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U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUL 08 2009
SRC 07 800 26028

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:

[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.

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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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). 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. Specifically, the director concluded that the petitioner meets one of the ten regulatory criteria, of which an alien must meet at least three.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director’s decision. While we will not withdraw the director’s favorable finding regarding artistic displays of the petitioner’s work, we note that even the evidence submitted to meet that criterion is not consistent with *sustained* acclaim in July 2007 when the petition was filed.

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, 60898-9 (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 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 seeks to classify the petitioner as an alien with extraordinary ability as a musician and singer. 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.

At the outset, we note that while the petitioner indicated on Part 2 of the petition that he was seeking classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, counsel's initial cover letter begins by discussing the criteria for a "National Interest Waiver," which allows a petitioner to seek a waiver of the job offer (and alien employment certification process) when seeking classification as an alien of exceptional ability or member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Act. Counsel cites a non-precedent decision that is not binding on USCIS officers and *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Comm'r. 1998), which dealt solely with section 203(b)(2) of the Act. Counsel then, however, explained how the petitioner meets the regulatory criteria for classification pursuant to section 203(b)(1)(A) of the Act, the classification checked on the Form I-140 petition.

On November 19, 2007, the director advised counsel that the petition was marked as a petition seeking classification pursuant to section 203(b)(1)(A) of the Act. In response, counsel focused on the regulatory requirements for classification as an alien of extraordinary ability pursuant to that section but twice referenced the "National Interest Waiver." The director adjudicated the petition under section 203(b)(1)(A) per the designation on Part 2 of the petition. On appeal, counsel no longer references the "National Interest Waiver." We reiterate that the waiver of the job offer and alien employment certification has no relevance to section 203(b)(1)(A) of the Act, a classification that inherently does not require either a job offer or alien employment certification. Rather, Congress only provided for a waiver of the job offer in the national interest in relation to section 203(b)(2) of the Act, covering aliens of exceptional ability and members of the professions holding an advanced degree.

The director properly adjudicated the petition under the classification specified on the Form I-140 petition. Counsel's apparent confusion between two separate classifications does not require multiple adjudications on the part of USCIS. The initial filing fee for the Form I-140 covered the cost of the director's adjudication of the I-140 petition. Pursuant to section 286(m) of the Act, 8 U.S.C. § 1356, USCIS is required to recover the full cost of adjudication. In addition to the statutory requirement, Office of Management and Budget (OMB) Circular A-25 requires that USCIS recover all direct and indirect costs of providing a good, resource, or service.¹ If the petitioner also seeks to classify himself as an alien of exceptional ability pursuant to section 203(b)(2) of the Act with a waiver of the

¹ See <http://www.whitehouse.gov/omb/circulars/a025/a025.html>.

job offer in the national interest, then he must file a separate Form I-140 petition requesting the new classification.

In light of the above, we will adjudicate the appeal pursuant to the statute and regulations relating to the alien of extraordinary ability classification under section 203(b)(1)(A) of the Act. The petitioner has submitted evidence that, he claims, meets the following criteria relevant to this section.²

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

Initially, counsel asserted that the petitioner's honors, awards and distinctions serve to meet this criterion. The director's request for additional evidence noted that the "awards" constituted certificates of appreciation and could not serve to meet this criterion. Counsel's response no longer asserted that the petitioner meets this criterion. As such, the director did not address this criterion in the final decision. On appeal, counsel does not explicitly assert that the petitioner meets this criterion, but resubmits the certificates of appreciation (in addition to a new one that postdates the filing of the petition). The new certificate will not be considered as it does not relate to the petitioner's eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

The majority of the certificates express appreciation for the petitioner's participation in cultural events as a performer. They are not nationally or internationally recognized prizes or awards for excellence.

