



U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]  
EAC03 135 51885

Office: VERMONT SERVICE CENTER

Date: APR 07 2006

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:

[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*

2 Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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). 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, the petitioner questions whether the initial documentation was considered and resubmits much of that documentation. For the reasons discussed below, we find that the director’s request for additional evidence erroneously implied that the petitioner had to meet specific criteria and the final decision contains errors of law and ignores nearly all of the evidence submitted.

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 are listed below. It should be reiterated, however, that the petitioner must show that he 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 musician. 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 criteria follow.

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

(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;

(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;

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

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

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

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

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

Initially, prior counsel chronicled the petitioner's recording history and asserted that he had "a record of critically acclaimed success." Counsel did not address the ten regulatory criteria. The petitioner

submitted considerable published material about his work, compact discs and recording contracts. The petitioner also submitted two reference letters.

On January 19, 2005, the director issued a request for additional evidence. Specifically, the director requested evidence of the petitioner's awards, memberships, published material about the petitioner and his remuneration. The director provides no explanation for singling out these four criteria. Nothing in the regulation implies that an alien must meet any specific criterion as long as the alien meets at least three of the ten criteria. The director also requested expert letters although most of the criteria require objective evidence of accomplishments as opposed to the subjective opinions of experts, however credible such opinions may be.

In response, the petitioner submitted additional reference letters and more published materials about the petitioner and his work.

The director lists all ten of the regulatory criteria, but only discusses awards, memberships and remuneration. This discussion is especially curious in light of the considerable published materials submitted. The director asserted that the petitioner based his eligibility claim on his awards and musical career. The petitioner, however, makes no claim to have won any awards. Moreover, the director's analysis of this criterion is flawed as he asserts that the petitioner had not demonstrated whether the awards were individual or "as a member." Nothing in the regulation at 8 C.F.R. § 204.5(h)(3)(i) precludes team awards. As such, the director's focus on that issue was in error.

The director also stated that the petitioner had not submitted "objective evidence, such as affidavits from well-known U.S. organizations or individuals, to support your claims of prestige and ability." Later in the decision, the director asserts that the petitioner submitted mostly letters from friends or mentors. While affidavits can serve as valid evidence, they are far more subjective than objective. Evidence that addresses the regulatory criteria, such as awards and independent journalistic coverage of the alien, is far more persuasive than the subjective opinions of experts in the field. Thus, the implication that expert letters are required to establish eligibility is in error.

The director then discusses the membership criterion at length, concluding that the petitioner had not established that he met the criterion set forth at 8 C.F.R. § 204.5(h)(3)(ii). After that conclusion, the director noted that the petitioner's personal statements are not objective. While we concur with these statements, the petitioner never claimed to meet this criterion. Finally, as stated above, the director noted the lack of evidence regarding significantly high remuneration, another criterion the petitioner never claimed to meet, and failed to consider the published materials submitted.

In light of the above, this matter is remanded to the director in order to issue a new request for additional evidence that lists all ten of the regulatory criteria<sup>1</sup> and makes clear that the petitioner need

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<sup>1</sup> A request for additional evidence relating to this classification need not always address all ten criteria. For example, if a petitioner has claimed three or more criteria, the request might seek clarification on those claimed criteria. As stated above, however, by inquiring into only four criteria, and not the criteria claimed,

only meet three of the criteria and that there is no requirement that the petitioner meet a specific criterion as long as he meets three. The director should also request an explanation from counsel or the petitioner as to which criteria the petitioner claims to meet.

The director should also request that the petitioner address the following discrepancy. [REDACTED] the former production manager for Taiwan Rock Records' Beijing Office, asserts that the petitioner's album, *China Fire II*, sold 200,000 copies. [REDACTED] a German musician, however, asserts that *China Fire II* sold approximately 1,000,000 copies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires box office receipts or record, cassette, compact disk, or video sales as evidence of commercial success. Mere affidavits, as opposed to official documentation of sales numbers, are insufficient.

Finally, the director has never asserted that there are any deficiencies in the considerable published materials submitted. The director also appears to have failed to consider whether the petitioner, as the songwriter for his own bands, has played a leading or critical role for those band and, if so, whether those bands have enjoyed a distinguished reputation nationally or internationally. If the director believes the published materials cannot serve to meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) or the petitioner's role with his bands cannot serve to meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii), the director should explain his reasoning to the petitioner and afford an opportunity to respond.

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.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

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the director created the erroneous impression that those four criteria were more relevant than the other six criteria.