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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[Redacted]

FILE:

EAC 05 163 51897

Office: VERMONT SERVICE CENTER

Date: **MAY 18 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.

*Robert P. Wiemann*  
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 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 “is one of that small percentage who has risen to the very top of the field of endeavor.”

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

This petition, filed on May 16, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a pianist. The record also reflects that the petitioner is a vocal performer. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that her national or international acclaim has been sustained. The record reflects that the petitioner has been residing in the United States since January 2002. Given the length of time between the petitioner’s arrival in the

United States and the petition's filing date (more than three years), it is reasonable to expect her to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a musician 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 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. Diploma from the "Moscow Department of Education, Nadezhda Children Arts Festival," stating that it was "presented to alumni of Boarding School No. 16, Moscow, [the petitioner], for winning in festival" (1994).
2. Diploma from the "Young Talents International Competition Muses and Children" stating that it was "presented to alumni of Boarding School No. 16, Moscow, [the petitioner], for winning in DO-RE-ME" competition program (1995).
3. Diploma from "All Russian Young Talents Competition Children and Muses (among children's homes and boarding schools alumnae)" honoring the petitioner as a "winner" in the "song" category (1994).
4. Diploma from the "Children of Russia Fund" stating that the petitioner, a Loktev Ensemble Brass Band Soloist, was a "winner" in the "Young Russia Talents Festival" (1995).
5. Diploma from the "Moscow Department of Education" stating that the petitioner, a soloist from the "Northern-Eastern Education District Boarding School No. 16 . . . under supervision of Aliev Yu. B.," was a "winner" in the "Nadezhda Children Arts Festival" (1995).
6. An August 24, 2001 letter from Arkansas State University (ASU), the petitioner's alma mater, stating that she was "selected to receive the Ruby I. Reng Memorial Scholarship" which provided \$500 for the fall 2001 semester and \$500 for the spring 2002 semester. The letter states: "To meet the requirements of this award, the recipient must have completed at least 45 hours at ASU with a minimum GPA of 3.00 on a 4.0 scale; must express intent to graduate from ASU and be a full-time student during the award period. Need will be considered . . ."
7. Correspondence and certificates from ASU stating that the petitioner was named to the President's List (based on a grade point average of 3.8 or above) in 1997, 1998, 1999, 2000, and 2001.

8. An October 27, 2000 letter and a certificate stating that the petitioner was “selected to the 2000-2001 edition of Who’s Who Among Students in American Universities and Colleges” in recognition of her “outstanding merit and accomplishment as a student at Arkansas State University.”
9. Certificate from Sigma Alpha Iota Philanthropies, Inc. stating that the petitioner was the recipient of its “Undergraduate Scholarship” for 1999-2000.
10. Certificate from Phi Kappa Phi in recognition of the petitioner’s “high scholastic achievement in the sophomore year at Arkansas State University” (1999).
11. Certificate from ASU stating that the petitioner received a “President’s Scholar Award for achieving the highest grade point average in the College of Fine Arts” (2002).
12. “Certificate of Achievement” from ASU presented to the petitioner “for outstanding attainments as a Music major in the Department of Music” (2002).
13. ASU “Honors Day Award” stating that the petitioner “has been selected to receive an award for outstanding achievement in the field of Vocal Performance” (2002).
14. A photograph of a trophy, a December 12, 1996 letter of congratulations, and an article appearing in *The Commercial Appeal* of Memphis, Tennessee indicating that the petitioner represented Craigmont High School and won first place in the high school senior division at the 1996 Newspaper In Education Geography Fair at the University of Memphis.

We find that the preceding awards reflect institutional, local, or regional recognition rather than national or international recognition. Regarding the youth awards received by the petitioner in Russia, there is no supporting documentation from the awarding entities or print media to establish that her awards were nationally or internationally recognized. More importantly, all of the preceding awards were limited by their terms to high school or college students who had yet to begin their music careers and thus they excluded experienced professionals from consideration. University or high school study is not a field of endeavor, but rather preparation and training for future employment in a field of endeavor. The petitioner cannot artificially restrict her field to exclude all those musicians who have long since completed their academic studies and training and therefore do not compete for student honors. There is no evidence showing that the petitioner faced competition from throughout her field, rather than her approximate age group within that field. We find that the petitioner’s receipt of awards limited to high school and college students is not an indication that she has reached the “very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). These awards do not constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

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

*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.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding

achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted an April 3, 1998 certificate reflecting her collegiate membership in the Epsilon Gamma Chapter of Sigma Alpha Iota (SAI). The petitioner also submitted information printed from this organization's internet website stating:

The National Bylaws (Article III, Section 2) state that Collegiate Membership can be offered to: "a regularly matriculated woman student in an institution where a chapter of this Fraternity is chartered or who has demonstrated an interest in music and in the purposes of SAI. Such student shall be enrolled in or have completed one or more courses in music."

or

"a woman actively involved in music at the local or national level who has sufficient training to earn her living in the field of music. . . ."