The record does contain a 2002 Saraswoti Award issued by the Foundation of Nepalese in America (FNA) for "the many contributions made by you in enriching the Nepali Arts, Culture and Heritage in Nepal and Abroad." An article about the FNA-organized event to celebrate the Nepali King's birthday in New York states that FNA issued the Saraswoti Award "to various artists, professional and sportsman who had made many contributions made in enriching Nepali arts, culture and heritage in Nepal and abroad who have helped promote the prestige and image of Nepal and the Nepali people."³ The article then lists seven individuals who received the award. According to this article and the award certificate itself, the awards were at least in part in recognition of the awardees' community and social work. The petitioner has not demonstrated that this award was issued in recognition of excellence in music as opposed to work with the community. Moreover, the record lacks evidence that this award, issued by a New York foundation at a New York event, is recognized nationally. Moreover, an award limited to Nepalese musicians residing in the United States is not indicative of or consistent with national acclaim in either Nepal or the United States. More specifically, the most acclaimed Nepali musicians in Nepal and the most acclaimed musicians in the United States, regardless of ethnicity, are precluded from consideration. Rather, at best, the Saraswoti Award demonstrates the petitioner's recognition among those Nepalese residing in the New York area.

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

³ Grammar as it appears in the original.

The petitioner also submitted a letter from the *Nepal Samachar*, a U.S. Nepali newspaper, advising the petitioner that he has been “nominated to honor with the ‘Shrasta Honor Award.’” The letter further indicates that the award honors “those personalities who have greatly contributed in the development of Nepalese Music, Art, Journalism & Literature living in [the] United States.” First, it is not clear whether the petitioner actually received this award. A nomination is not an award or prize. Second, as with the FNA Saraswoti Award, an award limited to a small ethnic group residing in the United States is not evidence of national or international acclaim either in the United States or the home country of that ethnic group.

Finally, the petitioner submitted a 1991 “honor letter” issued by the Kathmandu Jaycees at the “Shikhar Saanjh” cultural program. The record contains no evidence as to the standards for this honor or the pool of competitors. Moreover, an honor from 1991 cannot establish the petitioner’s sustained acclaim 16 years later in 2007 when the petition was filed.

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 response to the director’s request for additional evidence, counsel asserted that the petitioner’s “long affiliation” with the Royal Nepal Academy serves to meet this criterion. The director concluded that the record lacked evidence that the academy requires outstanding achievements for membership.

The director also acknowledged the petitioner’s memberships in the Music Association of Nepal, the Film Artists Association of Nepal, the Tamang Society of America and the Association of Nepalis in the Americas. The director concluded, however, that the record lacked evidence that any of these associations requires outstanding achievements of their members.

On appeal, counsel focuses on the Royal Nepal Academy, asserting that it holds “a national prominence along the lines of the American Academy of Arts and Sciences,” and is an institution of the “highest caliber” and not a “casual endeavor.” Counsel asserts that recent “political upheaval” has resulted in the renaming of the academy and the disappearance of the academy’s website. Counsel asserts that these recent developments preclude obtaining the academy’s bylaws or other concrete evidence of the academy’s membership criteria.

The first issue is whether the petitioner has even established that he is a “member” of the academy. [REDACTED], a former music director at the academy asserts that the petitioner worked for a long time in the music department. [REDACTED] President of the Literary Journalist Association in Nepal, asserts that the petitioner was “affiliated with [the] Royal Nepal Academy for a long time” and asserts that the academy is selective of its employees, suggesting that petitioner was merely an

employee of the academy. the Administration Chief of the Music Department of the academy asserts that the petitioner was “a” music director at the academy from 1988 to 1996. A job, even a faculty position at a competitive institution, is not a membership. For example, the National Academy of Sciences employs individuals who are not elected members of this elite and exclusive institution. The petitioner also submitted his student transcript from the academy. Students are not “members” of the institutions where they study. In light of the above, the petitioner has not established that he is a member of the academy.⁴

The second issue is whether the petitioner has established that “membership” in the academy is qualifying. The petitioner submits evidence regarding the academy’s mission and history as well as its own distinguished reputation. We acknowledge that the academy has a long and distinguished history and is discussed in the United Nations Educational, Scientific and Cultural Organization (UNESCO) Kathmandu Office publication “The Intangible Cultural Heritage of Nepal: Future Directions.” Not every association with a distinguished reputation for promoting culture has exclusive membership requirements. It is the petitioner’s burden to demonstrate that the “association” of which he claims to be a member requires outstanding achievements of its members. We acknowledge that the Internet materials provided by the petitioner indicate that one of the academy’s objectives is to offer life and honorary memberships to distinguished scholars, artists and organizations. The record does not elaborate on what constitutes “distinguished” or establish that membership selection is judged by nationally or internationally recognized experts in the field. Regardless, the petitioner has not established that he is a life or honorary member.⁵ Specifically, ██████████ President of the Music Association of Nepal, asserts that the petitioner is a member of that association, not the academy. The record contains no evidence regarding the association’s membership criteria.

