



U.S. Citizenship  
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FILE:

SRC 04 067 52353

Office: TEXAS SERVICE CENTER

Date: MAR 23 2006

IN RE:

Petitioner:

Beneficiary:



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:

SELF-REPRESENTED

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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.

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 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 he has earned sustained national or international acclaim at the very top level.

This petition, filed on January 6, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a composer, arranger, conductor, and 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 petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner submitted a fill-in-the-blank certificate (dated November 20, 1997) reflecting that he was issued a Medal of Merit by the Popular Institute of Culture (IPC), Cali, Colombia in recognition and gratitude of his contribution “to the institutional development of the IPC.”<sup>1</sup> This award reflects institutional or local recognition rather than national or international recognition.

The petitioner also submitted a certificate of honor from the Musical Society of Valle (dated November 21, 1980) naming the petitioner “best arranger and artistic director.” This award reflects regional recognition rather than national or international recognition.

The petitioner also submitted an August 5, 1992 letter from the president of the foundation that runs the “National and International Festival of Song Interpreters of [REDACTED] (a.k.a.- [REDACTED]) thanking the petitioner for his contribution to the festival. The petitioner offers no evidence showing that this certificate is a nationally or internationally recognized award for musical excellence, rather than simply an acknowledgment from the organizing committee that the petitioner provided his services to the festival.

*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.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

On appeal, the petitioner claims eligibility under this criterion stating that page eight of his resume reflects his membership on the Funmusica Technical Committee and in the National Association of Authors and Composers. The petitioner, however, did not submit first-hand evidence of his individual membership status in these organizations (such as a membership card). 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)). Nevertheless, the record includes no evidence of the membership bylaws or the official admission requirements for the Funmusica Technical Committee and the National Association of Authors and Composers. There is no indication that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

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<sup>1</sup> The petitioner’s resume states that he was Head of the School of Music, Popular Institute of Culture, Cali, Colombia from 1980 to 1985.

*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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>2</sup>

Several of the articles initially submitted with the petition were not primarily about the petitioner. In response to the director's request for evidence, the petitioner submitted the following articles:

1. "One Night of Fantasy in the Carneestre Club" appearing in [REDACTED] (undated)
2. "Night of Fantasy" appearing in [REDACTED] (September 27, 2001)
3. "The Tuning is Key in a Band" appearing in [REDACTED] (undated)
4. [REDACTED] "Will Make Dance to Queens" appearing in [REDACTED] (undated)

The date of the published material for items 1, 3, and 4 was not provided as required by this criterion. Nor is there evidence showing that the three publications listed above had substantial national readership. Further, we note that items 1, 2, and 4 publicized upcoming events involving the petitioner, which is certainly not uncommon for a professional musical director. Involvement in an event, such as a beauty pageant or charitable benefit, that, as a whole, merits promotional media coverage is not adequate to demonstrate the petitioner's sustained national or international acclaim. We find that the evidence presented by the petitioner is not adequate to show that he has been the primary subject of sustained major media attention.

*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 specification for which classification is sought.*

The petitioner submitted evidence in the form of diplomas and newspaper articles indicating that he has served as a judge for national level music contests. We find that that the petitioner's evidence satisfies this criterion.

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

On appeal, the petitioner states:

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<sup>2</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

As announced in my resume (Page 6 title Hymn arrangements and production), I was the composer in some of the cases and the arranger in others of the formal hymns of three municipalities, two universities, and of the firefighters department of the City of Cali. Besides all my work as a composer, arranger and producer of more than 60 CD's of different artists [sic]. You can find in the evidences presented that my whole professional life has been full of achievements and contributions to my City, State and Country musical culture.

As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165. The record includes no letters of support from national or international music experts describing the petitioner's accomplishments as contributions of major significance in his field. Further, the majority of the professional achievements described by the petitioner are local or regional in scope rather than national in scope. We accept that the petitioner is a talented composer, arranger, conductor, and musician, but the record lacks independent evidence demonstrating that his contributions have significantly impacted the music industry in general. For example, there is no evidence showing the extent of the petitioner's influence on other professionals in the music industry.

The mere fact that the petitioner has arranged and produced musical recordings for various artists does not demonstrate that such recordings are nationally recognized as having major significance in the field of music. It has not been shown that the petitioner's musical collaborations enjoyed a significant degree of national recognition or were viewed by music critics or other recording artists as "contributions of major significance" to the industry. The petitioner's involvement in the production of various compact disc recordings will be further addressed below under the "commercial successes in the performing arts" criterion.

In this case, the petitioner has not submitted evidence showing that his work is widely recognized throughout his field as a major contribution. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed at the national or international level, we cannot conclude that it constitutes a contribution of major significance.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted evidence of his authorship of a seven-page article appearing in [REDACTED] but there is no evidence showing that this publication had substantial national or international readership. Without such evidence, there is no indication that this book qualifies as "major media." Nor is there any evidence of the field's reaction to the petitioner's article, or any indication that it is widely viewed as significantly influential.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

On appeal, the petitioner states: "Even though in my application there is not a direct evidence over my remuneration is of [sic] common sense to conclude that the remuneration I received for my work was higher in relation to others in the field: I was a full time professor in the University of Valle . . . ." The record, however,

includes no financial documentation (such as payroll records or income tax forms) showing the petitioner's actual earnings for any given period of time prior to the petition's filing date. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165. The plain wording of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." There is no evidence showing that the petitioner earns a level of compensation that places him among the highest paid composers, arrangers, conductors, or musicians in his country.

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

The petitioner submitted evidence of twenty compact disc recordings for which he worked as a producer, director, arranger, synthesizer, mixer, editor, or musician. This regulation, however, calls for commercial success in the form of "sales" or "receipts"; simply documenting the petitioner's involvement in the production of a musical recording cannot satisfy this criterion.

On appeal, the petitioner submits a letter from [REDACTED] Executive President of the National Promusica Foundation of Ginebra Funmusica in Valle, Colombia, stating that the petitioner directed various musical recordings in that organization's recording studio. He further states:

The following were the amounts of records sold:

[REDACTED] – 20 anos (Voice and Symphonic Orchestra Arrangements)	12,000 copies
[REDACTED] (Guitar Solist with accompaniment)	25,000 copies
[REDACTED] Contemporanea	9,000 copies
[REDACTED]	7,500 copies

The record, however, includes no evidence showing that the petitioner himself was primarily responsible for these sales rather than the performing musicians themselves. For example, there is no evidence showing that the petitioner's contracts for these recordings single him out for compensation equivalent to or greater than that of the main performers. Nor has the petitioner submitted evidence indicating that the above recordings were among the top sellers in their particular music category (as measured by ranking systems such as *Billboard* charts, for example). We find that the petitioner's evidence is not adequate to demonstrate a level of commercial success placing him at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2).

In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.