



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

BZ



FILE: [REDACTED]
EAC 04 132 50374

Office: VERMONT SERVICE CENTER

Date: MAR 01 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:



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 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 of the beneficiary 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 as a musician. The director determined that the petitioner had not established that the beneficiary had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, counsel submits a brief and copies of documents previously submitted. Counsel's claims do not overcome the deficiencies of the petition and the appeal will be dismissed for the following reasons.

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 beneficiary is eligible under any criteria not discussed below.

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

Several support letters submitted below state that the beneficiary won awards as a member of the [REDACTED] but the letters provide inconsistent descriptions of these awards. [REDACTED] states that the beneficiary's band received the "Rockers Award for the Band with the Best Original Style" in 1986 and 1987, and the "Martin International Award for the Best Reggae Band" in 1987. [REDACTED] states that the [REDACTED] won "many Awards Including [sic] Martins International Awards; Rockers Awards for the [REDACTED] [sic] Band for the year 1991." [REDACTED] states that the beneficiary received the Rockers Award and the Martins International Award "for reggae musicianship," but does not state the dates of these awards or provide any other details about their significance. [REDACTED] states that the beneficiary received "an award from 'Rockers International' as well as a 'Martins International Award,' two of the most prestigious awards that any Jamaican musician can receive." [REDACTED] also affirms the beneficiary's receipt of the "Rockers Award and the Martin International Award," but does not state the dates and categories of these awards. The beneficiary submitted no primary evidence of his purported awards to clarify the discrepancies in the letters' descriptions regarding the titles, dates and subject areas of the alleged awards.

On appeal, counsel states:

[The beneficiary] has received Rockers Awards and the Martins International Award for his excellence in Reggae music as a founding member of the Reggae band the [REDACTED]. The Rockers Award is akin to the American Grammy Awards and is a prestigious regional awards show in the Caribbean; [the beneficiary] is the recipient of two Rockers Awards. The Martins International Award is a coveted prize within the Reggae music community.

Counsel does not state the dates of the beneficiary's purported awards and submits no evidence to support his statements regarding the prestige and national or international recognition of the awards. 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).

On appeal, counsel further states, "Pictures of the awards are not available but several letters which were submitted testify to the Beneficiary's having been so awarded." Counsel does not state that other primary evidence of the beneficiary's purported awards was unavailable and does not submit any documentation to clarify the support letters' inconsistent testimony regarding the beneficiary's alleged awards. 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). The record contains no primary evidence of the petitioner's purported awards, provides only inconsistent testimony regarding the alleged awards, and is devoid of any documentation of the significance and national

¹ This band is alternately referred to as the "[REDACTED] and [REDACTED]" by various letters in the record. Because [REDACTED], Manager of [REDACTED] to the band as the "[REDACTED]," we use this spelling in our decision.

or international recognition of the awards. Consequently, 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.

Counsel claims the beneficiary meets this criterion through his membership in the Jamaica Federation of Musicians and Affiliated Artistes' Union. In his letter submitted below, ██████████ President of the Union, affirms the beneficiary's membership in the Union, but provides no description of the Union's membership criteria. The record contains no other evidence that the Union requires outstanding achievements of its members as judged by recognized national or international experts in the field. Accordingly, the beneficiary 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.

With his Form I-140, the petitioner submitted no evidence of published materials about the beneficiary's work. Yet on the Form I-290B, counsel states that the petitioner did submit "evidence of published material in major media publications about the Beneficiary." On appeal, counsel makes no mention of published materials about the beneficiary in his brief and submits no evidence of such materials. Consequently, 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.

On appeal, counsel states, "It is clear that without [the beneficiary's] original contributions to Reggae and Gospel music, that [sic] these musical forms would be quite different today." As evidence to support his claim, counsel cites four recommendation letters submitted below. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

Mr. ██████████ President of the Jamaica Federation of Musicians and Affiliated Artistes Union, states that the beneficiary is a reputed drummer and music tutor with expertise in several musical forms and that his services have been in demand in Jamaica and overseas. ██████████ a musician and broadcaster in Jamaica, describes the beneficiary as one of the top drummers in Jamaica "with the exceptional gift of Composing, Arranging and Writing Music [sic] for most instruments." Mr. ██████████ states that the beneficiary has a very diverse musical style, has been involved with the Flames of Glory gospel music group, and has played with several well-known musicians. ██████████ an entertainment journalist in Jamaica, praises the beneficiary as a "musician extraordinaire" and describes his success with the ██████████ and his work with the Bee Zee Street Music Academy for beginning musicians. Similar praise of the beneficiary's skills and accomplishments are made by

██████████ manager and bassist of Fabulous 5, a Jamaican band; ██████████ Managing Director of Kingswell Music and Manager of the ██████████ in Jamaica; ██████████ Manager of Bare Essentials in Jamaica; and ██████████ Chief Executive Officer of Great Gospel Musical Productions Limited in Jamaica.

