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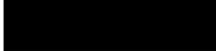
U.S. Citizenship
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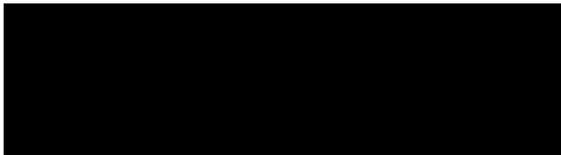
Petitioner:

Beneficiary:



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.


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 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 director “ignored the extensive evidence of record which . . . demonstrated that [the petitioner] is indeed an ‘alien of extraordinary ability’ in her field of endeavor: traditional Albanian folk music.”

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. 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 July 19, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a “professional singer and performer.” 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 "Third Class [REDACTED] Award" from the "Popular Parliament of Popular Socialist Republic of Albania" stating that she and three other individuals "gave an important help [sic] in the development of folklore, by strengthening the outcome and improving the artistic level, in all stages of the National Folklore Festival of Gjirokastra 1978." The petitioner also submitted a "First Class [REDACTED] Award with Third Class of Labor Award" presented to her and three other individuals by the "Popular Parliament of Popular Socialist Republic of Albania" for "the help given on successful preparation and performing in all stages of the National Folklore Festival of Gjirokastra 1983." Substantive information regarding these awards was not provided. For example, the record includes no evidence indicating the criteria for granting the awards, the level of expertise of those considered, the total number of individuals considered for the awards at each festival, and the actual number of award recipients. The record includes no evidence showing that these certificates were nationally or internationally recognized awards for excellence in music, rather than simply an acknowledgment of the petitioner's participation in the festivals. Further, both of these awards were received more than twenty years before the petition was filed and thus they are not indicative of sustained national or international acclaim.

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.

The petitioner submitted two letters dated October 21, 2002 and March 20, 2006 confirming her membership in the "Albanian Association of the Writers and the Artists" and the "Artistic Union Albanian National," respectively. There is no evidence (such as membership bylaws or official admission requirements) demonstrating that admission to membership in these associations required outstanding achievements, as judged by recognized national or international experts in the petitioner's or an allied field. As such, 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.

The petitioner submitted an article about her in *The Country of the Artists*, but the date and author of this material were not provided as required by this criterion. The petitioner also submitted an interview of her in the January 15 – 21, 2001 issue of *Intervista* and a February 1, 2003 article about her in *RD (Rilindja Demokratike)*.¹ There is no evidence (such as circulation statistics) showing that these articles appeared in professional or major trade publications or other major media.

In addressing the evidence submitted by the petitioner, the director's decision stated: "The circulation and caliber of the publications cannot be determined from the evidence of record. Additionally, it has not been established that these are major trade publications or major media." We concur with the director's observations.

On appeal, the petitioner submits an August 22, 2006 interview of her appearing in *SOT*. This article was published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this article in this proceeding.

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. We cite representative examples here.

An October 29, 2002 letter from [REDACTED] and [REDACTED] of the Republic of Albania Theater of Opera and Folklore Ensemble, Tirane, states:

We hereby certify that the folklore singer [the petitioner] is a great activist in a lot of premiers of the Ensemble of Folklore Songs and dances in and out of the country. She has shown a high artistic level interpreting the folk song in all of these concerts. She is welcomed and praised from the public for her warm vocal and characteristic voice, especially the northern region songs.

A December 19, 2002 letter from [REDACTED] Moderator of the Artistic Programs in RTV, Albanian Television, Tirana, states:

I certify that the singer [the petitioner] is a very well known singer everywhere in Albania. Her fame has been growing over the years with her presentation in folklore Festivals of Gjirokastra during 1978

¹ These three articles indicate that the petitioner's primary occupation was that of a nurse rather than a "professional singer and performer." For example, the article in *The Country of the Artists* states: "[The petitioner] was nurse from Zalldardhe during 1976 –1978, and nurse in Infectious Department during 1978 –1984, nurse in pediatrician Department 1984 –1987, and now nurse in Sanitarium Department." In the *Intervista* interview, the petitioner states: "I work as a sanitary-nurse in Tirana, a hard job." Finally, the author of the article in *RD* states that he or she "met [the petitioner] at the Cardiology Department in the Sanatorium in Tirana" where "she was working as a nurse."

– 1983, in Folklore Festivals where she was awarded with honor medals. Also she performed in the competitions of folk songs in stages of ARTV in Tirana.

