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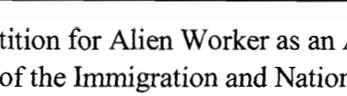
U.S. Citizenship
and Immigration
Services

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FILE: SRC 07 188 52042 Office: TEXAS SERVICE CENTER Date: **AUG 04 2008**

IN RE: Petitioner: 
Beneficiary: 

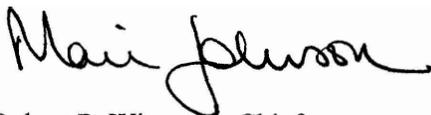
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that she is among that small percentage who have risen to the very top of her field of expertise.

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

This petition, filed on June 4, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a professional cellist. A January 17, 2007 letter from ██████████, President, Friday Morning Music Club, Washington, D.C. states that the petitioner "is classified as a Solo Performing Member." 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 an April 13, 1994 first prize certificate from the International Music Competition of the Women Artists Musicians Union in Paris, France. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. The English language translation accompanying the petitioner’s prize certificate was not certified as required by the regulation. Further, there is no evidence demonstrating the significance and magnitude of this competition. For example, there is no evidence indicating the number of prizes given, the geographic area from where individuals eligible for consideration for the prizes were drawn, the specific criteria for granting prizes, the level of music expertise of those considered, and the number of individuals eligible to compete. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally recognized and it is her burden to establish every element of a given criterion. In this case, the petitioner has not submitted evidence demonstrating that her prize commanded significant recognition beyond the presenting organization. For instance, there is no evidence showing that prize recipients were announced in major media or in some other manner consistent with national or international acclaim. Without such evidence, we cannot conclude that the petitioner’s prize constitutes a nationally or internationally recognized prize for excellence in the field.

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.

With regard to the petitioner's involvement with the Friday Morning Music Club, the January 17, 2007 letter from [REDACTED] states:

[The petitioner] is classified as a Solo Performing Member. This status is granted to players who pass a demanding audition, judged by professional musicians, by demonstrating superior music ability and talent. It is our highest artistic level of membership, and entitles a member to perform as a soloist in concerts presented by the Club.

There is no evidence establishing that passing a music audition for the Friday Morning Music Club is tantamount to outstanding achievements. Further, there is no evidence showing that prospective solo performing members of the Friday Morning Music Club are judged by recognized national or international experts in the petitioner's field. 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)).

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 an article about her in the Korean language newspaper *Hankuk Ilbo*, but the English language translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the date and author of the article were not provided as required by the plain language of this regulatory criterion. Finally, there is no evidence (such as circulation statistics) showing that *Hankuk Ilbo* is a professional or major trade publication or some other form of major media.

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.

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.

The petitioner initially submitted a pamphlet from her April 10, 1999 cello recital at the Salle Cortot concert hall in Paris, France. On appeal, the petitioner submits a videotape of her cello recital at the Charles Sumner School Museum in Washington, D.C in October 2006. There is no evidence showing that these performances were consistent with sustained national or international acclaim at the very top of her field. Further, the plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for musicians such as the petitioner. 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).

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 submitted January 17, 2007 and October 25, 2007 letters from [REDACTED] and a videotape indicating that she has occasionally performed as a soloist in concerts presented by the Friday Morning Music Club. There is no evidence showing that this club has earned a distinguished reputation in the same manner as (for example) the New York Philharmonic, Boston Symphony Orchestra, or Chicago Symphony Orchestra. Further, with regard to the petitioner's role for the Friday Morning Music Club, there is no evidence showing that her name received top billing or that the popularity of the club increased when she was known to be performing. Nor is there evidence demonstrating how the petitioner's role differentiated her from the other members of the club (such as its principal musicians and soloists). As such, the petitioner has not established that she was responsible for the Friday Morning Music Club's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim at the very top of 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.

This regulatory 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 recitals 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 at the very top of her field. 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 musical recordings 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 her 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). Nor has the petitioner submitted evidence showing that her national or international acclaim as a musician has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Specifically, the record includes no evidence of her nationally or internationally acclaimed achievements and recognition as a professional cellist subsequent to her arrival in the United States in 2000.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” Part 6 of the Form I-140 petition, “Basic information about the proposed employment,” was left blank. The petitioner submitted January 17, 2007 and October 25, 2007 letters from the president of the Friday Morning Music Club stating: “Performing members of the Club are required to appear in one or more programs each year. [The petitioner] has done so since joining the Club and has pledged to continue performing at least once a year in the coming season and beyond.” We cannot conclude that the petitioner’s pledge to perform “at least once a year” for the Club is “clear evidence” that she will continue working as a professional musician in the United States rather than seeking employment in an unrelated occupation.

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 the national or international level. Nor is there clear evidence that the petitioner will continue work in her area of expertise in the United States. 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.