U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

[redacted]

APR 29 2005

File: SRC 04 204 53136 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, U.S.C. § 1101(a)(15)(O)(i)

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Texas Service Center Director denied the nonimmigrant visa petition in a decision dated July 30, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a non-profit organization established for the promotion and instruction of Indian performing arts. The petitioner is seeking O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him as a tabla performer and teacher.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is "at the very top" of his field or that he has had the requisite "sustained acclaim" in the field of arts (tabla playing).

On appeal, counsel for the petitioner submits a brief.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The beneficiary is a 43-year old native and citizen of India. According to the evidence on the record, the beneficiary studied the tabla with [redacted] and [redacted]. The beneficiary has performed as a solo artist and has provided accompaniment for other performing artists. He has served as an instructor and performing artist at the [redacted] School of Music Foundation (PJSMF) in Tampa, Florida for approximately four years. In September 2003, the beneficiary began teaching and performing for the petitioning organization. He last entered the United States as a P-3 nonimmigrant visitor on January 5, 2004.

The issue in this proceeding is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

> *Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.
>
> *Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well known in the field of arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

> (A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
>
> (B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in the alien is engaged. Such testimonials must be in a form clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary has neither been nominated for, nor has he been the recipient of any significant national or international awards or prizes in his field of endeavor. The beneficiary does not satisfy the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iv)(A), so the petitioner must establish that the beneficiary satisfies at least three of the criteria set out at 8 C.F.R. § 214.2(o)(3)(iv)(B). The petitioner submitted evidence to Citizenship and Immigration Services (CIS) in relation to criterion numbers one through three of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B).

Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

In relation to criterion number one, the petitioner, Samskriti Society for Indian Performing Arts (SSIPA), submitted a publicity release and a critical review dated September 23, 2003, of one of its productions, the First International Kuchipudi Dance Conference in North America. The publicity release and critical review

were published on a website http://www.narthaki.com/info/reviews/rev133.html [accessed on 8/26/2004]. The beneficiary is not named in the review. The petitioner did not indicate that the beneficiary participated in this production.

The petitioner submitted a critical review of the petitioning organization's director, teacher and performer, Rathna Kumar. There is no mention of the beneficiary in the review.

The petitioner submitted a list of past productions that was published on its website (www.samskriti.houston.org). Although a number of performers are mentioned on the list, the beneficiary is not included.

The petitioner submitted a publicity flyer indicating that the beneficiary was one of three featured performing artists for a production held at the Anjali Center for Performing Arts in Houston, Texas.

The petitioner included a publicity flyer indicating that the beneficiary was one of two performers in a vocal concert at the Chinmaya Mission, Houston, Texas on June 6, 2004.

The petitioner submitted a publicity flyer featuring the beneficiary and one other musician for a production at the Rehearsal Hall at the Tampa Bay Performing Arts Center, held on May 23, 2003.

The petitioner submitted a copy of a publicity flyer published on the Internet that states that the beneficiary accompanied another musician at a lecture-demonstration held at the University of South Florida Cooper Hall Auditorium, Tampa, Florida on November 16, 2001.

The petitioner submitted a publicity flyer for an event held on May 18, 2002 at the Heritage Hall, Hindu Temple of Toledo, which features the beneficiary and one other musician.

The petitioner submitted a brief review published in *India Today International* dated December 10, 2001, which notes the beneficiary and another musician held a demonstration of khayal, a genre of Hindustani classical vocal music, at the Pandit Jasraj School of Music in Tampa, Florida.

The petitioner submitted two reviews of a performance by the beneficiary and a vocalist at the Chinmaya Mission auditorium in Houston, Texas. Both reviews were published on June 18, 2004, in the *Indo-American News.*

The petitioner submitted an article published on the Internet on August 3, 2000, about the Pandit Jasraj School of Music in Tampa that mentions that the beneficiary was on its faculty.

The petitioner failed to establish that the beneficiary has performed in productions that have a distinguished reputation in the past. The petitioner failed to establish that the beneficiary will perform as a lead or starring participant in productions that have a distinguished reputation. The beneficiary does not satisfy this criterion.

> *Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.*

The petitioner submitted evidence in the form of critical reviews and published material for criterion number two. The evidence is discussed above in relation to criterion number one. The petitioner failed to establish

that the beneficiary has achieved sustained acclaim on a national or international level.

The petitioner stated the beneficiary won the Gold Medal from the Sangeet Natak Academy of Lucknow and was awarded national talent scholarships from the Indian government. The petitioner failed to establish that the beneficiary received national or international recognition for such scholarships. The petitioner also states that the beneficiary received the title of Sangeet Prabhakar from the Prayag Sangeet Samiti. The petitioner failed to establish the significance of the medal and title. The beneficiary does not satisfy this criterion.

> *Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.*

For criterion number three, the petitioner submits three testimonials including one written by the petitioning organization's artistic director, [redacted] Ms. [redacted] wrote that the beneficiary had accompanied her on the tabla on many of her solo concert tours around the world. [redacted] professional vocalist, performing artist, teacher for vocal classical music at the Mumbai University and the University of Pune writes that the beneficiary has accompanied him on many solo concert tours around the world and that the beneficiary has gained a large number of devoted students at SSIPA. Padma Talwalkar, professional vocalist and a performing artist in north Indian classical music, wrote that the beneficiary has accompanied her on many of her concerts and that he has "evolved into a great teacher."

In review, the testimonials' authors fail to indicate that the beneficiary has or will perform in a lead, starring or critical role for organizations and establishments that have a distinguished reputation. The beneficiary does not satisfy this criterion.

The petitioner submitted a favorable consultation from an appropriate U.S. peer group. Consultations are advisory in nature and are not binding on CIS. 8 C.F.R. § 214.2(o)(5)(i)(D).

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in his field of endeavor.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.