

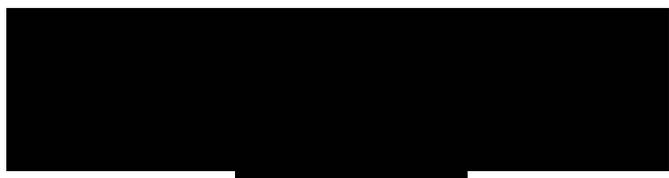
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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 04 2009
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IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

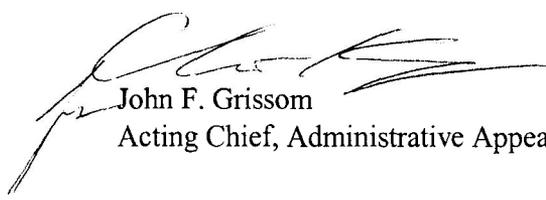
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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 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 of the beneficiary 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 that the petitioner had not established that the beneficiary had the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director applied incorrect standards in denying the petition.

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

This petition, filed on November 30, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a Public Relations Specialist to Elan, a pop 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, 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 the beneficiary's 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 beneficiary 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).

Each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply. Thus, the beneficiary's eligibility will be evaluated under the regulatory criteria relating to the immigrant classification as claimed by the petitioner. The petitioner does not assert that the beneficiary meets any criteria not discussed below.

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

The petitioner did not provide any evidence for this criterion, either initially or in response to the director's Request for Evidence ("RFE"). On June 13, 2008, the director in his decision found that the record did not contain evidence for this criterion. On appeal, however, the petitioner provided an uncertified letter, dated June 16, 2008, from the Fermatta Academy of Music, stating that the beneficiary was selected to receive the "Ibero-American Award in honor of educational excellence 2008." It appears the beneficiary was awarded with this honor after she filed her petition on November 3, 2007. As a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In addition, the letter was not accompanied by a certified translation as required by the regulation at 8 C.F.R. § 103.2(b)(3).

We find the evidence submitted on appeal does not satisfy this criterion. Specifically, in addition to the above-detailed deficiencies, the petitioner also failed to provide documentation about the award received by the beneficiary, such as evidence regarding the awards' prestige, selection process or candidates that the beneficiary was competing against. Without such information, the petitioner failed to establish the national or international recognition of this award.

In light of the above, the petitioner has not established that the beneficiary 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 petitioner initially submitted the copies of Elan's album covers, which credit the beneficiary for "production coordination." The petitioner also provided various articles and reviews about Elan, which the index stated the beneficiary "arranged" for Elan. The reviews were from websites including amazon.com and three other websites which cannot be identified because the web address was cut off at the bottom of the page. The petitioner provided an article that was purportedly published in the *Los Angeles Times*, however the actual article submitted came from a website entitled calendarlive.com. Although the first page of the original article from the *Los Angeles Times* appears to have been submitted, it cannot be confirmed as the name and date of the publication were not written anywhere on this page. Two additional articles were provided from an internet source also without the internet link referenced on the bottom of the page, presumably from a website entitled Undercover. Additional articles submitted were published in the *Reporter of Guadalajara*, *Gene Simmons Tongue*, *San Diego Weekly Reader*, answers.com, wikipedia.com, and billboard.com. None of these articles or reviews even mentioned the beneficiary.

Despite the director's RFE finding that there was not sufficient evidence to fulfill this criteria, the petitioner did not provide any new evidence in response to the RFE. In his decision, the director found that the initial evidence provided failed to satisfy this criterion as the articles were not about the alien, and were also not published in major trade publications or other major media. Further, no new evidence was provided on appeal.

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulation, 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.¹

The petitioner failed to submit evidence to establish that the articles submitted were published in a professional or major trade publication or other major media, if published at all. Most of the articles submitted were published on the Internet. We note that in today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. We are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication is a form of "major media." The petitioner must still provide evidence, such as, a widespread readership or overall interest in the publication in order to demonstrate that the

¹ 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.

publication is a professional or major trade publication or a form of major media in order for us to credit these articles.

