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FILE: EAC 02 251 52051 Office: VERMONT SERVICE CENTER Date: DEC 19 2005

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:



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, Director
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 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 submits a brief and additional materials. While we are persuaded that the petitioner has played a critical role for an entity with a distinguished reputation pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), we are not persuaded that the petitioner meets at least three of the regulatory criteria as required. Thus, for the reasons discussed below, we will uphold the director's decision.

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 to the United States will substantially benefit prospectively the United States.

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 seeks to classify the petitioner as an alien with extraordinary ability as a pianist. 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, international 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. The petitioner has submitted evidence that, she claims, meets the following criteria.¹

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The director concluded that the petitioner's awards were received more than a decade prior to the date of filing and mostly student awards. On appeal, counsel asserts that there is no statutory provision that requires the awards to be "recent" or that precludes awards won by students.

First, the statute requires evidence of "sustained acclaim." While we will consider older evidence, the record must demonstrate that any earlier acclaim is sustained as of the date of filing. Regarding student awards, counsel is correct that the petitioner's status as a student when she won the awards is not determinative. For example we would not discount a Nobel Prize because the recipient was a student at the time. The issue is whether competition for the award is *limited* to students. Where the most experienced and renowned members of the field do not aspire to win the award, we cannot conclude that the award is nationally or internationally recognized such that winning the award is indicative of or consistent with national or international acclaim.

Most of the awards appear not only limited to students, but students at individual universities. For example, the petitioner received an outstanding achievement award in collaborative piano from the [REDACTED]. The letter accompanying the award reveals that it is limited to students within the Collaborative Piano Department at Boston University. Such recognition is not indicative of national or international acclaim.

Similarly, the most experienced and renowned members of the field do not seek scholarships. As such, the petitioner's music scholarship cannot serve to meet this criterion.

On September 19, 1993, the petitioner received a "Special Prize for Collaborative Pianist" at the Clarinet International Competition. The petitioner provides no evidence regarding how many "special prizes" were awarded, as compared with first, second and third prizes. Thus, the petitioner has not established the significance of this prize.

The petitioner asserts that she received First Prize as the Best Romanian Accompanist in 1992. The only award issued in 1992 in the record, however, is the other 1992 award she lists, a generic "prize for collaborative piano" awarded by the Cluj Student House at the Music Academy "G.H. Dima" Cluj Napoca. The documented award appears limited to students at a particular academy. 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)). Thus, we cannot consider the petitioner's claim to have won a national award in 1992.

The petitioner's awards prior to 1992 appear limited to awards from music institutions limited to students at those institutions or young musicians. As stated above, these awards do not compare the petitioner with the most experienced and renowned musicians nationally or internationally.

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.

Counsel initially asserted that the petitioner meets this criterion through her “membership” in two music academies and the group Camerata Lysy. The director concluded that the record contained no evidence relating to this criterion. On appeal, counsel no longer asserts that the petitioner meets this criterion.

Employment, even for a prestigious performance company or academy, is employment experience. It is not a “membership” in an association. Thus, employment cannot meet the plain language of the regulatory criterion. Rather, we must consider below whether the petitioner played a leading or critical role for an employer with a distinguished reputation nationally, pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Published materials 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 director concluded that the evidence relating to this criterion was over a decade old and that the petitioner had not established the circulation or caliber of the publications. On appeal, counsel lists some of the publications. The petitioner does not submit circulation data for the publications.

The petitioner submitted a review of her compact disc released in 2000 where she accompanied violinist [REDACTED]. [REDACTED] The review does not discuss the petitioner’s performance beyond listing her as the pianist. Thus, the review is not primarily “about” the petitioner. Moreover, the petitioner did not submit the circulation data for the publication.

The remaining dated articles, mostly reviews of performances, were published in 1993 or earlier and all of the articles were published in newspapers of unknown circulation. Without evidence of the circulation of these publications, we cannot conclude that the reviews appeared in major media. It is inherent to the field of performing arts to be reviewed in publications local to the performance. Such reviews are not necessarily evidence indicative of or consistent with national or international acclaim.

As the petitioner has not established that the published materials are either primarily “about” her or that they appear in major media, 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 relies on letters to meet this criterion. 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have been influenced by her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

The petitioner obtained her "Diploma of Degree" in music from the Ciprian Porumbescu Conservatory in Bucharest in 1988. The petitioner submitted a letter confirming her scholarship at the International Menuhin Music Academy (IMMA) in Switzerland and claims to have obtained a Master's degree in music from the academy in 1998. The Master's degree is not in the record. According to [REDACTED] Musical Director for [REDACTED] he and [REDACTED] founded IMMA in 1977 as a school for young, extremely gifted string players. The petitioner accompanied violin players during their Master Classes with renowned professors. The petitioner also played piano and harpsichord during [REDACTED] concerts. [REDACTED] is an ensemble of 18 virtuoso string players comprised of students and professors at IMMA that tours internationally, including performances before the Pope and the Queen of Spain. In 2000, the petitioner entered the Artist Diploma program in collaborative piano at Boston University. As of the date of filing, the petitioner was still a student at that university.

