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U.S. Citizenship
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Services

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FILE:

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OFFICE: NEBRASKA SERVICE CENTER

Date: FEB 09 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 that 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 argues that he meets at least three of the regulatory criteria at 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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) 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, 60898-99 (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 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 sustained national or international acclaim at the very top level.

This petition, filed on August 16, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a pianist. The petitioner submitted a November 10, 2007 letter from [REDACTED]

President, Queens New York School of Music (QNYSM), stating that the petitioner has worked there as a teacher since June 2007.¹ The petitioner's employment with the QNYSM post-dates the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Subsequent developments in the petitioner's career cannot retroactively establish that he was eligible as of the petition's filing date. Accordingly, the AAO will not consider the petitioner's work for the QNYSM in this proceeding.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria.²

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 diploma and a medal reflecting that he received 4th Prize at the 5th Annual Konzertrum International Piano Competition in Markopoulon, Greece (1999). In response to the director's request for evidence, the petitioner submitted an internet listing of Greek piano competitions reflecting that participation in the 12th Konzertrum International Piano Competition is limited to entrants age 35 and younger. On appeal, the petitioner submits regulations for the 6th Konzertrum International Piano Competition which indicate that the competition "is open to pianists . . . not above the 36th year of age." The petitioner also submits a letter from Professor Emanuel Krasovsky, Piano Faculty, Tel Aviv University, and jury member of the 5th Annual Konzertrum International Piano Competition, stating: "In the adult category (till 32 years of age), the international jury awarded [the petitioner] of Georgia the fourth prize." The petitioner's appellate submission also includes a November 7, 2007 letter from another jury member of the competition, Professor Tengiz Amiredjibi, Piano Department Chair, Tbilisi State Conservatory. Professor Amiredjibi's letter states: "The competition consisted of three rounds, in which high level participants from 10 different countries (aged 24-32) took part."

¹ We note that the petitioner is not listed among the faculty in the QNYSM brochure submitted by him. Further, the petitioner is not listed among the faculty on the QNYSM's internet site. See <http://www.qnys.org/faculty.htm>, accessed on January 26, 2009, copy incorporated into the record of proceeding.

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

We note that the age limit specified in the internet listing of Greek piano competitions and the regulations for the 6th Konzertheum International Piano Competition contradict the age limit specified in the preceding letters from jury members. 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).

With regard to prizes won by the petitioner in age-restricted competition, we do not find that such prizes indicate 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). There is no indication that the petitioner faced competition from throughout his field, rather than limited to his approximate age group within the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.³ Likewise, it does not follow that a musician who has had success in competition restricted to pianists age 35 and under should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Further, the petitioner has not submitted evidence showing that his fourth prize constitutes a nationally or internationally recognized prize for excellence in his field of endeavor. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s award be nationally or internationally *recognized* and it is his burden to establish every element of this criterion.

In an August 4, 2007 letter responding to the director’s request for evidence, the petitioner asserts that he won “second prize” at the 2nd International Piano Competition in Tbilisi, Georgia in October 2001. On appeal, the petitioner submits the brochure for the “Second Tbilisi International Piano competition 2001.”⁴ While this brochure reflects that the petitioner was a participant in the competition, there is no evidence showing that he received “second prize” or that his prize was nationally or internationally recognized. 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

³ While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

⁴ On page 13 of the brochure, the competition rules state: “The Competition is open to pianists of all nationalities born between October 19, 1970 and October 8, 1985.” Thus, the competition was limited to young participants age 16 to 31.

(Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, there is no evidence from the competition organizers demonstrating that the petitioner received a prize at the Second Tbilisi International Piano competition in 2001.

The petitioner's August 4, 2007 letter states that he "was the recipient of President's scholarship." In support of his statement, the petitioner submitted a 2001 certificate stating: "[The petitioner] is an Exhibitioner of the President of Georgia." The record does not include information regarding the significance of the "President's scholarship" or being an "Exhibitioner of the President." There is no evidence showing that the petitioner's certificate is a nationally or internationally recognized prize or award for excellence in his field of endeavor.

In light of the above, 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. Further, 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 a February 12, 2007 letter from the Chairman of the Georgian Composers' Union stating that the petitioner was a member of the organization from 1999 to 2006. The record, however, does not include evidence (such as membership bylaws or official admission requirements) showing that this organization requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one. As such, the petitioner has not established that he meets this criterion.

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.

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.⁵

The petitioner submitted a 1999 article in *Musika* entitled “Yesterday, Today, Tomorrow. . .” The English language translation of this article was incomplete. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. Without a full English language translation of the article, it cannot be determined that the article was about the petitioner. The plain language of this regulatory criterion requires that the published material be “about the alien” relating to his work in the field. An article that only mentions the petitioner’s name in passing does not meet this requirement. The petitioner also submitted an English language translation for a March 31, 1988 article in *Sakhalkho Ganatleba*, but a copy of the original article was not submitted. There is no indication that the English language translation of the article was complete as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, according to the English language translation submitted by the petitioner, the article was about a “Music Week of Children and Youth” held by his school rather than being primarily about him. The petitioner also submitted an article about him in *Dro* entitled “Discovery. . .” The date of this article was not provided as required by the plain language of this regulatory criterion. Further, there is no evidence (such as circulation statistics) showing that *Musika*, *Sakhalkho Ganatleba*, and *Dro* qualify as professional or major trade publications or some other form of major media.