Additionally, while the album covers briefly mention the beneficiary's name, they are not published material about the beneficiary. Moreover, none of the articles or reviews provided even mentions the beneficiary, and they do not relate to her work. The articles all discuss Elan, the pop star, and do not discuss the beneficiary's role as a public relations specialist. Moreover, many of the articles and reviews provided fail to include the publication name and date, both required by 8 C.F.R. § 204.5(h)(3)(iii).

For all of the above stated reasons, the petitioner failed to establish that the beneficiary 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 provided several letters of recommendation as evidence for this criterion including:

1. A letter dated November 12, 2007 from Matthew Rifat, an entertainment attorney, stated that the beneficiary is "caring, patient, capable at public relations and precise in handling a large volume of work."
2. A letter dated October 30, 2007 from [REDACTED], a director at Fermatta Music Academy, wrote the beneficiary's "involvement with Elan's career has been truly helpful and the results are very visible in [REDACTED] international operations."
3. A letter dated October 29, 2007 from [REDACTED], a Senior Director at Reaccion Media, stated that the beneficiary is "one of the best artist relations and personal assistants I've personally interacted with." She also wrote, "I dare to say she is one of the best in her line of work."
4. A letter dated October 29, 2007 from [REDACTED], a Senior Director at Reaccion Media, wrote almost the same exact letter, word for word, as [REDACTED]. She also found the beneficiary to be "one of the best artist relations and personal assistants I've [she has] personally interacted with."
5. A letter dated October 16, 2007 from [REDACTED], Strategic Marketing Coordinator for Warner Music Mexico also wrote the exact same sentiments as [REDACTED] and [REDACTED]. Her letter similarly stated that the beneficiary is "one of the best artist relations and personal assistants I've personally interacted with."
6. A letter dated October 10, 2007 from [REDACTED], Senior Vice President of Fermatta Music Academy, wrote that the beneficiary is "well organized and a very diligent worker" and that she "plays a crucial role" in Elan's professional life.
7. A letter dated October 10, 2007 from [REDACTED], Chief Finance Officer of Fermatta Music Academy, stated that she considers the beneficiary "a true standout in her line of work."

8. A letter dated September 14, 2006 from [REDACTED], Senior Commercial Director of OCESA, wrote that the beneficiary is “diligent” and “plays a crucial role” in Elan’s professional life.
9. A letter dated September 14, 2006 from [REDACTED], Mastering Engineer from Capital Mastering, wrote that the beneficiary is “one of the best artist relations and personal assistants I have been in contact with.”
10. A letter dated August 30, 2006 from [REDACTED] Market Expansion Manager at Microsoft, wrote that the beneficiary is “very efficient” and “her speed of work is amazing.”
11. A letter dated August 25, 2006 from [REDACTED], Senior Director of Latin Music at BMI, similarly stated that the beneficiary is “one of the best artist relations and personal assistants I’ve personally interacted with.”
12. A letter dated April 3, 2008 from [REDACTED], praised the beneficiary for her “amazing” work, and credited her success to the beneficiary.
13. A letter dated April 7, 2008 from [REDACTED], Executive Director of Fermatta Music Academy, wrote that the petitioner has given lectures on Public Relations at her academy and credits her with taking an independent artist and making her into an “internationally renowned star.” The petitioner also included a letter from [REDACTED] inviting the beneficiary to be a seminar participant.
14. A letter dated April 22, 2008 from [REDACTED] President and CEO of Abbywho, wrote that the beneficiary is a “crucial part” of their team and the “key to worldwide operations.”

