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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B-2

[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: MAR 3 2007

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:

[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.

2 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 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. The director also found the petitioner had “not demonstrated that he will substantially benefit prospectively the United States.”

On appeal, counsel states: “The petitioner submitted evidence . . . establishing that he is an artist of extraordinary ability in the field of Tibetan arts. He has also shown that he has achieved significant national and international acclaim and has risen to the very 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.

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 he has sustained national or international acclaim at the very top level.

This petition, filed on July 8, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a singer, composer, musician, and dancer. 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 information printed from Music Tibet's internet website (accessed at <http://www.musictibet.com>) indicating that he was among several individuals nominated for a "Best male singer" award and a "Best Composition" award at the "first Tibetan Music Awards" in 2003. Information submitted from this internet website states: "The nominations had been voted upon by the public from the 11<sup>th</sup> through the 20<sup>th</sup> of June 2003 online on this website. . . . Five artists with the highest votes from each category were presented to a grand jury, who decided the winners." The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i), however, requires the petitioner's receipt of "nationally or internationally recognized prizes or awards" [emphasis added] rather than a nomination for an award. Further, we find that receipt of a Tibetan Music Award constitutes evidence of *regional* recognition rather than national or international recognition.<sup>1</sup>

On appeal, counsel cites *Matter of [Name not provided]*, (California Service Center, June 1, 2004) in which the AAO gave "some consideration" to a nomination for an award that was found to be nationally prestigious. Unpublished appellate decisions have no force as precedent and thus are not binding on CIS employees in the administration of the Act. See 8 C.F.R. § 103.3(c), which indicates that only designated precedent decisions are binding on CIS' officers. In the non-binding AAO decision that counsel references, the award involved was found to be nationally prestigious, whereas in the present case the petitioner's supporting evidence is limited to a posting of his name appearing on Music Tibet's internet website.<sup>2</sup> In this case, unlike the unpublished decision cited by counsel, there is no supporting evidence showing that a Tibetan Music Award commands a significant level of recognition (beyond the awarding entity or its internet website) to the extent that it could be found to be nationally prestigious. For example, there is no evidence that nominees or recipients are announced in national entertainment media or in some other manner that would garner them national or international acclaim. The burden is on the petitioner to demonstrate the level of recognition associated with a Tibetan Music Award. Nevertheless, we find that this criterion requires the petitioner's receipt of a prize or award rather than a "nomination" for a prize or award. Therefore, the petitioner has not established that he meets this criterion:

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<sup>1</sup> "The United States recognizes the Tibet Autonomous Region (TAR) and Tibetan Autonomous prefectures and counties in other provinces to be a part of the People's Republic of China. This long-standing policy is consistent with the view of the international community. In addition, the Dalai Lama has expressly disclaimed any intention to seek sovereignty or independence for Tibet and has stated that his goal is greater autonomy for Tibetans in China. Because we do not recognize Tibet as an independent state, the United States does not conduct official diplomatic relations with the Tibetan 'government-in-exile' in Dharamsala." [Emphasis added.] See <http://www.state.gov/p/eap/rls/rpt/34266.htm> accessed on March 1, 2007.

<sup>2</sup> There is no statistical evidence showing that the Music Tibet internet website attracts a substantial national or international audience, nor is there evidence specifying the number of online votes received by the petitioner.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The petitioner submitted a list of sales for his music albums, evidence that his musical recordings have been featured on compact disc, and evidence that he appeared in a video depicting Tibetan arts. In a document entitled "INDEX OF EVIDENCE" accompanying the petition, the petitioner asserts that the preceding evidence meets this criterion. The preceding evidence, however, is far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be addressed later in this decision. The petitioner does not explain how any of the aforementioned evidence qualifies as an artistic contribution of major significance in the music field.

We accept that the petitioner is a talented singer, composer, and musician, but the record lacks independent evidence demonstrating that the petitioner's work has had a significant national or international impact in the performing arts 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 made musical recordings 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 a promotional flyer for an annual public information series entitled *Chicago Matters* presented by Chicago Public Radio 91.5 FM. The petitioner was among several individuals who performed at this community event held at Unity in Chicago, [REDACTED]. The petitioner also submitted a letter from [REDACTED], stating that the petitioner performed with this production company. 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 musical performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be addressed later in this decision. 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 May 13, 2005 letter from Gonpo Tashi, Secretary, Tibetan Institute of Performing Arts (TIPA), stating: "In 1994, we initiated a musical band 'Aa Ka Ma,' who would combine the Tibetan melodies with western Music. [The petitioner] was a lead vocalist of the band and was a prolific composer." The record, however, includes no evidence showing that "Aa Ka Ma" had earned a distinguished reputation at the national or international level, or that performing lead vocals for "Aa Ka Ma" was tantamount to a leading or critical role for the TIPA.