An undated letter from [REDACTED] who identifies himself or herself as an “Academic Professor,” states:

[The petitioner] [is] a well-known singer of Folklore of the Northern Region of Albania, especially of the Northeast. She has been a very successful singer in and out of Albania thank[s] to her characteristic and melodious voice, colorful vocal[s] and special features of her interpretation.

Until 1990 she performed successfully in all festivals and fiestas, where she was praised with awards and medals.

An April 24, 2006 letter from [REDACTED] who identifies himself or herself as a “folklore music singer,” states:

[The petitioner] is one of my colleagues. I have performed in many concert, festivals, tourneys not only in Albania, but outside the country too.

We had sung together in the one of the first concerts given in Albanian Communities in USA in 1992. [The petitioner] was very successful and applauded from the public. She won their hearts with her sweet voice and high level of performance.

I have debuted with her in many other concerts throughout Europe. With her warm interpretation and vocal[s] she makes the public to love her [sic]. She brings to the Albanian Community their country close to their soul, brings back their nostalgia, the language, tradition, [and] the mother’s hand which is thousands of miles away.

A March 21, 2006 letter from [REDACTED] Director, Albanian Ministry of Culture, Youth and Sports, Tirana, states: “I certify that [the petitioner] is an interpreter of the folklore song with a multiyear artistic activity and performer in many national and international festivals where she showed her high artistic level and giving [sic] a great help in the interpretation of the Albanian folklore song.”

An undated letter from [REDACTED], Director, National Center of Folklore Activity, Albania, states:

[The petitioner] . . . is an extraordinary interpreter of the Albanian traditional song.

She has debuted in many National Festivals of Albanian arts and is awarded with many prizes.

She is an interpreter of the songs of many Regions of North and North-East parts of Albania and as such she has won the sympathy of many art lover generations in and out of the country.

She has given and continues to demonstrate a high level of professionalism outside the country, especially in family events and parties.

An undated letter from [REDACTED] Artistic Director, Center for Traditional Music and Dance, New York, states:

The Center has been working with the New York Albanian community since the mid-1970s and, in 1977, produced the first major festival of Albanian arts at Hunter College in New York City.

* * *

I was first introduced to [the petitioner's] artistry through her recordings and through her stellar reputation among many of the traditional artists in the Albanian community with whom we've worked. She is regarded as one of the best exponents of traditional Albanian song, especially the repertoire of Northern Albania. In a rich voice often tinged with melancholy, she sings of love, the beauty of nature, and the longing experienced by those far from home in a manner that has been appealing and deeply moving for both her countrymen and for foreign audiences.

Born in Diber in 1957, [the petitioner] grew up in a musical environment. She began singing at an early age and gained professional stature in the late 1970s. She was a soloist with the [REDACTED] and in 1984 became a member of the nationally acclaimed Dardania Ensemble with which she performs to the present day. She has been awarded many national prizes in Albania, including the coveted award from the National Folk Festival in Gjirokaster in 1978 and 1983 and is a recording artist with many recorded tracks in the Phonoarchives at Radio Tirana. In 1999 she was selected to perform with the Kuvendi group, a traditional music group held in the highest esteem and considered a national treasure. [The petitioner] has performed throughout Albania and toured widely in Europe, including Germany, Sweden, Denmark and Turkey and in 1992 she toured in the US.

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.

In this case, aside from confirming the petitioner's participation in the National Folk Festival in Gjirokaster in 1978 and 1983, none of the letters of support submitted by her specifically identify the dates of her subsequent concerts and festivals and the names of these events as would indicate the petitioner's sustained national or international acclaim.² More importantly, 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 her field.

² For example, the December 19, 2002 letter from [REDACTED] states that the petitioner "performed in the competitions of folk songs in stages of ARTV in Tirana," but it does not name the specific competitions or identify their exact dates.

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

The petitioner submitted evidence of her participation in the Gjirokastra Folk Festival in 1978 and 1983. The record, however, includes no substantive evidence establishing the significance of this festival. Further, as both festivals occurred more than twenty years before the petition was filed, the petitioner's participation is not indicative of sustained national or international acclaim.