In light of the above, 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.

The director concluded that the published material submitted to meet this criterion appeared in publications aimed at a Nepali audience in the United States and noted that some of the material was not “about” the petitioner as required in the regulation at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, counsel notes that the statute only requires national acclaim and asserts that the petitioner enjoys “sustained national acclaim in Nepal and in the Nepalese community here in the United States.” Counsel also notes that an additional article about the petitioner was published after the date of filing.

⁴ The academy’s website, www.nepalacademy.org.np, actually lists the academy’s 14 honorary members and 22 lifetime members. See www.nepalacademy.org.np/honorary_members.php and www.nepalacademy.org.np/life_members.php (accessed on June 26, 2009 and incorporated into the record of proceedings). The petitioner’s name does not appear on either list.

⁵ As stated in the previous footnote, the academy’s website does not list the petitioner as either a life or honorary member.

This new article does not relate to the petitioner's eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner has submitted a 2006 article about the petitioner in *Vishwa Sandesh*, a 1997 article on Nepali artists in New York that mentions the petitioner in *Desi Talk*, an undated article about the petitioner in *Nepal Khabar*, what appears to be a 1999 review of a Nepali movie produced in the United States crediting the petitioner as the music director in *Diyalo*, a 2005 article about Prem Raja Mahat that mentions the petitioner as another participant at the National Folksong Event in Virginia in *Nepali Aawaz* and a 1998 article in the *Asia Observer* reviewing a Nepali movie and crediting the petitioner as the Music Director.

We concur with the director that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be about the petitioner and that material about events he attended or movies on which he worked are insufficient. Moreover, counsel is not persuasive that coverage in U.S. based Nepali newspapers is indicative of national acclaim in Nepal. Recognition among the Nepali community in a handful of U.S. cities is not the same as national acclaim in Nepal.

The petitioner submitted a letter from the Managing Director of *Vishwa Sandesh* advising that the paper is a "popular biweekly Nepali newspaper" published in the Washington, D.C. area. The letter asserts that the paper is distributed "in all major cities of [the United States, United Kingdom, Nepal, Canada and many more countries in our Nepali communities." The letter does not provide the actual circulation numbers. Moreover, the paper began publishing only a few months before the article about the petitioner appeared. Its distribution at that time is unknown. The article on the Nepali media boom in North America in the *Nepal Monitor*, submitted by the petitioner, indicates that the newspaper "may soon begin to look like small-scale entrepreneurial efforts" and has "begun to cultivate small advertising clientele." The record simply does not establish that this publication constitutes major media.

Desi Talk boasts 17,000 readers in the New York area. Such distribution is not consistent with major media. *Nepal Khabar Diyalo* is a free monthly magazine "for the Indian community" distributed only in Georgia, Alabama, Tennessee and South Carolina. Once again, this distribution is not consistent with major media. *Diyalo* now claims that it has grown into a "major international publication." The record contains no evidence of the publication's 1999 distribution. Even if the newspaper constituted major media in 1999, the article in this paper was not "about" the petitioner. *Nepali Aawaz* is a free publication that claims distribution in 10 U.S. states, Canada and Nepal. The *Nepal Monitor* article states only that *Nepali Aawaz* "is widely popular among Nepali New Yorkers." According to a book chapter on Indian media submitted by the petitioner, the *Asia Observer* is one of several Indian publications in the United States. The chapter does not specify the distribution or the circulation of the paper or provide other information suggesting that the paper constitutes major media.

Finally, we acknowledge that the petitioner submitted a 1999 article in the Queens Edition of *Newsday*. The article is about a VH1-organized Sherpa concert on the roof of the World Trade Center. The

petitioner is mentioned as the guitarist. The article is not about the petitioner and the record contains no evidence that the Queens edition of *Newsday* is nationally circulated or can otherwise be considered major media.

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

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.

Counsel asserted that the petitioner meets this criterion for the first time in response to the director's request for additional evidence. The record contains a letter from [REDACTED], Administrative Chief of the Royal Nepal Academy advising that the petitioner was a member of the judging committee of the National Music and Dance Festival in 1994, 13 years before the petition was filed. In addition, the petitioner submitted letters affirming that he served on a judging committee for the Academy of Nepali Poets and Writers in Washington, D.C. in 2004 and the Dashain Festival in New York in 2003.