The petitioner also submitted a June 1, 2004 letter from Columbia [REDACTED] stating: "[The petitioner] was invited by Columbia Artists Management to participate in our Coast-to-Coast United States tour of the Tibetan Institute of Performing Arts in Autumn 1996, and was also featured in our CD recording *Dhamma Suna*, released worldwide by Time Warner." The letter from [REDACTED] fails to elaborate on the importance of the petitioner's role when compared to that of the other featured artists. In order to meet this criterion, however, the petitioner must distinguish himself from the other members of the organization for which he claims to play a leading or critical role. Otherwise, the phrase "leading or critical role" is meaningless. The evidence reveals that the petitioner performed as part of an artistic ensemble for the TIPA tour. However, the evidence does not indicate that the petitioner's role was more notable or important than that of the artists who toured or who were featured on the *Dhamma Suna* CD. There is no evidence showing that the petitioner's name received top billing on the tour or that its popularity increased when the petitioner was known to be performing. Nor is there evidence showing that the petitioner's contract singled him out for greater compensation than that of other TIPA artists. In this case, the petitioner's evidence fails to demonstrate that he has performed in a leading or critical role for a distinguished organization in a manner reflective of 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.*

In response to the director's request for evidence, the petitioner submitted a financial statement reflecting that he earned \$1,166.00 in CD sales from 2000 to 2005. We do not find that the petitioner's earnings are sufficient to meet this criterion. The plain language of this criterion requires the petitioner to submit evidence of a "high salary . . . in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no evidence that the petitioner earns a level of compensation that places him among the highest paid performing artists at the national or international level. 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.*

In support of his petition and again on appeal, the petitioner submitted a list of sales for his music albums. Both of these documents, entitled "[The petitioner's] list of music albums," were prepared by the petitioner himself. The petitioner fails to specify the source of his sales figures. The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(x) requires "Evidence of commercial successes . . . as shown by box office receipts or record, cassette, compact disk, or video sales." The self-serving listing of album sales prepared by the petitioner does not meet this requirement. Simply 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)).

The petitioner's appellate submission includes an April 6, 2006 letter from [REDACTED] Spirit Festival, stating: "[The petitioner] produced 1500 CDs of his album entitled *Saraswati* in 2004 and 2000 CDs *Best of Jack* in 2005." This letter, however, includes no address, telephone number, or any other information through which this individual may be contacted. Further, this letter indicates the number of CDs "produced" rather than the number of CDs sold.

The petitioner also submits a letter from [REDACTED] a retailer located in Stillwater, Minnesota, stating: "The store has sold about 222 copies of audio CD titled *Saraswati* at the price of \$9.99 per copy, from April 2004 to March 2006."

While the petitioner has submitted evidence showing that several his musical recordings have been featured on compact disc, that he appeared in a video depicting Tibetan arts, and that he has performed on stage in various countries, such evidence is not adequate to demonstrate commercial success or sustained national or international acclaim in the performing arts. As stated previously, this criterion calls for commercial success in the form of "sales" or "receipts." 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. In regard to the petitioner's musical recordings and video, there is no evidence showing that these materials had a high national or international sales volume.

In light of the above, 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.

In the document entitled "INDEX OF EVIDENCE" accompanying the petition, the petitioner asserts that several recommendation letters constitute other comparable evidence of his extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence, but only if the ten criteria "do not readily apply to the beneficiary's occupation." Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the petitioner's occupation. Of the ten criteria, the petitioner has offered arguments or evidence indicating that more than half readily apply to performing artists. Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation does not allow for the submission of comparable evidence. Thus, the regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. However, we will briefly address the petitioner's argument and the recommendation letters submitted by his professional contacts.

We cite representative examples of the petitioner's recommendation letters here.

[REDACTED] Association, states:

[The petitioner], an ex-graduate from TIPA . . . in Dharamsala, India, is a very well-known artist in our Exile-Community, he has performed in various shows in Switzerland in 2003, he has also taught Tibetan dances to the Tibetan Womens Association in Switzerland, his profound dedication and contribution to Tibetan culture . . . is very much appreciated by our members here.

President, Canada Tibet Committee, states: “[The petitioner] will be an asset to the local Tibetan community wherever he chooses to live. His proficiency in Tibetan music and dance can benefit the community.”

Producer and Director, International Performing Arts, Netherlands, states: “[The petitioner] has always been very reliable and interesting to work with. He is a creative, kind and friendly artist and in my opinion a very good person to teach Tibetan children Tibetan art.”

While the regulation at 8 C.F.R. § 204.5(h)(4) permits “comparable evidence” where the ten criteria do not “readily apply” to the alien’s occupation, the regulation neither states nor implies that letters of support written by professional acquaintances of the petitioner attesting to his standing in the field are “comparable” to the strict documentation requirements in the regulations setting forth the ten criteria. Pursuant to the statute and regulations, the classification sought requires documentary evidence of sustained national or international acclaim, and the petitioner cannot arbitrarily replace such evidence with attestations from the petitioner’s professional contacts, who assert that they find the petitioner’s abilities to be extraordinary. Similarly, witness statements to the effect that the petitioner is well-known throughout the field have minimal evidentiary value without objective supporting evidence from independent sources. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires “extensive documentation” to establish eligibility. *See* section 203(b)(1)(A)(i) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

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)(i) of the Act and the petition may not be approved.

Section 203(b)(1)(A)(iii) of the Act requires the petitioner to demonstrate that his “entry to the United States will substantially benefit prospectively the United States.” In addressing the director’s finding that the petitioner had not met this statutory requirement, counsel states: “The petitioner will substantially benefit prospectively the United States. Not only will the petitioner’s artistic performances and skills benefit thousands of Tibetans who are U.S. citizens but also the general population of U.S. citizens who benefit from artistic exposure from around the world that is of such high level and quality.” The record includes evidence, such as the letter from Andrew Grossman, indicating that the petitioner was invited by Columbia Artists Management to participate in their Coast-to-Coast United States tour of the Tibetan Institute of Performing Arts, and was also featured in a CD

recording *Dhamma Suna*, released worldwide by Time Warner. The record includes further evidence showing that his performances and the distribution of his musical recordings have not been limited to a particular geographic region. Therefore, we withdraw the director's finding that the petitioner has not demonstrated eligibility pursuant to section 203(b)(1)(A)(iii) 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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.