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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 08 2007
SRC 06 030 51984

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.

2 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 in the arts. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

On appeal, counsel submitted a substantive statement but indicated that he would submit a brief within 30 days. Counsel dated the appeal February 3, 2006. As of September 16, 2006, this office had received nothing further. Thus, on that date, this office contacted counsel by facsimile, advising that we had received no additional materials, inquiring as to whether anything had been submitted and requesting a copy of any additional materials submitted. In response, counsel requested that the appeal be decided on the record. On November 2, 2006, this office inadvertently reissued the same facsimile and received no response. Thus, we will adjudicate the appeal on the record. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states, in pertinent part:

(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 she has *sustained* national or international acclaim at the very top level. In his appellate statement, counsel implies that “sustained” refers to the petitioner’s career, not necessarily her acclaim in the field. Thus, counsel implies that evidence of remote acclaim and a lengthy career is sufficient to demonstrate “sustained” acclaim. We do not agree. It is the “acclaim” that must be sustained. Thus, the petitioner must demonstrate that her acclaim, not just her career, is sustained as of the date of filing the petition.

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a singer. 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). Counsel claims the petitioner meets this criterion because she won the “‘*Gaviota de Plata*’ (Silver Seagull) as the Best Female Vocalist at the Twenty-Seventh International Song Festival at Viña del Mar in 1986.” The petitioner submitted two photographs of the petitioner and other individuals from an unidentified source with the caption, “XXVII International Festival of Song Viña del Mar 5 – 10 February 1986.” The record contains no photographs of her actual award, contemporaneous media coverage of the event or documentation from the festival organizers. The director determined that the submitted photographs were insufficient to demonstrate that the petitioner actually received this award.

As evidence of the award’s significance, the petitioner submitted several letters. [REDACTED] Vice President of Programming at Univision Radio WAMR 107.5 in Florida asserts that the Viña del Mar Music Festival is an international song festival that has been world renowned for nearly 50 years and draws singers from Europe, Asia and the Americas. [REDACTED] Senior Vice President of Marketing at the Grand Entertainment Group in Florida; [REDACTED] Chairman of CTV.24; and [REDACTED] Sales Manager of Universal Latino, use similar language, all describing the award as a “career defining moment in the life of an artist.” [REDACTED] President of DG Music International in Florida, asserts that he has participated with different ists in different festivals. He states:

This [Viña del Mar Music] Festival is considered in the industry as a very prestigious Festival, and has featured, and produces some of the most famous artist[s] in Spanish Music. Winning this festival is considered an accomplishment in an artist’s career that sets her among the best in the field. Winning in this Festival is a once in a lifetime moment that defines the caliber of the artist with other internationally renown vocalists and songwriters.

[REDACTED] recipient of the Spirit of Life Award from the Latin Music Industry City of Hope, asserts:

I know of [the petitioner's] career as a singer, lyricist and producer of entertainment events. She has been bestowed with one of the most prized awards internationally, the "Gaviota de Plata," awarded to the best singer in the "Festival Internacional de la Canción de Viña del Mar" (the International Song Festival of Viña del Mar) Chile, the highly prestigious song festival.

In response to the director's request for additional evidence (RFE) of the award's prestige, the petitioner submitted new letters from Florida Latin music professionals reiterating that a Viña del Mar Festival award is a "career defining moment."

In addition to the above letters, the record contains brief references to the award in what appears to be local media coverage of the petitioner. The media coverage is not contemporaneous with the award. The petitioner has not submitted any media coverage, especially national or international media coverage, of the festival itself in 1986 or in any year.

The director concluded that the record lacked evidence that the petitioner actually received the award and that the award is a major international recognized award. The director also noted that the award was "received" several years prior to the filing of the petition. On appeal, counsel asserts that the director failed to consider the letters submitted and contradicts herself by questioning the petitioner's receipt of the award while asserting that the petitioner "received" the award several years ago.

We do not find the director's decision contradictory. Read in context, the director's discussion of when the award was issued is provided as an additional point assuming the petitioner could provide evidence to corroborate her claims to have won the Viña del Mar Music Festival award. We concur with the director that the record lacks the required initial evidence, the award itself.

The regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

We find that where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. Secondary evidence might be contemporaneous newspaper reports of the competition results. Affidavits attesting to awards, therefore, would need to “overcome the unavailability of both primary and secondary evidence.” The petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, and therefore the petitioner is presumed ineligible pursuant to 8 C.F.R. § 103.2(b)(2).

Even assuming the petitioner has won the Viña del Mar Music Festival Award, and we reiterate that the record does not contain the necessary primary or secondary evidence establishing that she did so, we further concur with the director that the record lacks evidence that the festival is a *major* international recognized award or prize. It can be expected that a festival with major international recognition will generate coverage in the major media at the international or national level. The record contains no evidence that the festival is televised internationally or that the results are reported in the national print media beyond Chile, where the festival is held.