The director concluded that this evidence did not demonstrate how the petitioner's selection as a judge was attributable to his extraordinary ability. On appeal, the petitioner submits letters asserting that he was selected as a judge based on his expertise in Nepali music.

At issue is whether the petitioner's work as a judge is indicative of or consistent with sustained national or international acclaim. The petitioner's service as a judge for the Royal Nepal Academy predates the filing of the petition by 13 years and, by itself, cannot be considered evidence of sustained national or international acclaim. The petitioner's subsequent service as a judge was limited to Nepali-American groups which is not indicative of his wider acclaim in the United States or in Nepal as a whole.

Without additional evidence of the national significance of the festivals the petitioner judged in the United States, the petitioner cannot demonstrate that he meets this criterion. Even if we concluded that the petitioner does meet this criterion, and we do not, the petitioner falls far short of meeting the necessary three criteria.

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

Initially, counsel asserted that the petitioner had made "significant contributions in the area of music" but does not identify any specific contribution. In response to the director's request for additional evidence, counsel asserted that the published materials about the petitioner's talents and accomplishments, his affiliation with the Royal Nepal Academy, the certificates of appreciation and the submitted compact discs and digital video discs (DVDs) serve to meet this criterion.

The director concluded that the petitioner had not demonstrated how he had made original contributions that had impacted the music field as a whole. On appeal, counsel reiterates that the

petitioner submitted published materials and certificates of appreciation. Counsel further notes that the petitioner submitted samples of his recorded music. Counsel asserts that the petitioner has never claimed to meet the commercial success criterion set forth at 8 C.F.R. § 204.5(h)(3)(x), but that meeting that criterion is not necessary. Finally, counsel notes the submission of reference letters praising the petitioner's talent.

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. To be considered a contribution of major significance in the field of music, the contribution must have had a demonstrable impact on the field as a whole.

The published material has already been considered pursuant to the criterion relating to such evidence, set forth at 8 C.F.R. § 204.5(h)(3)(iii). We will not presume that evidence directly related to but insufficient to meet that criterion must be considered sufficient to meet this criterion. None of the published material addresses how the petitioner has impacted the field of music as a whole.

The certificates of appreciation have also been considered under the awards criterion, set forth at 8 C.F.R. § 204.5(h)(3)(i). As explained above, these certificates merely express appreciation for the petitioner's participation in cultural events. None of these certificates suggest that the petitioner has impacted the field of music as a whole.

We acknowledge the submission of the petitioner's original work. While original, the petitioner has not demonstrated that this work constitutes a contribution of *major significance*. USCIS does not make subjective determinations of talent and skill. Rather, the standard for the classification sought is national or international acclaim as demonstrated through extensive evidence. While the petitioner submitted reference letters attesting broadly to the petitioner's skill and talent, skill and talent are not, by themselves, contributions of major significance. The letters do not identify specific contributions or explain how those contributions have impacted the field as a whole.

_____, President of the Association of Nepalis in the Americas, asserts that the petitioner served the Royal Nepal Academy for 15 years. While the academy may be a national institution, _____ does not explain how the petitioner's work with the academy has impacted the field as a whole. Mr. _____ further asserts that the petitioner has "contributed to both state run Television and the Radio." _____ does not elaborate and this assertion is too vague to determine the nature of the contribution or how it may have impacted the field of music in Nepal. _____ also notes that the petitioner worked on a Nepalese feature film as music director. The fact that the petitioner secured employment in his field does not constitute a contribution of major significance. The record contains no evidence that the music in this film has had a major impact on the music industry in Nepal or the United States. _____ Museum Educator at the Rubin Museum of Art in New York, asserts that there are few people in the United States that play the Tungna (the Nepali instrument played by the petitioner) and requests that the petitioner be permitted to "continue making his unique creative musical contributions

toward world arts and culture.” We will not presume that every musician who plays an ethnic instrument rarely played in the United States has made a contribution of major significance to the field of music.

The remaining letters merely contain broad, generalized assertions of acclaim, prominence and talent without identifying specific contributions and explaining how those contributions have impacted the field.

Without more specific information explaining how the petitioner has impacted the field of music at a national level, we cannot conclude that the petitioner meets this criterion.

