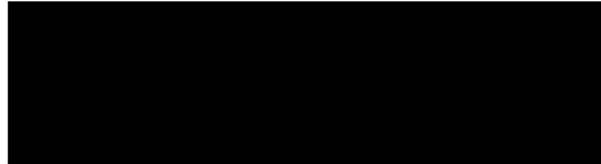


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FILE: [REDACTED]
LIN 05 272 54286

Office: NEBRASKA SERVICE CENTER

Date: **AUG 29 2007**

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:



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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary 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 that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the beneficiary has satisfied 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 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 will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on October 17, 2005, seeks to classify the beneficiary as an alien with extraordinary ability as a musician. Specifically, the beneficiary is a composer and performer of blues and soul music. 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 a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. We find that the petitioner's evidence meets at least three of the regulatory 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 initially submitted photographs showing that, *inter alia*, the beneficiary was awarded "Male Vocalist of the Year" and "Song of the Year" at the 2004 Australian Blues Awards. The director's decision noted that the photographs of the beneficiary's Australian Blues Awards did "not show the beneficiary's name or otherwise demonstrate that he was a recipient of the awards." On appeal, the petitioner submits information printed from the Australian Blues Music Festival's official internet website identifying the beneficiary as the recipient of the preceding awards.¹ Further information submitted by the petitioner from this website states:

Australian Blues Music Awards (originally known as the Goulburn Blues Music Awards) are presented each year to recognise excellence in Blues Music in Australia.

* * *

Judging is done by a panel of judges representing the various states and territories.

* * *

The Australian Blues Music Awards are now recognised as the industry's most prestigious honour

Published media reports submitted on appeal confirm the national significance of the Australian Blues Awards.

The petitioner's appellate submission also includes evidence showing that *US Magazine's* "Guide to the Best of the Blues Harmonicas & Beyond" voted the beneficiary's *Way Down Deep Inside* compact disc its 2004 "Album of the Year" and voted him the "Sweet Harmonica Award" and the "Nasty Harmonica Award."

In light of the evidence submitted on appeal, we find that the beneficiary meets this criterion.

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.

¹ The record also includes published materials stating that the beneficiary received the two Australian Blues Awards.

The petitioner submitted numerous articles about the beneficiary appearing in professional, major trade publications or other major media such as *Australian Musician*, *Down Beat*, *King Biscuit Time*, *Big City Blues*, *The Canberra Times*, *The Blues Times*, *Rhythms Magazine*, and *Mixdown Magazine*. As such, we find that the beneficiary meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submitted evidence indicating that the beneficiary has performed at major music festivals including the Australian Blues Music Festival, the Milwaukee Summerfest, the Riverbend Festival, the Chicago Blues Festival, and the East Coast Blues & Roots Festival. The petitioner also submitted documentation showing the significance of these festivals and that the beneficiary's performances were consistent with sustained national acclaim as a blues musician. Thus, we find that the beneficiary 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.

The petitioner submitted evidence showing that the beneficiary's musical recording "Sailing Australia" (The America's Cup Theme) was a number one single in Australia in 1987 and achieved "Gold" record status.

The director's decision stated that "this establishes a level commercial success in the performing arts," but concluded that a "single gold record from nearly two decades ago does not demonstrate sustained national or international acclaim."

We concur with the director's finding that a single gold record does not satisfy the plain language of the regulatory criterion's call for "commercial successes," but find that more recent documentation of the beneficiary's achievements shows that his national acclaim has indeed been sustained. For example, the record includes evidence that the beneficiary was featured on a national broadcast of the Australian Broadcasting Corporation's television program *Live at the Basement* in July 2004, that he received nationally recognized awards in 2004, that he has recently performed at major music festivals here in the United States (such as the Milwaukee Summerfest), and that he has frequently been the subject of media coverage in recent years.

In conclusion, the beneficiary has satisfied three of the regulatory criteria required for classification as an alien of extraordinary ability. Moreover, the evidence, considered in the aggregate, contains extensive documentation of the beneficiary's sustained national acclaim. Pursuant to the statute and regulations as they are currently constituted, the beneficiary qualifies for the classification sought.

In this case, the totality of the evidence establishes an overall pattern of sustained national acclaim and extraordinary ability. The petitioner has also established that the beneficiary seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has overcome the stated grounds for denial and thereby established the beneficiary's eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.