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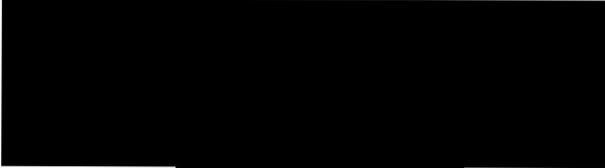
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 03 2006**
SRC 05 257 51963

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, 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 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, specifically as a Tibetan performing artist, musician, composer and instructor. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, counsel submits a brief and additional evidence, which do not overcome the deficiencies of the petition. The appeal will be dismissed for the reasons that follow.

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).

We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. Counsel does not claim that the petitioner meets any criteria not discussed below.

(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 petitioner submitted copies of three articles as evidence of his eligibility under this category, none of which meet this criterion. First, the record contains an article from the Winter 2004 edition of *Rangzen Voice*, the official newsletter of the International Tibet Independence Movement (ITIM), which is entitled "Around ITIM." Under a subsection titled, "Rangzen Concert A Success," the article lists the petitioner as one of "[s]even highly esteemed Tibetan musicians [who] performed what some viewed as the best live performance they had heard in years" at a concert in Minnesota on February 19, 2005 that was attended by approximately 240 people. This one-paragraph subsection of an article does not further discuss the petitioner or his work. On appeal, the petitioner submits a letter from Larry Gerstein, President of ITIM, who states that *Rangzen Voice* is distributed quarterly to over 3,000 individuals and organizations worldwide and is also read online by numerous people. Even if Mr. Gerstein's letter was sufficient to establish that *Rangzen Voice* is a professional, major trade publication or other form of major media, the article is not about the petitioner and his work, but merely lists him as one of seven "highly esteemed Tibetan musicians." This brief reference to the petitioner is not consistent with national or international acclaim.

Second, the petitioner submitted a printout from an article published in the *Seattle Times* on Sunday, August 29, 2004. The article is entitled "Tibetans Keep Culture, Customs Alive in TibetFest" and contains a photograph of the petitioner and another performer. The petitioner is identified by name in the photograph's caption, but is not mentioned in the text of the article. The article discusses TibetFest in general and profiles one of the festival's founders. Although counsel submits evidence on appeal that the *Seattle Times* is a form of major media, the article is not about the petitioner and does not satisfy this criterion.

Third, an excerpt from the 1996-1997 Tibetan Institute of Performing Arts (TIPA) Newsletter entitled "Meditations and Improvisations" reports on a concert given by two Hungarian musicians and four TIPA artists, including the petitioner. The TIPA artists are described as "[a] group of TIPA's most creative, talented and progressive artistes who have been with the Institute for at least ten years." The article does not discuss the petitioner and his work individually or in any depth. On appeal, counsel submits evidence that TIPA is an institute formed by the Tibetan Government in Exile in order to preserve Tibetan culture and claims that the TIPA newsletter is "a major trade publication because of its significant national and international circulation." The record contains no documentation of the circulation of the TIPA newsletter. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*,

19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Regardless of the newsletter's purportedly national and international circulation, the submitted article is not about the petitioner. In addition, the article was published in 1997, eight years before this petition was filed and does not indicate the requisite sustained national or international acclaim.

The petitioner submitted three articles, one of which was published in a major newspaper, that identify him, but do not discuss his work in any depth or detail. Such brief references to the petitioner are not consistent with sustained national or international 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.

Counsel claims the petitioner meets this criterion through his work as a Tibetan singer, musician, music arranger and coordinator, and leader and composer for the band AaKaMa. The petitioner submitted copies of six compact disc covers and two audiocassette covers. These documents identify the petitioner as a singer, musician, coordinator, and music arranger. The petitioner submitted two copies of AaKaMa compact disc covers, one of which identifies the petitioner as "supporting Musician" and the other of which credits the petitioner as music arranger and musician. All of these recordings were produced by or in association with TIPA between 1993 and 2002. A letter from [REDACTED] TIPA Secretary, confirms that the petitioner composed and coordinated music for nine TIPA recordings and shows that as of January 18, 2005, TIPA had sold a total of 26,990 copies of these recordings. In a letter dated April 23, 2003, [REDACTED] of Columbia Artists Management, Incorporated (CAMI) confirms that the petitioner was also featured in CAMI's compact disc recording, *Dhamma Suna*, which was released worldwide by Time Warner.

