U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 17 2005
SRC 04 025 50130

IN RE: Petitioner:
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:

[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.

for Robert P. Wiemann, Director
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 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 requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

> (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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend 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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a singer. The petitioner submitted initial supporting evidence including an O-1 visa consultation letter from the American Federation of Musicians, her contract with [redacted] Incorporated, her resume and three letters of recommendation. In response to the director's Request for Evidence (RFE), the petitioner submitted additional materials related to her awards, professional association membership, her compact disc recordings, three media articles, printed advertisements for various performances, her designation as honorary cultural delegate for the City of Sant' Angelo in Vado, and photographs of her childhood performances. On appeal, counsel submits an eight-sentence statement. Counsel's contentions do not overcome the deficiencies of the petition and the appeal

will be dismissed. We address the evidence submitted and counsel's claims in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not addressed below.

A one-time achievement (that is, a major, internationally recognized award).

Counsel claims the petitioner meets this criterion because she won the "'*Gaviota de Plata*' (Silver Seagull) as the Best Female Vocalist at the Twenty-Seventh International Song Festival at Viña del Mar in 1986." In her RFE response, the petitioner submitted two photographs of the petitioner and other individuals from an unidentified source with the caption, "XXVII International Festival of Song Viña del Mar 5 – 10 February 1986." The record contains no photographs of her actual award, documentation from the Festival, or any other independent evidence of the alleged international significance of the Festival and the petitioner's award. The director correctly determined that the submitted photographs were insufficient to demonstrate the petitioner's eligibility under this criterion.

On appeal, counsel claims the director did not consider that both a letter from Thomas Muñoz and an article from *El Atlantico* attest to the prestige and prominence of the Viña del Mar award. Thomas Muñoz, an executive in the Latin music recording industry, states that the petitioner was "bestowed with one of the most prized awards internationally, the '*Gaviota de Plata,*' awarded to the best singer in the '*Festival Internacional de la Canción de Viña del Mar*' (The International Song Festival of Viña del Mar) Chile, the highly prestigious song festival." The article from the October 19, 1987 edition of *El Atlantico* contains an interview of the petitioner. The article does not identify the Viña del Mar award by name, but quotes the petitioner as stating that "[a]fter 1986 I decided to dedicate myself to singing and doing it professionally. And that is what sparked my trip to Chile and once there am [sic] surprised to be awarded the prize." These two brief and uncorroborated statements do not establish the major significance or international recognition of the Viña del Mar award. Moreover, the award was allegedly presented to the petitioner in 1986, seventeen years before her petition was filed, and does not demonstrate the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

In his RFE response, counsel states the petitioner meets this criterion because she received "the Golden Anchor, The Star of The Sea, and the Golden Dolphin in Argentina. These are artistic prizes in Argentina." The petitioner's resume states that she received the following awards: "Star of The Sea (1989), Golden Dolfin [sic] (1989), Gold Ligthouse [sic] (1995), Star of the Sea (1997)," but the record contains no primary evidence of these awards or their significance. Simply going on record without supporting documentary evidence is not sufficient to meet 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)). On appeal, counsel contends that the director "failed to consider that the Article Showing that she received a 'Golden Anchor' included a list of other prominent entertainers from Latin America. It was an award as an artist." The record does not support this claim. An article from the January 20, 1987 edition of *La Capital* is entitled "The Golden Anchor is Handed Out." The article reports that "various members of the artistic community who are presently participating in shows in Mar De Plata were recognized with a luncheon, during which was announced the handing out of the distinction called the 'Golden Anchor.'" The petitioner is included along with 17 other individuals "among others" that received this distinction. The article does not further discuss the significance of

the award or demonstrate that the listed individuals are all "prominent entertainers from Latin America," as claimed by counsel. Rather, the article indicates that the "Golden Anchor" is a distinction limited to the Mar Del Plata region and that the petitioner's receipt of this local distinction occurred 16 years prior to the filing of this petition.

The petitioner also submitted a copy of a document that attests to the petitioner's appointment as "Honorary Cultural Delegate of Mayor's Office for the Promotion of Culture" by the City of Sant' Angelo in Vado on January 21, 2005, but no evidence of the significance of this appointment. Regardless, we cannot consider this designation because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the petitioner does not meet this criterion.

(ii) 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.

The petitioner submitted a copy of her Latin Recording Academy membership card and a form letter discussing the benefits of Academy membership. The record is devoid of any evidence that outstanding achievements are prerequisite to membership in the Academy. Accordingly, the petitioner does not meet this criterion.

(iii) 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.

The record contains three media articles printed in 1987. As discussed above under the first criterion, one article simply includes the petitioner's name in a list of 17 other artists who received the Golden Anchor distinction. A second article contains a one-paragraph review of one of her recordings. The third article is the interview with the petitioner discussed above under the one-time achievement criterion. The record is devoid of any evidence that the sources of these articles are professional, major trade publications or other major media. Moreover, the articles all date from 1987, sixteen years before this petition was filed, and do not reflect the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner did not specifically claim eligibility under this criterion, but the record contains relevant evidence that merits brief discussion. The record contains four recommendation letters from three individuals involved in the music industry. [redacted], a pianist and musical director, states that he has worked with the petitioner and that he composed the song for which she won the Viña del Mar award. Mr. Moreno further explains that he worked with the petitioner on the "Song of Mar del Plata," which is used to promote that city "both nationally and internationally." Finally, Mr. Moreno states that the petitioner "is characterized by her interpretative work and her professionalism. She has been chosen by prestigious directors and composers for exclusive presentations. She has sung duets with internationally recognized artists . . . ." [redacted] and D'Aldo Romano, of Latin/WE Latin World Entertainment, make similar comments in their letters. While the letters indicate that the petitioner is considered a successful singer by these three individuals, none of their

letters substantively discuss any specific, original contributions of major significance that the petitioner has made to her field.

