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U.S. Citizenship
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FILE:

[REDACTED]
EAC 06 112 52160

Office: TEXAS SERVICE CENTER

Date:

NOV 28 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.

3 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 (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 in the arts. 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 meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). More specifically, counsel asserts that the evidence of record satisfies the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), and (viii).

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, 60898-99 (Nov. 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 March 9, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a "concert pianist." At the time of filing, the petitioner was employed as a piano teacher at the Brookline Music School in Brookline, Massachusetts. The petitioner earned a Master of Music degree in Piano Performance from the Boston Conservatory in May 2000.

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. 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 a July 26, 2006 letter from [REDACTED], President of the Boston Conservatory, stating that the petitioner was "the top prize winner" in the conservatory's "school-wide concerto competition in 2000 . . . enabling her to perform a major work as a soloist with full orchestra."

The petitioner also submitted a December 9, 2005 letter from [REDACTED], a member of the piano faculty of the Boston Conservatory, stating:

[The petitioner] was a Master's student of mine at the Boston Conservatory from September 1998 through May 2000. . . . She was an outstanding student, very bright, hardworking, and conscientious. [The petitioner] was the winner of our school's concerto competition, which earned her a performance with the Boston Conservatory Orchestra at Faneuil Hall in Boston. . . . [The petitioner] is undoubtedly one of the finest students I have ever had, *with the potential to succeed as a pianist in America as well as in her native Japan.*

[Emphasis added.]

[REDACTED]'s assertion that the petitioner has "the potential to succeed as a pianist" is not consistent with her establishing that she has sustained national or international acclaim at the very top of the field. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. See 8 C.F.R. § 204.5(h)(2). The petitioner's victory at the Boston Conservatory's student concerto competition reflects institutional recognition in an educational setting rather than national or international recognition for excellence in her field of endeavor. This award may place the petitioner among the top students at her educational institution, but it offers no meaningful comparison between her and those pianists who are already well established in the field.

The petitioner also submitted a December 20, 2005 letter from [REDACTED] Concert Associate, Dame Myra Hess Memorial Concerts, stating:

I am the concert organizer of the [REDACTED] Concert Series, a weekly chamber music series presented by the City of Chicago Department of Cultural Affairs and broadcast on WFMT-FM fine arts radio. The Hess series presents 52 concerts each year before a live audience of 500 and a radio audience of many thousands.

The mission of the series is to identify and present young performers who are establishing prominent careers as solo and chamber music performers.

* * *

[The petitioner] applied to appear on the Hess series by submitting a curriculum vitae, program proposals, and recording samples of her playing. Upon seeing her educational and performance credentials, our artistic advisors had no hesitation in accepting her to the roster of Hess musicians. She was scheduled for a concert on August 11, 2004.

On appeal, counsel argues that “being invited to perform at the [REDACTED] in Chicago . . . is considered a prestigious award by musicians.” [Emphasis in original.] The plain language of this regulatory criterion, however, requires evidence of the petitioner’s “receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Being invited to perform at this concert series is not a prize or award for excellence in the field of music, nor are any of petitioner’s other performance engagements. Further, we note that the petitioner’s selection to appear in this concert series was based on her submission of application materials to the concert organizer rather than an independent nomination process more consistent with sustained national or international acclaim.

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

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 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.¹

The petitioner submitted articles about her from 2000 and 2002 in local newspapers such as the *Melrose Free Press* and the *Gloucester Daily Times*. The petitioner also submitted two newspaper articles from 2003 in the

¹ 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 Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

Fukui Shi[m]bun, but the English language translations accompanying these articles were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence (such as circulation statistics) showing that the preceding newspapers with the articles mentioning the petitioner qualify as professional or major trade publications or other major media. Nor is there evidence of any published material about the petitioner from 2004 to the petition's filing date, which would indicate that her national or international acclaim has been *sustained*.

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

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

The petitioner submitted several letters of support.

In his December 22, 2005 letter, [REDACTED] identifies himself as the Music Director and Conductor of the Cape Ann Symphony Orchestra, the Melrose Symphony Orchestra, and the Quincy Symphony Orchestra, and as a faculty member at the Boston Conservatory. He describes the petitioner as being "in the front rank of pianists here in America." [REDACTED] further states:

I have had the opportunity to work with [the petitioner] as the featured soloist with orchestras I conduct. She performed Mozart's *Piano Concerto K. 466* with the Cape Ann Symphony, Rachmaninoff's *Piano Concerto No. 2* with the Melrose Symphony, and Beethoven's *Piano Concerto No. 3* with the Quincy Symphony.