In light of the above, the petitioner has not established that he meets this criterion.

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

The petitioner submitted several letters of recommendation praising his talent as a pianist. Talent in one’s field, however, is not necessarily indicative of artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field.

[REDACTED] of the Tbilisi V. Sarajishvili State Conservatoire, states: “[The petitioner] is a pianist of romantic type, his sound is tender, his spirits volcanic, his technique virtuoso. His unique scenic attractiveness charms the audience, his performance is always sincere, deliberate and perfect.”

[REDACTED]. Paliashvili 2nd Music College, states: “[The petitioner] is richly and notably talented young musician-performer. His piano playing was distinguished by virtuoso technique and

⁵ 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, for instance, cannot serve to spread an individual’s reputation outside of that county.

range, matchless taste, dynamism and bright artistry which was attracting audience and made them remember him for a long time.”

██████████ Professor of Piano, DePaul University School of Music, states: “[The petitioner’s] talent is truly outstanding and his extraordinary music abilities impress audiences and music experts alike. He is an exceptional musician of the highest caliber and will be a valuable asset to the musical community of our country.”

██████████ Piano Professor, College of Music, Michigan State University, states: “[The petitioner] is without a doubt an artist of the highest caliber. He possesses an extremely large active repertoire and has maintained a regular roster of concert engagements.”

██████████ Chairman of the Georgian Composers’ Union, states: “Members of the Georgian Composers’ Union and its Management are pretty sure of his creative potential and hope that thanks to his activity as a pianist he will lead his way in any country and be a successful artist.” Similarly, ██████████, Faculty Member, Manhattan School of Music, states: “As a person who comes in contact with many outstanding pianists, I can confidently state that [the petitioner] has tremendous potential in this field.” Such statements indicate that the very top of the petitioner’s field is a level above his present level of achievement. 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. *See* 8 C.F.R. § 204.5(h)(2).

The letters of recommendation submitted by the petitioner discuss his talent as a pianist, musical performances, and educational training, but they fail to demonstrate that he has made original contributions of major significance in the field. These letters do not include a substantive discussion as to which of the petitioner’s specific achievements constitute original artistic contributions of major significance in his field of endeavor. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. While the petitioner has earned the respect and admiration of those offering letters of support, there is no evidence demonstrating that his work has had major significance in the field. For example, the record does not indicate the extent of the petitioner’s influence on other pianists nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. Thus, the content of the experts’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of

an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a pianist who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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 music programs and promotional material reflecting that he has performed at venues such as the Millennium Theater in Brooklyn, Cathedral of the Holy Virgin Protection in New York, and the Armenian Church of the Holy Ascension in Trumbull, Connecticut. There is no evidence showing that these performances were consistent with sustained national or international acclaim at the very top of his field. Nevertheless, the plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for pianists such as the petitioner. In the performing arts, national or international acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial national or international 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 at 8 C.F.R. § 204.5(h)(3)(x).

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 a letter from the QNYSM stating that he has worked there as a piano teacher since June 2007. As discussed, the petitioner's employment with the QNYSM post-dates the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's role for the QNYSM in this proceeding.

The petitioner submitted a letter from
and Culture, stating:

Artistic Manager, Tbilisi Centre of Music

This is given to a young Georgian pianist [the petitioner] to certify that in 2001-2006 he was a soloist of the Tbilisi Centre of Music and Culture. He was delivering concerts together with the Tbilisi symphony orchestra under leadership of a prominent Georgian conductor [redacted] and was performing famous works of the world piano classical music in both the symphonic and solo programs.

The staff of the Tbilisi Centre of Music and Culture strongly believes in his creative potential....

The record does not include supporting evidence showing that the Tbilisi Centre of Music and Culture and the music schools for which the petitioner has worked (such as the Z. Paliashvili 2nd Music College) have a distinguished reputation. As stated previously, 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. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). Nor is there evidence demonstrating how the petitioner's role differentiated him from the other musicians and faculty members employed by the preceding organizations. The petitioner has not established that he was responsible for his employers' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

In light of the above, the petitioner has not established that he meets this criterion.

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

On appeal, the petitioner submits a November 10, 2007 letter [REDACTED] President, Amirani International Inc., stating: "We arranged piano solo recital of Merab Ebralidze in May 2008 at Carnegie Hall." This solo recital post-dates the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the recital in this proceeding.⁶

This regulatory criterion calls for evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner participated in various concerts or competitions cannot meet the plain language of this criterion. The record does not include evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of his field. For example, there is no indication that the petitioner's performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Nor is there evidence showing, for example, that the petitioner's musical recordings generated substantial national or international sales.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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

⁶ Nevertheless, the petitioner's solo recital is not listed among the performances in Carnegie Hall's May 2008 schedule. See http://www.carnegiehall.org/textSite/box_office/events/cal_2007-2008_5.html, accessed on January 28, 2009, copy incorporated into the record of proceeding.

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 a 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.