Several support letters praise the petitioner's skills and accomplishments, but fail to demonstrate that he has made any original artistic contributions of major significance to his field. [REDACTED] describes the petitioner as "a qualified senior artist" of TIPA and "a distinguished artist of the highest caliber." In a letter dated January 18, 2005, [REDACTED] TIPA Secretary, states that the petitioner worked at TIPA since his childhood and devoted his time to "preserving and excelling the Tibetan traditional dance, music, Tibetan Opera and ritual dance." In addition, [REDACTED] confirms that the petitioner composed "Tibetan Modern song albums for AaKaMa Band and coordinate[ed] Tibetan traditional melodies with western music instruments." In his letter dated November 16, 2002, Tashi Wangchuk, TIPA Sponsorship Secretary, confirms that the petitioner was a senior artist at TIPA who was "extremely talented in music and Tibetan arts." [REDACTED] also states that the petitioner was the "group leader of TIPA's modern band 'Aa-ka-Ma' and the band has to it's [sic] credit several noted albums like, Aa-ka-Ma yearly series, OM, Drelan and many more that are distributed across the world." Finally, Mr. [REDACTED] notes that the petitioner is "well versed in multi-century old Tibetan opera tradition, the regional songs and dances of Tibet and above all the unique music of Tibet." A February 23, 2004 letter from Gonpo Entertainment also confirms that the petitioner is the "lead music composer of the

contemporary Tibetan music band AaKaMa, a well known and respected band in exile, which has released seven albums to date.”

In his letter dated July 29, 2005, [REDACTED] Tibetan Project Director at the Cultural Conservancy in San Francisco, California, states that he and the petitioner both studied at TIPA. Mr. [REDACTED] describes the petitioner as “a truly gifted artist of traditional Tibetan folk song, dance and Opera” who “can make a difference in the Santa Fe Tibetan community.” In a letter dated April 30, 2003, [REDACTED], Artistic Director of the Chaksam-pa Tibetan Dance and Opera Company in San Francisco, California, also praises the petitioner as “an outstanding Tibetan performer and instructor in the classical and folk arts of Tibet.” Director Sharzur summarizes the petitioner’s accomplishments as follows:

Apart from his serious contribution to the preservation of classical and folk arts of Tibet, [the petitioner] has appeared in the major motion picture “Kundun,” directed by Martin Scorsese and has collaborated with famous Indian film composers Laxmikant and Pyarilal. He has performed as the leading character in 13 videos produced by [TIPA]. He was a musician and singer on TIPA’s major recording “Dama Suna,” produced in 1997 by Columbia Artists and “Dra Yang” a CD of traditional Tibetan music recorded and produced in Tokyo, Japan. Among his highest achievements is being the bandleader of the sensational Tibetan contemporary musical band Aa-Ka-Ma, who have produced four albums, all available internationally.

The record does not fully corroborate the statements made in these support letters. The petitioner submitted no primary documentation of his work on the film “Kundun” or with the Indian film composers Laxmikant and Pyarilal. The record contains no evidence of the petitioner’s leading role on any TIPA video productions. The record documents only two compact disc recordings by AaKaMa, none of which identify the petitioner as the group’s leader. One of the discs lists the petitioner as “Supporting Musician” and the composer of one of 12 pieces on the disc. The second disc, “OM II,” identifies the petitioner as both “Music Arranger” and one of five musicians. On appeal, counsel submits a printout from musictibet.com, which states that a 2003 recording by AaKaMa was nominated for Best Album in the 2005 Tibetan Music Award, but the record is devoid of any evidence that AaKaMa – or the petitioner himself – won this or any other awards or similar accolades in their field.

On appeal, counsel states, “The fact that [the petitioner] had been selected by . . . prominent organizations to perform his music on CDs that are sold in the Tibetan music market throughout the world is a major and extraordinary contribution.” Counsel further claims that the petitioner’s work “impacted the Tibetan arts field in a major way as evidenced by the sales of the albums.” The record does not support counsel’s claims. Although [REDACTED] and [REDACTED] state that the petitioner’s recordings have been distributed internationally and while [REDACTED] letter documents the sales of TIPA recordings of the petitioner’s work, the record is devoid of any comparative evidence from which we could determine that such distribution and sales are consistent with sustained international acclaim. For example, the petitioner provided no documentation of the sales of other notable or prominent Tibetan musicians. The record also lacks any evidence that the

petitioner's work has been critically acclaimed, written about by scholars of Tibetan music, influenced other prominent Tibetan musicians, or otherwise made contributions of major significance to his field in a manner consistent with sustained national or international acclaim. Consequently, 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.