Other relevant evidence fails to establish that the petitioner's work as a singer has made original, major contributions to her field. The petitioner submitted copies of two recordings dated 1986 and 1988, [redacted] and [redacted] *Corraoma A Amarnos,"* but no evidence that these recordings received wide critical acclaim, awards or other significant recognition by her field. The three media articles (discussed above under the third criterion) also do not demonstrate that any of the petitioner's work has been recognized for its original, major contributions to her field. The *El Atlantico* article quotes the petitioner as saying that she has signed with CBS, which gives her "important backing since it is an international label," but the record contains no evidence of a contract between the petitioner and CBS. The petitioner's self-titled compact disc contains the copyright of "Discos CBS SAICF," but the record contains no evidence that this album was distributed, sold or critically acclaimed internationally. The petitioner also submitted copies of advertisements for her performances at the Michelangelo in [redacted] and the Tio Curzio Restaurant in [redacted] Argentina from 1987 to 1988, but the record contains no evidence that these performances received critical acclaim or other significant recognition in her field. The record indicates that the petitioner won the [redacted] award in 1986, but does not establish the international recognition or professional significance of that award. None of the submitted evidence indicates, for example, that the petitioner has a unique style, technique or other qualities that have significantly influenced other Latin singers or musicians or that her work has otherwise made a notable impact in her field. In sum, the record indicates that the petitioner enjoyed limited success as a signer from 1986 to 1988, but the evidence does not demonstrate that she made any original, major contributions to her field during that time or in the five subsequent years preceding the filing of this petition. Accordingly, the petitioner does not meet this criterion.

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

This criterion generally applies to the visual, not performing, arts. However, relevant evidence in the record merits brief consideration under the comparable evidence provision of 8 C.F.R. § 204.5(h)(4). As noted under the fifth criterion, the record contains advertisements for the petitioner's performances at the Michelangelo in Buenos Aires and the Tio Curzio Restaurant in [redacted] Argentina from 1987 to 1988. Yet performances are inherent to the singing profession and duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The record contains no evidence that the venues where the petitioner performed are prestigious or that the petitioner's performances received critical acclaim or other significant recognition in her field. On appeal, counsel claims these advertisements show "the level of entertainers who performed with Ms. Dupetit, Olga Guillot (the Cuban singer of boleros) and Armando Manzanero (Mexico)." Even if the record documented the reputation of these performers, it fails to show that such renown is also attributable to the petitioner. On appeal, counsel also contends that the director did not consider "the range of places in Latin America and Italy" where the petitioner performed. The record documents the petitioner's performances in Argentina and Chile, but not Italy. Moreover, the record contains no evidence that the petitioner received critical acclaim for any of her performances except at the Viña del Mar festival. That single performance, made 17 years before her petition was filed, does not demonstrate the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In his RFE response, counsel claims the petitioner meets this criterion because "[f]ifty years of performing as a vocalist is an extraordinary achievement. Its highlight, so far, was winning at Viña del Mar in 1986." The record is devoid of any evidence that the petitioner's Viña del Mar award brought her commercial success. The petitioner submitted no evidence of box office receipts or sales of her recordings, as required by the regulation to establish eligibility under this category. Accordingly, the petitioner does not meet this criterion.

On appeal, counsel also contends that the petitioner has previously been recognized as an alien with extraordinary ability because Citizenship and Immigration Services (CIS) approved her petition for O-1 nonimmigrant status. Although the words "extraordinary ability" are used in the Act for both the nonimmigrant O-1 classification and the first preference employment-based immigrant classification, the applicable regulations define the terms differently for each classification. The O-1 regulation explicitly states that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines 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 evidentiary criteria for these two classifications also differ in several respects. Given the clear regulatory distinction between these two classifications, the beneficiary's prior receipt of O-1 nonimmigrant classification is not evidence of her eligibility for immigrant classification as an alien with extraordinary ability. Hence, counsel's citation to the O-1 advisory opinion of the American Federation of Musicians that the petitioner is a "vocalist of extraordinary ability" is misguided.

On appeal, counsel also contends, "Exceptional Ability is established in part under 8 C.F.R. 204.5 in part with ten years of experience in a field. Fifty years of work as a vocalist is a factor to be considered in rising to the level of sustained extraordinary ability." The regulation at 8 C.F.R. § 204.5(h) make no reference to years of experience in a field. It is not the length of an alien's career, but the alien's recognized achievements and sustained acclaim that will evidence his or her eligibility for classification as an alien with extraordinary ability. *See* 8 C.F.R. § 204.5(h)(3).

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner is a singer who made two recordings and received limited recognition in her field between 1986 and 1988. However, the record does not establish that the petitioner achieved sustained national or international acclaim as a singer placing her at the very top of her field. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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. The petitioner here has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.