\* \* \*

A prospective member must have a GPA of at least 2.5 through 2.9, depending on local chapter bylaws.

We do not find that the preceding membership requirements are indicative of outstanding achievement in the field of music. Further, there is no evidence showing that the petitioner was evaluated by nationally or internationally recognized experts in consideration of her admission to membership.

The petitioner submitted an April 18, 2000 certificate stating: "This certifies that [the petitioner] is a member of The Honor Society of Phi Kappa Phi by election of the Chapter at Arkansas State University." On appeal, the petitioner submits a document entitled "A World of Opportunity, The Honor Society of Phi Kappa Phi, Overview" stating:

#### Membership

Standards for election to Phi Kappa Phi are extremely high. Membership is by invitation only to the top 10 percent of graduating seniors and to the top 7.5 percent of juniors who have completed at least seventy-two semester hours. Graduate students in the upper 10 percent of the number of candidates for graduate degrees also qualify, as do faculty, professional staff, and alumni who have achieved scholarly distinction.

The petitioner also submits information printed from Phi Kappa Phi's internet website stating: "Phi Kappa Phi inducts annually approximately 30,000 students, faculty, professional staff, and alumni." We note that Phi Kappa Phi is an "all-discipline" academic honor society rather than a performing artists' association. We do not find that academic achievement at one's university is tantamount to outstanding achievement in the

field of music. Further, there is no evidence showing that the petitioner was evaluated by nationally or internationally recognized experts in consideration of her admission to membership in Phi Kappa Phi.

In light of the above, the petitioner has not established that she 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. 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.<sup>1</sup>

The petitioner submitted material about her appearing in local publications such as *The Herald of Arkansas State University*, *Voices* (the magazine of ASU's alumni association), *The Jonesboro Sun* of Arkansas, and *The Commercial Appeal* of Memphis, Tennessee. In response to the director's request for evidence, the petitioner submitted information printed from *The Jonesboro Sun*'s internet website stating: "*The Jonesboro Sun* is Northeast Arkansas' regional newspaper serving over 80,000 readers with a market coverage in seven counties of Arkansas each day." The record, however, includes no evidence showing that the preceding publications have substantial national or international circulation to such an extent that they qualify as major media.

The petitioner submitted additional articles entitled "Spectacular student piano artists are program guests of Musical Coterie," "ASU senior from Moscow to sing in recital Monday," "ASU student to present piano recital," and "A class production." This evidence, however, does not identify the title of the publication in which these articles appeared, the date of the articles, or their authors as required by this criterion. Nor is there evidence showing that these articles were published in professional or major trade publications or other major media.

The petitioner also submitted an April 15, 2002 ASU press release announcing the university's President's Scholar Award recipients. The petitioner's evidence also included promotional items and event programs relating to her musical performances. Such material, which is not the result of independent journalistic reportage, cannot serve to meet this criterion. This material does not satisfy the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and is simply not indicative of national or international acclaim.

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

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<sup>1</sup> 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 Prince William County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

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

The petitioner submitted recommendation letters from her former teachers and professors, but their letters fail to specify an original contribution of major significance in the music field directly attributable to petitioner. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field, the petitioner must show that her work has had a significant national or international impact. We accept that the petitioner has shown talent as a student pianist and vocalist, but the record lacks independent evidence demonstrating that her contributions have significantly influenced her field. For example, there is no evidence showing the extent of the petitioner's influence on other professionals in the music field or that this field has somehow changed as a result of her work. The mere fact that the petitioner has performed admirably at the high school and university level does not demonstrate that her activities are nationally or internationally acclaimed as having major significance in the field.

With regard to the personal recommendation of the petitioner's music instructors, the source of these recommendations is a highly relevant consideration. Such letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of her affiliated institutions. The statutory requirement that an alien have "sustained national or international acclaim," however, necessitates evidence of recognition beyond the alien's educators. See section 203(b)(1)(A)(i) of the Act. The opinions of the petitioner's instructors alone cannot form the cornerstone of a successful claim of national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that her work rises to the level of a contribution of major significance. Thus, the petitioner has not established that she meets this criterion.

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

The petitioner submitted promotional flyers, event programs, and local newspaper articles relating to performances in which she participated. The plain language of this criterion, however, indicates that it 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. The petitioner has not established that she 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 promotional flyers, event programs, and local newspaper articles showing that the petitioner took part in various performances cannot meet the plain language of this criterion. 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 those of most others in her field. Nor is there evidence showing that the petitioner has released musical recordings that have had a high national or international sales volume. Thus, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at a 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.

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.