In light of the above, the petitioner has not demonstrated a one-time achievement.

Barring the alien’s receipt of a major international 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. The petitioner has submitted evidence that, she claims, meets the criteria discussed below.¹ At the outset, however, we note that the petitioner is relying mostly on letters from members of the music industry in Argentina and Florida.

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)).

(i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

As discussed above, the petitioner has not demonstrated her receipt of the Viña del Mar Music Festival award. Even assuming the record contained such evidence, the award was issued 19 years prior to the

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

filing of the petition and, thus, could not establish sustained acclaim. Thus, we need not consider whether it is a lesser internationally recognized prize or award.

In support of the petition, counsel resubmitted his RFE response letter from a previous petition filed by the petitioner. In the response, counsel asserted that the petitioner received the Golden Anchor, the Star of The Sea, and the Golden Dolphin in Argentina. Counsel asserted that these awards “are artistic prizes in Argentina.” In support of the Golden Anchor award, the petitioner submitted an article from the January 20, 1987 edition of *La Capital* entitled “The Golden Anchor is Handed Out.” The article reports that “various members of the artistic community who are presently participating in shows in Mar De Plata were recognized with a luncheon, during which was announced the handing out of the distinction called the ‘Golden Anchor.’” The petitioner is included along with 17 other individuals “among others” that received this distinction. The article does not further discuss the significance of the award. Rather, the article indicates that the “Golden Anchor” is a distinction limited to the Mar Del Plata region and that the petitioner’s receipt of this local distinction occurred 18 years prior to the filing of this petition.

The record lacks any evidence, other than the petitioner’s self-serving resume, of the other awards claimed. 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). Moreover, 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)). As stated above, the petitioner cannot rely on affidavits without first establishing that primary and secondary evidence is either unavailable or does not exist. 8 C.F.R. § 103.2(b)(2).

On appeal, counsel does not specifically challenge the director’s adverse conclusions regarding this criterion. As discussed above, the petitioner has not submitted evidence that she actually received the awards other than the Golden Anchor, which appears to be a local honor. Moreover, the record lacks evidence of more recent recognition. Thus, she has not established that she meets this criterion through evidence of sustained acclaim in 2005, when the petition was filed.

(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.

The petitioner submitted a copy of her Latin Recording Academy membership card and a form letter discussing the benefits of academy membership. In response to the director’s RFE, the petitioner submitted Internet materials for the academy reflecting that voting members must demonstrate creative or technical credit on a minimum of six tracks on a commercially released album (or albums). Counsel does not challenge the director’s conclusion that voting membership in the academy does not require

outstanding achievements and we concur with the director. Accordingly, the petitioner does not meet this criterion.

(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.

The record contains three media articles printed in 1987. As discussed above under the first criterion, one article simply includes the petitioner's name in a list of 17 other artists who received the Golden Anchor distinction. A second article contains a one-paragraph review of one of her recordings. The third article is the interview with the petitioner. The petitioner did not submit the distribution and circulation data for the publications. The director concluded that the petitioner had not established that the articles appeared in major media and that the articles were not indicative of sustained acclaim in 2005, when the petition was filed. On appeal, counsel asserts that the articles all appeared in publications "of national importance" in Argentina. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Without evidence of the circulation and distribution of the publications that have covered the petitioner, we cannot determine whether they are major media. Regardless, as stated by the director, they are not evidence of acclaim after 1987.

In light of the above, the petitioner has not established that she meets this criterion.

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel has claimed that the petitioner meets this criterion because "[f]ifty years of performing as a vocalist is an extraordinary achievement." While the petitioner submitted copies of concert posters and compact disc covers, she did not submit evidence of box office receipts or sales of her recordings, as required by the regulation at 8 C.F.R. § 204.5(h)(3)(x). The director noted the lack of evidence specified by this regulation and concluded that the petitioner could not meet this criterion.

On appeal, counsel asserts that the director ignored evidence of "critical success as demonstrated by the opinions of leading figures in the music industry." The regulation at 8 C.F.R. § 204.5(h)(3)(x), however, explicitly requires evidence of commercial success through box office receipts or compact disc sales. While the regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of "comparable" evidence where a criterion is not readily applicable, the petitioner has not demonstrated that commercial success is not an applicable criterion for performing artists. Rather, it appears that the criterion was expressly designed for performing artists as the phrase "performing arts" appears in the regulation at 8 C.F.R. § 204.5(h)(3)(x). Thus, we need not consider comparable evidence.

Accordingly, the petitioner does not meet 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 herself as a singer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a singer and some former recognition in the field, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.