



U.S. Citizenship
and Immigration
Services

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FILE:

SRC 05 111 52356

Office: TEXAS SERVICE CENTER

Date: **SEP 14 2006**

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.

Mari Johnson

S 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. 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, counsel argues that the petitioner meets the “criteria required to classify him as an alien of extraordinary ability under 8 C.F.R. § 204.5(h)(3).”

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 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 March 10, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a Double Bassist.

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.

On appeal, counsel cites letters of support from several experts in the petitioner's field who assert that very few awards are made available to classical double bassists. For example, [REDACTED] Assistant Professor, Michigan State University School of Music, states that he knows of "very few awards for double bass players, as they play traditionally as part of an ensemble and not as soloists." While it may be true that "individual awards are seldom made available to classical bassists," the letters of support cited by counsel do not establish that nationally or internationally recognized awards are nonexistent for classical musicians such as the petitioner.

Nevertheless, counsel argues that the petitioner's acceptance into the Julliard School, his performances at distinguished venues such as Carnegie Hall (as part of an orchestral ensemble), and his participation in international music festivals (such as the Pacific Music Festival) are "equivalent to the garnering of an individual award."¹ The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence, but only if the ten criteria "do not readily apply to the beneficiary's occupation." In this case, the regulatory language precludes the consideration of comparable evidence, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation.

Regarding the petitioner's selection to participate in the Schleswig-Holstein Music Festival and the Pacific Musical Festival, we do not find that participation in such training programs limited to young musicians in the early stages of their career constitutes receipt of "nationally or internationally recognized prizes or awards for excellence in the field." An event program from the Schleswig-Holstein Music Festival states:

In 1987, under the patronage of the American Conductor Leonard Bernstein, the Orchestral Academy of the Schleswig-Holstein Music Festival (SHMF) was invented as an outstanding training opportunity for highly gifted young musicians The State Cultural Center at Salzau Castle became the home of the Orchestral Academy. Its creative atmosphere and rural seclusion offers perfect conditions for the intense musical work. Lectures about the works being performed complete the program in the summer.

The Orchestral Academy every summer sets up an international youth orchestra, the Festival Orchestra. More than 100 young musicians (age limit 26 years) from all over the world are given the opportunity to study and perform a wide range of orchestral literature with famous conductors. Before the beginning of the rehearsals with the respective conductor, the works are studied under the guidance of experienced teachers.

The petitioner also submitted two certificates issued by [REDACTED] Director of the Orchestral Academy, confirming the petitioner's acceptance to the Orchestral Academy of the Schleswig-Holstein Music Festival in 1996 and 2000, and reflecting that he participated in instructional "chamber music workshops."

¹ The evidence relating to the petitioner's ensemble performances and acceptance into Julliard will be addressed later in this decision.

An event program submitted by the petitioner confirms his selection as a 1998 Pacific Music Festival Academy participant. According to a document entitled "Audition," participation in the Pacific Music Festival was reserved for young musicians with promising talent "aged from 18 to 29." The petitioner was among 114 individuals accepted to participate in the "Orchestra Course."

The petitioner's participation in the Schleswig-Holstein Music Festival and Pacific Music Festival, while indicative of his talent as a young and promising musician, offers no meaningful comparison between the petitioner and musicians beyond their late twenties who had already completed their advanced instructional orchestral training. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. Participation in workshops and courses offered by the Orchestral Academy of the Schleswig-Holstein Music Festival and the Pacific Music Festival Academy is intended for amateur musicians seeking training opportunities rather than seasoned professionals in the petitioner's field of endeavor. The petitioner's involvement with the preceding academies' musical festivals (which exclude professional instrumental musicians beyond their late twenties) is not an indication of his sustained national or international acclaim, or that he "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

The plain language of this criterion requires evidence of "the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The record includes no such evidence. Therefore, the petitioner has not established that he meets this criterion.

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.

The petitioner submitted evidence of his membership in the International Society of Bassists. The record, however, does not include the membership bylaws or the official admission requirements for this organization. There is no evidence showing that admission to membership in this society required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

On appeal, counsel argues that the petitioner's acceptance in the Julliard School meets this criterion. The Julliard School, however, is an institution of higher learning rather than an association as contemplated by the regulations. The petitioner's enrollment in bachelor's and master's studies at this distinguished music school is not membership in an association in the field, but, rather training for a future career in his field.

The petitioner has not established that he meets this criterion.