A July 31, 2006 letter from [REDACTED] Executive Director, Brookline Music School, states:

[The petitioner's] talents and achievements put her at the top rank and level of pianists. As a solo and chamber musician, she has produced and performed in numerous recitals throughout America and Japan. In addition, [the petitioner] frequently appears in Brookline Music School's faculty concert series. This outstanding series provides our young students with the rare opportunity to hear outstanding live performances by high caliber professional artists and [the petitioner's] performances are inspirational and motivating.

An undated letter from [REDACTED], Professor of Musicology, Music Department, Kobe College, Hyogo, Japan, states:

I have known [the petitioner] for 2 years since she was invited as a guest speaker at the Kobe College in November of 2003. I am teaching a course called "Outreach in Music" and she was recommended to me because of her active outreach concert appearances in the United States. [The petitioner] devotes herself to numerous outreach concerts where she offers classical piano music to audiences who do not normally have access to performances of classical music.

A December 19, 2005 letter [REDACTED] President and Chief Executive Officer, Melrose Symphony Orchestra, Massachusetts, states: "[The petitioner] is an exceptional pianist with a special ability to

communicate to people through music and words. Her sound, feel, technique and skill are extremely advanced.”

In his July 27, 2006 letter, [REDACTED] identifies himself as “Head of the Morse Music & Media facility of Lamont Library at Harvard University” and a composer who has won local awards for his works. He states:

On October 25, 2003 [the petitioner] premiered my *Red Dragonfly Variations* on a concert in Brookline, Massachusetts – a piece based on a Japanese folksong and written especially for her concert program. On November 8, 2003 she gave the Japan premier at Kazenomori Hall in Fukui. Both performances displayed finely polished piano technique and deeply expressive musical understanding.

Regarding the concert performances in which she participated and her musical recordings (such as the music on her compact disc), we find that such evidence is far more relevant to the “commercial successes in the performing arts” criterion at 8 C.F.R. § 204.5(h)(3)(x). Because musical performance is inherent to the occupation of a pianist, not every performance is an original artistic contribution of major significance in the field indicative of national or international acclaim.

The July 26, 2006 letter from [REDACTED]

[The petitioner’s] playing is both disciplined and musically free, and she has grown from being an excellent student to being a distinguished professional. In short, she is fulfilling the promise of her talent at an entirely admirable level.

[The petitioner’s] achievements after graduation show great promise of a quick rise to the top of her profession.

We cannot ignore [REDACTED] observation that the petitioner’s achievements “show great promise of a quick rise to the top of her profession” and a July 20, 2006 letter from [REDACTED] stating that the petitioner “has a promising career in the United States.” Neither of these statements indicates the petitioner is one of that small percentage who has already risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Assertions from various witnesses that the petitioner has a promising future do not establish eligibility for classification as an alien of extraordinary ability, for the statute and regulations clearly call for evidence that the petitioner has already earned sustained national or international acclaim for achievements in her field. *See* section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i); 8 C.F.R. § 204.5(h)(3). A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Commr. 1971).

In general, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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. We acknowledge the petitioner's submission of letters discussing her talent as a pianist, activities in Japan and the United States, employment, and past musical training, but these letters fail to demonstrate that she has made original contributions of major significance in her field. The letters of support include no substantive discussion as to which of the petitioner's specific achievements rise to the level of original artistic contributions of major significance in music. Apart from the support letters, the petitioner submitted no other evidence to establish that she has made original artistic contributions of major significance to her field in a manner consistent with sustained national or international acclaim. For example, the record does not indicate the extent of the petitioner's influence on other musicians nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

In light of the above, the petitioner has not established that she 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 she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner, however, has submitted no evidence showing that the musical organizations for which she has worked have distinguished reputations or that she was responsible for their success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

In light of the above, 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.

The petitioner submitted published material, letters of support, event programs, and promotional material for her concerts and recitals indicating that she has taken part in various musical performances. The petitioner also submitted evidence of a compilation of her songs on a compact disc entitled "Reflections." A July 20, 2006 letter from [REDACTED] "Having released a CD two years ago which sold a tremendous number of copies, she is working on releasing a new CD of works by [REDACTED] and the American composer [REDACTED] [REDACTED] letter, however, does not provide specific sales figures for the compact disc released by the petitioner. This criterion calls for evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner participated in various concerts or made recordings of her music cannot meet the plain language of this criterion. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim. For example, there is no indication that the petitioner's performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Nor is there evidence showing, for example, that the petitioner's compact disc had a high national or international sales volume.

In light of the above, 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 at 8 C.F.R. § 204.5(h)(3).

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.