The petitioner submitted evidence that he performed at, among other venues, the Tibetan Cultural Festival held in 2002 in Tokyo, Japan; the 2001 Miaoli International Mask Festival in Taiwan; and the 2000 Smithsonian Folklife Festival in Washington, DC. The petitioner submitted a letter from Diana Parker, Director of the Smithsonian Folklife Festival, thanking the petitioner for his participation in the Festival and stating that his exhibition, "Tibet, Beyond the Land of Snows," was "a great success with almost ten thousand visitors a day; in the end approximately 1.5 million people visited your site." On appeal, the petitioner submits an article about this exhibition by Richard Kennedy, Deputy Director of the Smithsonian Center for Folklife and Cultural Heritage and co-curator of the Festival program on Tibetan culture. On appeal, the petitioner also submits an article from *Taipei Times* about the 2001 Miaoli International Mask Festival. While the record indicates that the 2001 Miaoli International Mask Festival and the 2000 Smithsonian Folklife Festival were international, artistic exhibitions or showcases, the petitioner's performances at these festivals occurred five and four years before this petition was filed and do not reflect sustained international acclaim.

The petitioner initially submitted a letter from [REDACTED] Representative of His Holiness the Dali Lama for Japan and East Asia, who confirmed that the petitioner performed for the 2002 Tibetan Cultural Festival in Tokyo. On appeal, the petitioner submits an article from *World Tibet Network News* about this event, which notes that over 300 people attended the festival. However, the article indicates that the festival was not an artistic exhibition or showcase, but rather a commemoration of the 360th anniversary of the founding of Gaden Phodrang Government of Tibet, which focused on Tibetan history and the functions of the present Tibetan Government-In-Exile.

The record also documents the petitioner's more recent July 9, 2005 performance at "Dance and Music From the Roof of the World Tibet" in Santa Fe, New Mexico but the record indicates that this was a regional event organized by the Tibetan Association of Santa Fe, Incorporated, performance at which does not demonstrate national or international acclaim. Accordingly, the petitioner does not meet this criterion.

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

On appeal, counsel claims the petitioner meets this criterion because he "played leading roles both as arranger and coordinator of several music CDs and tape compilations produced by TIPA, which is an extremely important and essential role." While the record shows that TIPA has a distinguished reputation as a cultural and artistic institution founded by the Tibetan Government in Exile and

sanctioned by the Dali Lama, the evidence does not establish that the petitioner performed a leading or critical role for TIPA in a manner consistent with sustained national or international acclaim. Although [REDACTED] TIPA Secretary, lists nine TIPA recordings with music composed and coordinated by the petitioner, the petitioner is identified as a music arranger or coordinator on only two of the eight TIPA recordings documented in the record. The petitioner is identified as "Music Arranger" on the compact discs entitled "2002 Promoting Peace Through Arts" and "AaKaMa OM II." The petitioner is also credited as one of two coordinators of the 2002 disc. The other six documented recordings identify the petitioner as one of a group of singers or musicians. In addition, while [REDACTED] Senior Editor of the Voice of America Tibetan Service, all state that the petitioner was a senior artist of TIPA, the record does not establish that all senior artists play a leading or critical role for TIPA as a whole.

On appeal, counsel also claims that the petitioner satisfies this criterion through his role in the band, AaKaMa. Although some of the support letters refer to the petitioner as the leader of AaKaMa, the two documented compact disc recordings of the group do not identify him in that role. As noted above under the fifth criterion, the petitioner is credited as "Music Arranger" on one of these recordings and is identified as "Supporting Musician" on the other. Yet even if the evidence established the petitioner's leading or critical role for AaKaMa, the record does not demonstrate that the band has a distinguished reputation. Some of the support letters praise AaKaMa's contemporary rendition of traditional Tibetan music and, as noted under the fifth criterion, the group was nominated for a 2005 Tibetan Music Award. However, the band but does not appear to have won that or any other awards or similar accolades. In addition, the petitioner submitted no evidence that any of AaKaMa's recordings have been critically acclaimed or that the group has received other significant recognition in its field. 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.

On appeal, counsel claims the petitioner meets this criterion, as evidenced by [REDACTED] letter documenting the sale of over 26,000 copies of the petitioner's TIPA recordings. As explained above under the fifth criterion, without comparative evidence of the sales of other Tibetan music recordings we cannot determine whether the petitioner's sales demonstrate commercial success and sustained national or international acclaim. Consequently, the petitioner does not meet this criterion.

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 an accomplished Tibetan performing artist and musician. However, the record does not establish that the petitioner has achieved sustained national or international acclaim placing him at the very top of his field. He 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 his 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.