The article about the petitioner in *The Country of the Artists* states she participated in the following "international tours":

- 1980 with the ensemble of Auto Tractors Factory in Sweden, Finland and Denmark
- 1981 with "Dibra" ensemble in Turkey
- 1989 with "Dardania" ensemble in Switzerland
- 1990 with "Dardania" ensemble in Germany
- 1992 with private group in USA
- 1997 with private group in Switzerland

The February 1, 2003 article in *RD* states: "Last year [the petitioner] had a tour performing in 4 recital concerts in Peshkopi and Tropoja." The record, however, includes no information regarding the significance of the concerts where the petitioner performed. Further, as there is no evidence that the petitioner has toured since 2002, we cannot conclude that her national or international acclaim has been sustained.

In addressing the petitioner's evidence, the director's decision stated: "[T]he quality of the venues where [the petitioner] has performed is not clearly documented in the record. Further, the evidence that [the petitioner] provided does not persuasively show that [her] work has garnered her sustained national or international acclaim."

On appeal, counsel states:

The documents show that the [petitioner] has performed in the Theater of Opera and Folklore Ensemble, that she has performed in artistic Programs on the national RTV (Albania Radio-TV), that she has performed at the Peshkopia Culture Center in Dibra, Albania, that she has performed on the stages of the nationally broadcast Albanian Public Television, that she has performed on stages of the nationally broadcast Albanian Public Radio Television, that she has performed on numerous stages in national folklore music activities sponsored by the Artistic Union of Albanian National, that she has

performed on countless sta[g]es in Europe and in the United States giving folk music presentations, and that she has published CD's and albums, among other accomplishments.

"The documents" upon which counsel's claims are based consist mostly of letters of support issued years after the petitioner's performances occurred. The absence of contemporaneous evidence of the petitioner's performances (such as event programs from her concerts or videotapes of her televised performances) is a significant omission from the record. The benefit sought in the present matter, however, 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. Further, the commentary for the proposed regulations implementing this statute 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). Given the statutory requirement for "extensive documentation" and the ten regulatory criteria requiring specific objective evidence of achievements, we must conclude that evidence in existence prior to the preparation of the petition is of greater weight than letters of support prepared especially for submission with the petition.

The October 29, 2002 letter from [REDACTED] of the Theater of Opera and Folklore Ensemble states that the petitioner was "a great activist in a lot of premiers of the Ensemble of Folklore Songs and dances in and out of the country," but it does not identify the specific events where she performed and the dates of her performances. The letter does not even include an address, telephone number, or any other contact information for the Theater of Opera and Folklore Ensemble.

The petitioner submitted an October 16, 2002 letter from [REDACTED] Director, Tirana Radio Directory, Albanian Radio Television, stating: "We certify that [the petitioner] is a great well known singer with a wide rep[ertoire], which we in [sic] Phonoarchive of Radio Tirana." The petitioner also submitted an October 17, 2002 letter from [REDACTED] Director, Albanian Public Radio Television, stating: "We certify that [the petitioner] is a very well known folk singer, a great artist attending artistic activities, in Albanian Public Radio Television." The December 19, 2002 letter from [REDACTED] states that "[the petitioner] performed in the competitions of folk songs in stages of ARTV in Tirana. She attended the live programs in ARTV." None of the preceding letters specifically identify the programs, events, or activities in which the petitioner participated or the dates of those broadcasts or performances. Further, none of the preceding letters include an address, telephone number, or any other identifying information for the aforementioned broadcast organizations.

The March 20, 2006 letter from the President of the "Artistic Union Albanian National" states that the petitioner "has been a part of many national folklore festivals" and that she "sings in all concerts that the Artistic Union Albanian National organizes." The letter, however, does not specifically identify the folklore festivals and concerts in which the petitioner performed or the dates and significance of her participation.

Regarding the concert tours in which the petitioner allegedly participated and her musical recordings (such as the songs 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). The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(vii) indicates that it is most applicable to visual artists (such as sculptors and painters), for whom the significance of the exhibition or showcase is indicative of their acclaim. Because performance is inherent to

the occupation of a musician, not every musical performance is an artistic exhibition or showcase indicative of national or international acclaim.

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 groups 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 that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted a March 22, 2006 letter from the Artistic Union of Albania National stating that she is paid an "average of \$4,000 a month." The record, however, includes no supporting evidence (such as payroll records or income tax forms) showing the petitioner's actual past earnings from her performances for any specific period of time. Further, 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 her compensation was significantly high in relation to others in her field.

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, awards from more than two decades ago, and unidentified photographs 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 [REDACTED]. 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 stage performances or made recordings of her songs 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 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). Further, there is no objective evidence of achievements or recognition (during the years immediately preceding the filing of the petition) showing that the petitioner has sustained national or international acclaim as a folk singer in recent years.

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.