

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Bz

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **AUG 27 2007**
EAC 05 095 50314

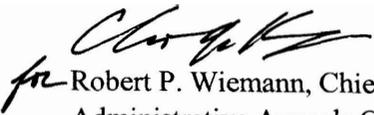
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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.


for 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 (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as an “alien of extraordinary ability,” 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 that he qualifies for classification as an alien of extraordinary ability.

On appeal, counsel argues that the director’s “[d]ecision makes no mention of the extensive, ‘primary’ evidence submitted, which confirms that [the petitioner], indeed meets at least 3 of the 10 categories to prove his Extraordinary Ability in the Arts.” For the reasons discussed below, we find that the director’s decision fails to explain the deficiencies in the evidence submitted consistent with the regulations such that the petitioner could file a meaningful appeal addressing those deficiencies. The director’s decision contains errors of law and ignores or incorrectly evaluates much of the petitioner’s evidence. Thus, we must remand the matter to the director for issuance of a new decision that properly addresses the deficiencies in the record. We provide the following guidance in complying with this remand order.

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 are listed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on February 10, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a pianist. 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, internationally 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 criteria follow.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) Published material 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

At the time of filing, the petitioner submitted evidence of his receipt of a "Youth Level" award at the "First Piano Contest for [REDACTED]'s Fan Club," his membership in the Peruvian Association of Authors and Composers (APDAYC) and the American Society of Composers, Authors and Publishers (ASCAP), published material about him, his concert performances, and a compact disc featuring his music. The petitioner

also submitted letters of support from individuals who attested to his musical accomplishments, including his receipt of an award from the APDAYC.

On May 6, 2005, the director issued a request for additional evidence. Specifically, the director requested evidence pertaining to the petitioner's awards, memberships, published material about him, and his salary, a criterion not addressed by the petitioner. Nothing in the regulation implies that an alien must meet any specific criterion as long as the alien meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). The director also noted that the record lacked letters "from well-known persons" in the petitioner's field although most of the criteria require objective evidence of achievements as opposed to letters of support from recognized experts, however credible their opinions may be.

In response, the petitioner submitted information about his APDAYC award and membership, additional evidence relating to his concert performances, further published material about him, and additional letters of support.

On March 22, 2006, the director issued a decision stating, in pertinent part:

You have filed this petition based on a claim of extraordinary ability in the field of Music as a Concert Pianist. Your cover letter claims that your extraordinary ability is shown in the awards received, and the writing career you have followed in the music industry of piano. However, you have not submitted objective evidence, such as affidavits from well-known U.S. organizations or individuals, to support your claims of prestige and ability. In addition, it is not clear whether the awards and memberships were given to you as an individual or as a member.

Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current member, or payment of dues, does not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute the national or international level, rather that the local level [sic]. Finally[,] the overall prestige of a given association cannot satisfy the criterion because the key issue is membership requirements rather than the association's overall reputation. In light of these facts[,] you have not demonstrated that the beneficiary has met this criterion. You [sic] statements and/or the statements of your attorney are not considered objective since you are attempting to obtain an immigration benefit.

The record contains letters which were predominantly written by the beneficiary's friends or mentors in support of the petition and as such, their probative value is somewhat limited by these previous relationships. It is true that some of the authors of those letters appear to be experts in the beneficiary's field in their country or profession, but the record, at present, does not establish that the beneficiary's accomplishments have been recognized as having advanced the field to a greater degree than others involved in similar pursuits by the members of the music industry. It is generally expected that an individual whose accomplishments have garnered sustained national or international acclaim would have received recognition for his accomplishments well beyond the circle of his personal acquaintances. In other words, if the beneficiary's work is not widely praised apart from his personal and professional associates, then it cannot be concluded that he enjoys sustained national or

international acclaim. It is expected that the record include a wider range of letters considering the extremely restrictive immigrant category that has been requested. Also, the record contains no evidence that the beneficiary has enjoyed compensation in excess of that enjoyed by others in the field. In the absence of objective evidence, the Service must conclude that you have not shown extraordinary ability and eligibility for the classification sought.

The record does not establish that the beneficiary qualifies as an alien of extraordinary ability. Therefore[,] the beneficiary is ineligible for classification under section 203(b)(1)(A) of the Act.

Contrary to the director's observation in the first paragraph cited above, the petitioner's February 9, 2005 cover letter included no discussion of the petitioner's "writing career." Although the director's decision listed all ten of the regulatory criteria, it only discussed awards, membership, and salary, a criterion not addressed by the petitioner. The director acknowledged that the petitioner based his eligibility claim on his awards, but concluded that he had not demonstrated whether the awards were individual or "as a member." Nothing in the regulation at 8 C.F.R. § 204.5(h)(3)(i) precludes team awards. Nevertheless, the awards claimed by the petitioner were individual awards, not team awards. As such, the director's focus on that issue was in error. The director also stated that the petitioner had "not submitted objective evidence, such as affidavits from well-known U.S. organizations or individuals, to support [his] claims of prestige and ability." While affidavits may serve as valid evidence, they are far more subjective than objective. Evidence that addresses the regulatory criteria, such as awards and independent journalistic coverage of the alien, is far more persuasive than the subjective opinions of experts in the field. Thus, the implication that expert letters from U.S. sources are required to establish eligibility under this classification is also in error.

The director's decision included no discussion of the evidence submitted for the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(iii), (vii), (x).¹ Nor did the director's decision specifically address the petitioner's failure to submit certain evidence requested by the service center on May 6, 2005. For example, the petitioner failed to submit "circulation" information for the publications that covered him or the membership "requirements" for the APDAYC. Further, 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. The director's decision, however, failed to address this deficiency.

In this matter, we find that the director's decision failed to explain the deficiencies in the evidence submitted consistent with the regulations such that the petitioner could file a meaningful appeal addressing those deficiencies. Therefore, we must remand the matter to the director for issuance of a new decision that properly addresses the deficiencies in the record and that applies the pertinent statutory and regulatory requirements in the analysis of the petitioner's evidence. The director's decision should include a specific discussion of the petitioner's evidence for each of the applicable regulatory criteria at 8 C.F.R. § 204.5(h)(3).

¹ On appeal, counsel argues that evidence in the record also pertains to the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and seeks to continue work in his area of expertise in the United States.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.