Items 1 through 11 were submitted initially. In the RFE, the director noted that “in order for the contribution to constitute an original contribution of major significance, the accomplishment must be both original and have a demonstrable impact on the field or set a standard to which others aspire.” Items 12 through 14 were submitted in response to the RFE. In addition to Items 12 through 14, the petitioner also submitted an announcement from Fermatta University indicating that the beneficiary will be giving a seminar in January of 2008, as well as a certificate which recognized her participation in that seminar. The petitioner also provided a certificate dated December 14, 2007 recognizing the beneficiary for “her invaluable contribution to music education.” An itinerary organized by the beneficiary for [REDACTED] 2008 Shine World Tour was also submitted to show the beneficiary’s contributions to [REDACTED]’s career. No new evidence was provided on appeal.

The preceding letters of recommendation, as well as the other evidence provided, discuss the beneficiary’s skills as a public relations specialist and personal assistant. However, they fail to demonstrate that she has made original contributions of major significance in her field. The letters include no substantive discussion as to which of her specific achievements rise to the level of original contributions of major significance in her field. 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 beneficiary’s hard work, efficiency and organization are admired by those offering letters of support, there is no evidence demonstrating that her work has had major significance in the field. For example, the record does not indicate the extent of the beneficiary’s influence on the field of public relations nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

The certificate recognizing the beneficiary for “her invaluable contribution to music education” comes closest to the type of evidence necessary to fulfill this criterion. However, the beneficiary’s field of endeavor is not music education. Further, it appears that this certificate of recognition relates to the beneficiary’s seminar at Fermatta University, which the record does not evidence to be a contribution of major significance.

In this case, the letters of recommendation and other relevant evidence submitted by the petitioner are not sufficient to meet this criterion.

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

The petitioner initially submitted the beneficiary’s resume stating that she authored an article entitled “██████████” in 2000 in the VOCES, an ITESO university magazine. The beneficiary’s resume also listed her as a co-author of “██████████” a pending publication. No further evidence was provided for this criterion in response to the RFE or on appeal. The director’s decision found the record failed to contain sufficient evidence to satisfy this criterion.

Neither of these two articles was provided. The petitioner’s first article was purportedly published in 2000, seven years after the petition was filed. Such a lapse in time would be insufficient to demonstrate *sustained* acclaim in the beneficiary’s field. The second article listed in the beneficiary’s resume is a pending publication. There is no evidence to show that the article was ever published or that it was published as of the petition’s filing date. A petitioner 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. As such, this article cannot be considered for this criterion.

Therefore, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner did not submit any evidence for this criterion initially or in response to the RFE. The director noted in his decision that the record lacked “objective, documentary evidence demonstrating that the beneficiary’s contributions have led directly to the success of Elan.” The director noted that the evidence only provided a basis for establishing that the beneficiary served as a personal assistant and manager for Elan.

On appeal, a letter was provided from ██████████ dated August 5, 2008, a Coordinator of the Bachelor’s Degree in Communication Sciences at ITESO University. The letter stated that the beneficiary “distinguished herself as being a student with work capacity, solid values, and a level of responsibility necessary for activities in the professional and human arena as well as showing an impeccable conduct.”

The beneficiary does not state a leading role or title that she held within her university, and therefore also fails to address the nature of the specific role within the organization. Simply being an outstanding undergraduate student is insufficient to meet this criterion.

The regulation also requires that documentation be submitted by the petitioner to establish that the organization, in which she purports to have performed a leadership role, has a distinguished reputation. Similar to the aforementioned reasoning regarding the title of a position, the name recognition associated with a particular organization or entity is not tantamount to a distinguished reputation. There was no evidence provided to demonstrate that ITESO University has a distinguished reputation.