[REDACTED] a professor at IMMA, asserts that he met the petitioner at the Juilliard Music School and subsequently performed with her at IMMA. [REDACTED] asserts that the petitioner has accompanied students and accomplished artists of international stature at IMMA as well as performing in numerous public concerts and professional quality recordings. [REDACTED] characterizes the petitioner as accomplished and original and praises her skill. He asserts that when she accompanies other artists, "she is both creative and supportive of their musical contributions."

[REDACTED] Chairman of the Collaborative Piano Department at Boston University, praises the petitioner's abilities and notes the petitioner's international experience. [REDACTED] asserts that the petitioner "brings a wealth of international performance and recording experience to her contacts with students and other young professionals" and that she is "in constant demand as a pianist." [REDACTED] singles out the petitioner's "knowledge of string repertoire." Finally, [REDACTED] asserts that the petitioner has "single-handedly raised the bar of pianistic prowess and ensemble expertise."

[REDACTED] a member of the collaborative and chamber music faculty at Harvard University and Boston University, praises the petitioner as "an accomplished and communicative performer with boundless potential for continued growth." He praises her ability to listen, teach, cooperate and criticize constructively. He concludes that she is "truly gifted."

[REDACTED] a violin teacher at the Boston Conservatory of Music and Chairman of the Strong Department at the New England Conservatory Preparatory School, asserts that the petitioner accompanied violin students at the Boston Conservatory of Music, who "started to sound confident and inspired."

██████████ an associate professor at Boston University, asserts that the petitioner's abilities exceed those of a student and some of the faculty. He notes the petitioner's international experience and unique interpretations of Mozart and Beethoven. He continues:

Since her arrival in Boston, [the petitioner's] stature and reputation continues [sic] to grow. Her outstanding performances are much appreciated [by] many musicians in our community. My own sense is that [the petitioner] will soon be recognized as one of the outstanding collaborative pianists in this region.

██████████ assessment of the petitioner as having only local notoriety is reinforced by the lack of letters from independent experts in the United States outside of the Boston area.

On appeal, the petitioner submits evidence that she has participated in courses, performed and recorded a compact disc after the date of filing. These accomplishments cannot be considered as evidence of her eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The petitioner also submits evidence regarding the acclaim enjoyed by violinists the petitioner has accompanied. The record reveals that the petitioner is valued by ██████████ whose reputation we do not contest. Her recent performances, however, appear limited to accompanying ██████████ and his students at IMMA and students at Boston University, all while working towards a diploma at those institutions. The reference letters do not establish that the petitioner has garnered individual acclaim in her field such that she is sought to accompany renowned musicians beyond the institutions with which she is affiliated or the local Boston area where she works.

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

The petitioner claims to meet this criterion, initially submitting programs documenting her performances. The director concluded that the petitioner's performances over the last decade were not indicative of national or international acclaim. On appeal, counsel does not directly address this criterion. The petitioner submits evidence relating to the acclaim enjoyed by violinists the petitioner has accompanied.

It is inherent to the field of performing arts that the artist performs. Not every performance is an artistic exhibition or showcase such that participating in the performance is indicative of or consistent with national or international acclaim.

The petitioner's recent performances in the United States appear limited to schools in the Boston area, where the petitioner is a student, and mostly involve accompanying students. These performances are not indicative of or consistent with national or international acclaim.

As recently as September 2001, less than a year prior to filing the petition, the petitioner performed with ██████████ in the Faroe Islands. While ██████████ received top billing, the petitioner received equal billing with the other three performers. The petitioner also performed as the sole accompanist for ██████████ in July 2001, with equal billing. The petitioner also performed internationally in small ensembles or duets with ██████████ and others in the mid-1990's through 2000.

While the petitioner lists some of her performances under “festivals” on her resume, the record does not establish that these performances were exclusive showcases of orchestra music, rather than routine performances by [REDACTED]. Thus, she 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.

The director, with little discussion, concluded that the petitioner had not submitted evidence relating to this criterion. The petitioner claims to have played a leading or critical role for [REDACTED] and IMMA. The petitioner’s role with [REDACTED] does not appear more critical than the other musicians. The director’s annual report for [REDACTED] lists the petitioner as an assistant, not as a member. The credit for the group’s notoriety and success appears to rest with [REDACTED].

That said, a brochure for IMMA provides:

[The petitioner is the accompanist at the IMMA and she plays cembalo in the concerts with [REDACTED]. She is the veritable back bone at the IMMA. Day or night – she accompanies everybody who needs a piano.

The petitioner has established the distinguished reputation of IMMA. Thus, we are persuaded that the petitioner 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 has never claimed to meet this criterion, despite its obvious relevance to her field. The petitioner submitted a review of a compact disc on which she performed. The petitioner, however, failed to submit evidence of the sales for the disc. As such, she has not established that she meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a pianist 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 indicates that the petitioner shows talent as a pianist, but is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field. 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.