



U.S. Citizenship  
and Immigration  
Services

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**B2**

FILE:

[REDACTED]  
SRC 06 211 51056

Office: TEXAS SERVICE CENTER

Date: **JAN 16 2008**

IN RE:

Petitioner: [REDACTED]  
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:

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.

*Robert P. Wiemann*  
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 that she qualifies for classification as an alien of extraordinary ability.

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 July 3, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a lute musician. 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 the following:

1. Diploma stating that the petitioner “won the honor of the Second Rank of National Lute Contest” (May 1982)
2. Certificate stating that the petitioner “won the First Rank of Guangdong Provincial Lute Contest” (October 1984)
3. Diploma stating that the petitioner “won the honor of the Second Rank in Lute Contest of National Music Conservatories” (June 1986)
4. Certificate stating that the petitioner won the “Excellent Teacher Guidance Award in Jinsha Cup National Lute Contest” (August 1992)

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, the petitioner has not submitted evidence showing that her awards commanded national or international recognition consistent with sustained national or international acclaim. The record contains no evidence establishing the significance and magnitude of the preceding contests. National contents typically issue event programs listing the names of the participating contestants and the award categories. At a contest’s conclusion, results are usually provided indicating how each participant performed in relation to the other contestants in his or her category. The petitioner, however, has provided no evidence of the official comprehensive results for the contests in which she received awards. Nor is there supporting evidence showing that the recipients of the preceding honors were announced in major media or in some other manner consistent with national or international acclaim. In regard to item 2, there is no evidence that this award reflects national or international recognition rather than provincial recognition. Moreover, there is no evidence that the petitioner has received any relevant prizes or awards since 1992. As such, the petitioner has not established that her national or international acclaim has been sustained.

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 response to the director’s request for evidence, the petitioner submitted her membership certificate for the Hunan Provincial Association of Musicians dated October 22, 1989. The record, however, includes no evidence (such as membership bylaws or official admission requirements) showing that this provincial association requires outstanding achievements of its members, 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.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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). For example, judging a national contest for professional musicians is of far greater probative value than judging a competition for novices or children.

The petitioner submitted an October 1994 “Letter of Appointment” from the “Organization Committee of the Xinghai Cup National Children[’s] Instrumental Music Competition” stating simply that she was “engaged . . . as an adjudicator.” This brief, vague letter is not adequate to demonstrate the petitioner's participation, either individually or on a panel, as a judge of the work of others in her field or an allied one. There is no evidence showing the names of the individuals evaluated by the petitioner, their level of expertise, the specific competitive categories she judged, or any other documentation of her assessments. Nor is there evidence establishing the level of acclaim associated with serving as an adjudicator at the competition. 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; 8 U.S.C. § 1153(b)(1)(A)(i). 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). Without substantive evidence of the petitioner's participation as a judge of the work of others in her field or an allied field that is consistent with sustained national or international acclaim, we cannot conclude that she meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted what is alleged to be an instructional guide she authored in 1998 entitled [REDACTED]. 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 petitioner's publication was unaccompanied by an English language translation 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 this publication qualifies as a professional or major trade publication or other form of major media.

Finally, the plain language of this regulatory criterion requires “authorship of scholarly articles.” A single instructional guide authored by the petitioner in 1998 does not meet the plain language of this regulatory criterion and is not 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 what are purported to be a ticket from a “solo concert” given by her and a compact disc featuring her lute music. This evidence was unaccompanied by an English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, this regulatory criterion calls for evidence of commercial successes in the form of “sales” or “receipts;” simply submitting evidence indicating that the petitioner had a solo concert or made a recording of her music cannot meet the plain language of this regulatory 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). Further, there is no evidence of achievements or recognition showing that the petitioner has sustained national or international acclaim as a musician since the 1990s.

Beyond the preceding regulatory criteria, the petitioner submitted six recommendation letters discussing her talent as a musician, educational background, and activities in her field. These recommendation letters are not sufficient to demonstrate that the petitioner has sustained national or international acclaim and that her achievements have been recognized in her field of expertise. Aside from two letters submitted on appeal from [REDACTED], a research and development engineer at General Motors,<sup>1</sup> the remaining letters do not include an address, telephone number, or any other information through which their authors may be contacted. In general, recommendation letters, 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 the petitioner’s personal and professional contacts 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. Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts,

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[REDACTED]’s field of endeavor is automotive powertrain systems engineering rather than music.

letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of achievements and recognition showing that an individual has sustained national or international acclaim at the very top of the field.

The record includes a photocopy of the petitioner's Chinese passport issued by the Ministry of Foreign Affairs of the People's Republic of China on February 29, 2000. Interestingly, under "Profession," the passport identifies the petitioner as an "Accountant," despite her claim that she is nationally acclaimed in China as a lute musician. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

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.

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." The record includes no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). 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.