As such, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner initially provided her employment contract, dated August 23, 2007, which states that the beneficiary will be paid either 8,000 pesos or \$8,000 per month by Music Education S.A. de C.V. In his RFE, the director requested documentary evidence to clarify whether the amount paid to the petitioner was in pesos or dollars, and to establish that this salary is high relative to others in the field. In response to the RFE, the petitioner provided a letter written by its President and CEO, [REDACTED] stating that the beneficiary receives a 3% commission on all compact discs, Concerts and Merchandise sold by Elan and estimates that the amount of annual commissions received by the beneficiary is \$35,000 dollars. The additional evidence failed to clarify whether the amount paid to the beneficiary by Music Education S.A. de C.V. was in pesos or dollars, or whether this salary was paid to her in addition to the commissions paid to her by the petitioner.

The director found in his decision that the evidence provided failed to establish that this is high remuneration in relation to others in the beneficiary's field. We agree with the director. The plain language of this regulatory criterion requires the petitioner to submit evidence that she has commanded a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field. There is no indication that the petitioner has earned a level of compensation that places her among the highest paid public relation specialists in Mexico or the United States or any other country.

Accordingly, the beneficiary does not meet this criterion.

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

The RFE noted that the petitioner did not initially submit any evidence for this criterion. In response to the RFE, the counsel for the petitioner stated in her letter that "Elan sales have topped 1.5 million

albums.” The petitioner also provided Elan’s compact discs. The director, in his decision, found that this claim regarding the number of sales failed to be supported by objective evidence. Further, the director wrote that “it is unclear how these sales can be attributed to the beneficiary.” On appeal, the petitioner provided invoices and other records, presumably to establish Elan’s commercial success. However, it is unclear what all the evidence represents, as there was no explanation for it. Further, none of this evidence demonstrates how Elan’s commercial successes are attributable to the beneficiary’s position as a public relations specialist.

There would not be sufficient evidence to satisfy this criterion, even if Elan herself was the beneficiary. The petitioner submitted no evidence showing how the number of sales of other albums in Elan’s music’s category compared to her own sales; or that the numbers presented otherwise show commercial success. The record also includes no evidence of documented “sales” or “receipts” showing that Elan achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of her field. For example, there is no indication that Elan’s performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature Elan. Therefore, if the record fails to show that Elan fulfills this criterion, the record likewise cannot show that her public relations specialist fulfilled this category.

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

On appeal, counsel argues that the reference letters submitted on the petitioner’s behalf are comparable evidence of the beneficiary’s extraordinary ability as a public relations specialist. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

The reference letters submitted in support of this petition have already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v), (viii) and (ix). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of her field. While reference letters can provide useful information about an alien’s qualifications or help in assigning weight to certain evidence, such letters are not a substitute for other evidence of the alien’s achievements and recognition as required by the statute and regulations. The classification sought requires “extensive documentation” of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for

lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

This petition seeks to classify the beneficiary as an alien with extraordinary ability. Pursuant to section 203(b)(1)(A)(i) of the Act, the petitioner must demonstrate the beneficiary's extraordinary ability in the sciences, arts, education, business, or athletics. In counsel's initial letter, she claims that "the petition is for an individual of exceptional abilities in the arts, sciences, or business." First, "exceptional" is a lesser standard than "extraordinary," as required by the statute. Compare section 203(b)(2) of the Act with section 203(b)(1)(A) of the Act. Secondly, there is no evidence to support that claim. The only evidence that is relevant to one of the five fields is the beneficiary's certificate for "educational excellence" and her "invaluable contribution to music education." But, counsel does not even claim that the beneficiary has an extraordinary ability in education. Moreover, we interpret "arts" as visual or performing arts, not the "art" of coordinating Elan's schedules or gaining publicity for Elan. Therefore, the beneficiary would not fit within that category either. The record also fails to support that the beneficiary would fall within the business or science category, as most of the reference letters refer to the beneficiary as a "personal assistant" rather than a public relations specialist. Therefore, the petitioner fails to satisfy the requirements set forth in 203(b)(1)(A)(i).

In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that the beneficiary 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 beneficiary has distinguished herself to such an extent that the beneficiary may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the beneficiary's achievements set her significantly above almost all others in her field at the national or international level. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A)(i) of the Act and the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.