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

The director concluded that the petitioner meets this criterion and we will not withdraw that finding. That said, we note that performing is inherent to the performing arts and that the petitioner’s most significant concerts, such as his World Trade Center roof concert filmed by VH1,⁶ predate the petition by several years.

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

Counsel raised this criterion for the first time in response to the director’s request for additional evidence. Counsel asserts that the petitioner’s “long affiliation” with the Royal Nepal Academy and his role as a founding member of the Dance Theater of Nepal in New York serve to meet this criterion. The director only considered the petitioner’s role with the Dance Theater of Nepal and concluded that the petitioner provided no evidence of the reputation of the theater.

On appeal, the petitioner submits evidence relating to the Dance Theater of Nepal. In addition, counsel asserts that the petitioner’s role with the Royal Nepal Academy should also serve to meet this criterion.

The record contains two letters from [REDACTED] Projects Advisor of the Dance Theater of Nepal. [REDACTED] asserts that the petitioner founded the troupe in 1997 and that it has since performed in many museums, schools, colleges, cultural and arts centers and official settings throughout New York and beyond. [REDACTED] asserts that the troupe receives grants and has a collection of work archived with the Lincoln Center. The petitioner submits reviews of the troupe’s performances. The reviews appear to be in local New York newspapers.

The petitioner also submitted a page from the troupe’s website, www.dancetheaterofnepal.org, stating that the troupe actually began performing in 1996 and was initially known as the Raj Kapoor Ensemble. This information is inconsistent with the assertions of [REDACTED]

⁶ The published material about this concert strongly suggests that VH1 selected Sherpa musicians for this performance based on their reputation for high altitude tolerance.

The petitioner has not demonstrated that grants are a unique means of income for nonprofit cultural groups such that the grants received by the Dance Theater of Nepal are indicative of its distinguished reputation nationally. The media coverage of the troupe all appears to be local. The record simply does not confirm the troupe's distinguished reputation nationally such that the petitioner's role with the troupe can be considered indicative of or consistent with national or international acclaim.

The record suggests that the petitioner was previously a music director with the Royal Nepal Academy. We do not question the nationally distinguished reputation of the academy. At issue is whether the petitioner performed a leading or critical role for the academy and whether that evidence is indicative of or consistent with sustained national or international acclaim in 2007 when the petition was filed. The record contains letters from another former music director, suggesting the academy may employ more than one music director at any given time. The petitioner did not submit an organizational chart or similar evidence explaining how the role of music director fits into the academy's hierarchy.⁷ Regardless, the petitioner's role with the academy ended in 1996, 11 years before the petition was filed. Thus, his role with the academy is not indicative of or consistent with national or international acclaim in 2007, when the petition was filed.

The record also contains an uncertified translation of what appears to be an article naming the petitioner as an active founding member of New York Kola Mancha. The record contains no evidence regarding the national reputation of this organization.

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

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a musician and composer 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 indicates that the petitioner shows talent as a musician and composer with some degree of recognition in Nepal in the mid 1990's, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Finally, the regulation at 8 C.F.R. § 204.5(h)(5) provides:

⁷ The academy's website, www.nepalacademy.org.np, contains a downloadable "Academic Structure Chart" which lists a vice chancellor overseeing an academy council, which oversees the academic departments, one of which is Drama and Music. The Department of Music, Dance and Film has an Academician/Coordinator overseeing an advisory committee and subcommittees. It is not clear where music directors fit within this hierarchy.

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The director noted the petitioner's claim to have worked "odd jobs" and concluded that the petitioner had not demonstrated that he would continue to work in his field of expertise. On appeal, counsel asserts that the "odd jobs" were music related. The petitioner submits a letter from ██████████ President of Yeti Japanese and Nepalese Cuisine, asserting that the petitioner has been a featured musician at the restaurant. The petitioner also submits a contract with a Nepali recording company, but does not explain how this represents a contract for U.S. employment. While we withdraw the director's concerns that the petitioner would not continue in his field of expertise, we note that the level at which the petitioner has been working is certainly consistent with our finding that he has not demonstrated national or international acclaim. While counsel asserts on appeal that not all artists are commercially successful, and we acknowledge that a performing artist need not meet that criterion provided he meets three others, the statute does require sustained national or international acclaim rather than requiring a subjective analysis of talent.

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.