While these letters praise the petitioner's skills and describe his purportedly successful musical career in Jamaica, they do not state that any of the beneficiary's accomplishments have made original artistic contributions of major significance to his field.

Apart from these recommendation letters, the only other evidence submitted in support of the petition were two compact discs and six recording labels that list the petitioner as a musician, producer, arranger or composer. The compact discs and one recording label are undated. The remaining recording labels are dated between 1992 and 1997. Four of the recording labels indicate that they were produced in Jamaica, but the petitioner submitted no evidence that the beneficiary's recordings were critically acclaimed, a commercial success, or otherwise significantly influenced other musicians in Jamaica or abroad. In his support letter, Mr. ██████████ states that the beneficiary is featured on "the ██████████ two albums, ██████████ and ██████████ and Friends, plus three singles, Jammin On the Corner, Na-Na-Nah and Smady Pickney." The record contains no evidence of these recordings.

The record is devoid of documentary evidence to corroborate the beneficiary's musical achievements as described in the recommendation letters and the submitted evidence does not establish that the beneficiary has made any original contributions of major significance to his field. Moreover, the record shows that the beneficiary's most recent recording was made in 1997, seven years before this petition was filed. Hence, the beneficiary's documented work does not demonstrate the requisite sustained acclaim. Accordingly, the beneficiary does not meet this criterion.

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

Although this criterion generally applies to the visual arts, we nonetheless address the numerous references to the beneficiary's performances in the record as evidence of his eligibility under this criterion. Several of the recommendation letters state that the beneficiary performed at numerous concerts and festivals in Jamaica such as the Heineken Startime, Reggae Sunfest, Sting, Reggae Ram Jam, Hot Shot, Reggae Sunsplash, Reggae Carnival, Border Clash, Bob Marley Birthday Bash, White River Reggae Bash, and Knox Salute. Mr. ██████████ further states that the ██████████ performed at unspecified venues and on unspecified dates in Europe, the United Kingdom, Canada, Japan and the United States.

While frequent performances are inherent to the musical profession, the regulation requires that evidence under this criterion demonstrate sustained national or international acclaim and not simply document an alien's continued employment or activity in his or her field. In this case, the record contains no documentation of any of the beneficiary's performances or evidence that any of the festivals or concerts mentioned in the support letters are equivalent to major artistic exhibitions or showcases, participation in which might demonstrate national or international acclaim. Accordingly, the beneficiary 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 that the beneficiary meets this criterion because he was a founding member of the [REDACTED] performed with famous musicians and appeared at esteemed musical festivals in Jamaica. The record does not support this claim. The record is devoid of any primary evidence of the beneficiary's work with the [REDACTED]. The petitioner submitted no evidence of the band's purported recordings, awards, or performances and the record does not establish that the [REDACTED] were critically acclaimed, had a major influence on other musicians in Jamaica or abroad, or otherwise enjoyed a distinguished reputation. The record is similarly devoid of any documentation of the beneficiary's performances with famous musicians or at the festivals cited by counsel and in many of the recommendation letters. The petitioner also failed to submit evidence regarding the significance, national or international recognition, or distinguished reputation of any of the musical festivals at which the beneficiary purportedly performed and the record does not document the beneficiary's allegedly leading or critical role in any distinguished musical group which performed at these festivals. Accordingly, the beneficiary does not meet this criterion.

In closing, we note two oversights made by counsel on appeal. First, on page two of his appellate brief, counsel states, "The professional soccer community being small and tight-knit, news of [the beneficiary's] stay in the United States reached [REDACTED] which then sought out [the beneficiary] for the purpose of recruiting him for its coaching staff." Counsel's references to professional soccer and coaching are inapposite, given the established fact that the beneficiary is a musician, not an athlete or coach.

Second, counsel contends that the director should have issued a Request for Evidence before denying the petition, but then states, "The response to Form I-797 Request for Evidence added an explanatory cover letter and translations of the newspaper articles, contracts and testimonial letters to the record. The provided evidence firmly establishes the Beneficiary's eligibility for the classification sought." The director did not issue an RFE in this case and the record contains no RFE response from counsel or any evidence of newspaper articles or contracts. Regardless of counsel's error, we note that although 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing," the director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. On appeal, the petitioner has submitted only copies of documents previously submitted and counsel does not claim that other evidence of the beneficiary's eligibility could or would have been submitted if the director had issued an RFE. Therefore, it would serve no useful purpose to remand this case simply to afford the petitioner the opportunity to supplement the record with new evidence.

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 record in this case does not establish that the beneficiary has achieved sustained national or international acclaim as a musician 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.



Page 7

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.