



U.S. Citizenship
and Immigration
Services

02

[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: JUN 02 2008

IN RE:

Petitioner:

[Redacted]

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the requisite national or international acclaim.

On appeal, counsel submits a brief and additional evidence. Counsel initially asserts that the director's request for additional evidence, which mostly reiterated the regulatory standards for the classification sought, did not identify any of the deficiencies raised in the final decision. Nothing in the regulation at 8 C.F.R. § 103.2(b)(8) precludes the director from denying the petition based on deficiencies not specifically identified in the request for additional evidence, some of which may arise from a review of the evidence submitted in response to such a notice. Regardless, we will consider all new evidence submitted on appeal. Counsel's assertions regarding the petitioner's eligibility will be discussed in detail below. While not all of counsel's assertions are persuasive, the petitioner has met her burden in this matter.

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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 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 she 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 violinist. The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. The director concluded that the petitioner meets only the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vii). We will not withdraw that conclusion. Review of the evidence of record establishes that the petitioner also meets an additional two criteria.

Before addressing the regulatory criteria, we note that the record contains more than 50 letters from experts and other members of the field supporting the petition. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also 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)). Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Nevertheless, it bears mention that several members of the field with the highest credentials have written in support of the petition. For example, [REDACTED] asserts that he arranges songs for top caliber artists and has selected the petitioner to perform and record for [REDACTED] and [REDACTED] states that the petitioner "is recognized by everyone that I know as one of the United States' most talented violinists today."

Grammy Award-winning pianist as well as [REDACTED] asserts that he considers the petitioner to be "an exceptional violinist of the highest caliber" and notes that she has served as assistant concertmaster for the Philly Pops for selected presentations.

[REDACTED] a visiting professor of composition at the University of Texas at Austin, asserts that he knows of "no other musician that possess equal artistic talent as well as charisma and determination." He continues:

Rather than being content with her niche as the Principal Second Violin of the Philadelphia Chamber Orchestra, nationally a very reputable ensemble, she is in constant pursuit of more engaging ways of music-making, such as solo recitals, chamber music and solo performances with orchestras in different countries. She captivates as a recitalist and has been applauded by former Secretary of State Henry Kissinger at the 50th Anniversary Gala of the Foreign Policy Research Institute, as well as Presidents Ford and Carter at the Academy of Music event.

[REDACTED] asserts that the petitioner "is at least within the top five percent of young professionals in her field."

Letters from independent musicians carry more weight than letters from those who have worked closely with or taught the petitioner or letters from individuals within the Ukrainian community with no expertise in music. Moreover, the record would have been bolstered by objective evidence supporting some of the claims in the record, such as the petitioner's alleged sold-out performances at Carnegie Hall and her position as guest concertmaster for the Fresno Philharmonic.

Nevertheless, while the above letters would be insufficient had the petitioner not also submitted objective evidence demonstrating that she meets at least three of the regulatory requirements, the letters are consistent with a finding that the petitioner has enjoyed a career of acclaimed work as a violinist and, for that reason, bear mention.

For the reasons discussed below, we find that the petitioner meets the following two criteria in addition to the criterion identified by the director as being met.

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 several newspaper articles. Some of the articles are reviews that mention the petitioner only in passing and others appear in publications with a limited distribution. Nevertheless, we are satisfied that the petitioner has provided at least some articles that are primarily about her that have appeared in major media. For example, the record contains a lengthy article entirely about the petitioner in *Art-Postup*. Contrary to the director's conclusion that the record lacked evidence regarding the significance of this publication, the record contains evidence that the publication is Ukraine's seventh most visited newspaper. Thus, we are satisfied that the petitioner 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 her senior year at the Curtis Institute of Music, the petitioner served as [REDACTED] [REDACTED] concertmaster, the premier role for a violinist. The petitioner is currently [REDACTED] [REDACTED]. In addition, as confirmed by [REDACTED], the petitioner has served as assistant concertmaster for the Philly Pops. While several references assert that the petitioner has also served as guest concertmaster for the Fresno Philharmonic, the record contains no programs or letters from the group confirming this role.

The director concluded that the record lacked evidence that these roles were critical or leading to such an extent as to be indicative of sustained national or international acclaim. We disagree. Both concertmasters and principal second violinists are credited as such in the various programs in the record. It is clear from the letters that these are roles for which the violinist must audition and for which they are formally selected. The union material in the record reveals that both roles must be compensated above the regular compensation for a concert violinist. [REDACTED] confirms that principal second violinist is "second in the orchestral hierarchy to the concertmaster."

While the petitioner's role in a student orchestra, even at a prestigious music institution, has limited evidentiary value, we are persuaded that her roles for [REDACTED] and the [REDACTED] both of which have documented distinguished reputations, serve to meet this criterion.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that she has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in her field of expertise. The petitioner has established that she seeks to continue working in the same field in the United States. The petitioner has established that her entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.