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 or international 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.²

The petitioner submitted two brief articles appearing in the *New Jinshan Post* on June 14, 2000 and August 14, 2004 discussing his performances at the Jinshan Theater in Shanghai, China. The record, however, includes no evidence showing that this publication has substantial national readership.

The petitioner also submitted a letter from [REDACTED] who identifies himself as Chief Editor of a television program entitled "Touring Around the Artistic World" which appears on a "satellite channel" of the "Tianjin TV network." [REDACTED] states that his television program profiled the petitioner on October 2, 2004. The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), however, requires the submission of "published materials about the alien . . . in major media," rather than third-party letters attesting to the existence of such material. The letter from [REDACTED] cannot carry the same weight as the actual material (such as a complete transcript from the television program or a video recording of the program). Further, there is no evidence showing the amount of time this program devoted to the petitioner or the program's volume of viewership. The name of the broadcaster, Tianjin TV, suggests that the program was shown locally rather than nationally.

The petitioner has not established that he meets this criterion.

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

The petitioner submitted event programs from numerous performances in which he participated as an ensemble member. For example, the petitioner performed frequently at Carnegie Hall as a member of the New England Symphonic Ensemble. The petitioner also performed at Alice Tully Hall, which is located within the Julliard School building at Lincoln Center. This particular criterion, however, is more appropriate

² 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.

for visual artists (such as sculptors and painters) rather than for than for classical musicians such as the petitioner. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's musical performances are far more relevant to the "commercial successes in the performing arts" criterion. The petitioner has not established that he meets this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted evidence showing that he performed as a double bassist ensemble member for orchestras such as the Lyric Orchestra, New England Symphonic Ensemble, Cosmopolitan Symphony Orchestra, Southeastern Louisiana University Chamber Orchestra, Rapides Symphony Orchestra, Louisiana State University Orchestra, Baton Rouge Symphony, Camerata of Los Angeles, Jupiter Symphony Chamber Players, and Acadiana Symphony Orchestra. Aside from their own self-serving promotional material, there is no evidence showing that the preceding orchestras have earned distinguished national reputations in the same manner as (for example) the New York Philharmonic, Boston Symphony Orchestra, or Chicago Symphony Orchestra.

The petitioner must also demonstrate that he has regularly performed in a "leading or critical role" as an ensemble member. This requires the petitioner to submit evidence distinguishing himself from the other musicians in the aforementioned orchestras. According to an event program submitted by the petitioner, [REDACTED] (rather than the petitioner) was identified as the "Principal" bassist for the Lyric Orchestra. The petitioner submitted evidence showing that he has served as the principal bassist for the Louisiana State University Orchestra and the New England Symphonic Ensemble, however, as stated previously, there is no evidence showing that these orchestras have earned distinguished national reputations. Nor has the petitioner submitted evidence showing that he is the principal bassist in his current position with the Acadiana Symphony Orchestra.

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

A letter of support from [REDACTED] Executive Director, MidAmerica Productions, states:

The New England Symphonic Ensemble most recently performed at Carnegie Hall twice at the world famous Issac [sic] Stern Auditorium at Carnegie Hall in Manhattan, NY on Sunday June 12, 2005. The 2:00 PM show sold 1,600 tickets and the 8:00 PM show sold 1,200 tickets. [The petitioner] was essential to these pre-eminent, high-grossing performances as he has been in numerous other similar ones.

The petitioner also submitted information printed from Carnegie Hall's internet website stating that the Isaac Stern Auditorium "accommodates up to 2,804" people. Thus, the 2:00 p.m. show was only at 57 percent capacity and the 8:00 p.m. show was far below half capacity. In this case, the record includes no evidence of documented "sales" or "receipts" showing that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Further, the record includes no evidence showing that the preceding shows were promoted with the petitioner's name receiving top billing or that the popularity of the shows increased when the petitioner was known to be performing. Aside from the aforementioned deficiencies, the performances described by [REDACTED] came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). The petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Beyond the regulatory criteria, the petitioner submitted multiple letters of support attesting to his skill as a double bassist and the prestigious nature of the venues where he has performed as an ensemble member. While letters of support may place the evidence for the regulatory criteria in context, they cannot serve as primary evidence of the achievement required by each criterion. Pursuant to the statute and regulations, the classification sought requires documentary evidence of sustained national or international acclaim, and the petitioner cannot arbitrarily replace such evidence with attestations from the petitioner's colleagues, who assert that they find the petitioner's abilities to be extraordinary. Similarly, witness statements to the effect that the petitioner is widely acclaimed throughout the field have minimal evidentiary value without objective evidence from independent sources.

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.