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U.S. Citizenship
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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: JUN 02 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:



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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts 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 requisite national or international acclaim.

On appeal, counsel submits a brief and additional evidence. Counsel initially asserts that the director’s request for additional evidence, which mostly reiterated the regulatory standards for the classification sought, did not identify any of the deficiencies raised in the final decision. Nothing in the regulation at 8 C.F.R. § 103.2(b)(8) precludes the director from denying the petition based on deficiencies not specifically identified in the request for additional evidence, some of which may arise from a review of the evidence submitted in response to such a notice. Regardless, we will consider all new evidence submitted on appeal. Counsel’s assertions regarding the petitioner’s eligibility will be discussed in detail below. While not all of counsel’s assertions are persuasive, the petitioner has met her burden in this matter.

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, 60898-9 (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 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 seeks to classify the petitioner as an alien with extraordinary ability as a violinist. The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. The director concluded that the petitioner meets only the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vii). We will not withdraw that conclusion. Review of the evidence of record establishes that the petitioner also meets an additional two criteria.

Before addressing the regulatory criteria, we note that the record contains more than 50 letters from experts and other members of the field supporting the petition. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (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. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also 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)). Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Nevertheless, it bears mention that several members of the field with the highest credentials have written in support of the petition. For example, Oscar nominee Larry Gold asserts that he arranges songs for top caliber artists and has selected the petitioner to perform and record for R. Kelly and Justin Timberlake. Mr. Gold states that the petitioner "is recognized by everyone that I know as one of the United States' most talented violinists today."

Grammy Award-winning pianist as well as Music Director and Conductor for the Philly Pops, Peter Nero, asserts that he considers the petitioner to be "an exceptional violinist of the highest caliber" and notes that she has served as assistant concertmaster for the Philly Pops for selected presentations.

