in those events.

On a voluntary basis, [the petitioner] teaches musical notes, traditional Indian musical instruments and songs to the interested Bangladeshi-American children who live in Oklahoma City. We, the members of this organization, appreciate him for his assistance in teaching our children the traditional music, songs and culture which is [sic] extremely important for our community to identify ourselves as a separate ethnic entity in our great multi-cultural Nation, called the United States of America.

While the petitioner may have earned the respect of the local Bangladeshi-American community in Oklahoma City, there is no evidence showing 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 at cultural events or produced musical recordings does not demonstrate that such activities are nationally or internationally acclaimed as having major significance in the field. There is no evidence showing that the petitioner’s work has attracted large audiences or that it has received significant attention from music critics or professional recording artists. 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. 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 event programs, pamphlets, photographs, and video and compact disc recordings from various performances in which he participated. This particular criterion, however, is more appropriate for visual artists (such as sculptors and painters) rather than for than for musical performers such as the petitioner. 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 musical 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.

In response to the director’s request for evidence, counsel argues that local newspaper reports and photographs relating to the petitioner’s appearances at cultural events in Houston are adequate to satisfy this

criterion. We find no evidence showing that the organizations for which the petitioner performed had earned distinguished reputations at the national or international level. Nor has the petitioner submitted evidence establishing the relative importance of his role when compared to that of others active in those organizations. In this case, 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. 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.

In response to the director's request for evidence, counsel argues that the petitioner has commanded significantly high remuneration for his services in radio and television. The record, however, includes no evidence (such as payroll records or income tax forms) showing the petitioner's actual earnings for any specific period of time. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The plain wording of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." In this instance, there is no evidence showing that the petitioner's compensation was significantly high in relation to others in his field. Therefore, 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, pamphlets, photographs, and video or compact disc recordings showing that the petitioner took part in various 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. The petitioner also submitted a musical cassette that he co-produced. The record, however, includes no evidence showing that this cassette has a high national or international sales volume. The petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. Occasional participation in local community cultural events (involving multiple performers) is not evidence of an individual's sustained national or international acclaim as a musician or vocalist. Since his arrival in the United States in 1996, there is no evidence showing that the petitioner's musical performances have attracted significant attention beyond his affiliation with the Bengali communities of Houston or Oklahoma City.

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 the 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.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” The record includes no such evidence. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.