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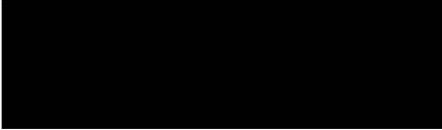
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED]
LIN 07 098 50561

Office: NEBRASKA SERVICE CENTER

Date: **JUN 12 2009**

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)

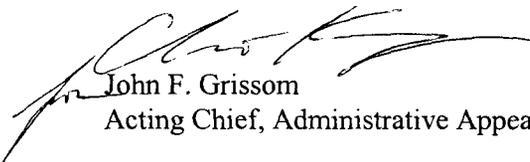
ON BEHALF OF PETITIONER:

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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 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 requisite for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that she 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:

(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.

The applicable regulation defines the statutory term "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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).

On appeal, the petitioner argues that she should have received additional time to respond to the director's Request for Evidence ("RFE") because of delivery problems of a package sent from her home country of Georgia. The director granted the petitioner the maximum response time allowed by the regulation at 8 C.F.R.

§ 103.2(b)(8)(iv), which does not permit any extension. Even if the director had committed a procedural error by failing to provide the petitioner additional time in which to respond to the February 8, 2008 RFE, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal as of June 25, 2008, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a musician. The petitioner presented evidence that she is a professional ballerina and submitted evidence about the qualifications she received, however, she only claims eligibility on her original petition as “singer, composer, pianist.” In support of the petition filed on February 12, 2007, the petitioner submitted news articles, letters of recommendation, membership verification and evidence about the associations, information about the Philharmonia, compositions that she authored, education records, recordings, and evidence of her awards. In response to the RFE dated February 8, 2008, the petitioner submitted a contract, two additional letters of recommendation, and promotional materials. On appeal, the petitioner submitted award certificates, information about the Georgian State Philharmonic, news articles, and letters of recommendation. The petitioner does not claim eligibility under any criteria not discussed below.

(i) 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 evidence that she received a certificate of “participation and success” in the Tsiteli Vardi (Red Rose) contest; first place in “We are looking for Talents” sponsored by the Khashuri Municipal Government Department for Education, Culture, Sport and Youth Issues; and first place in the 2002 Golden Voices contest. The petitioner also submitted a certificate of participation for a concert held at the Khashuri Culture Palace, a certificate for “active participation and success” in the State Philharmonic of Georgia Amateur Art Activities Festival, and a certificate for composing a hymn for the 2003 International Student Games. Although documentation of these various awards appears in the record, information about the significance of and national or international recognition of the contests is notably absent. For example, the petitioner did not submit evidence of the number of participants in the event or the standing or recognition of the other participants. Several of the petitioner’s awards are from competitions that are not nationally recognized or consistent with those events that bestow national or international acclaim as they are regional in scope, having “Municipal” in the name of the event. In addition, the petitioner did not submit secondary evidence, such as news articles or letters from sponsoring organizations, documenting the prestige associated with her awards that would indicate their national or international recognition as awards for excellence in her field. On appeal, the petitioner states that the Golden Voices competition is an international festival, that “We are looking for talents” is an “American Idol” type competition, and that the International Student Games certificate and Georgian Voices award were for national level competitions. 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972)).

The petitioner also submitted evidence of her first place award for participating as part of the ensemble “in regional Delphic” contest sponsored by the media company Spectr. According to the letter submitted from the ensemble “a” is a dance troupe. We note that this award with “” appears to be an award for her dancing instead of her music, which thus falls outside of her area of claimed expertise.

Accordingly, the petitioner did not establish eligibility under this criterion.

(ii) 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, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on, for example, employment or activity in a given field, minimum education or experience, proficiency certifications, 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 evidence of her membership in The Culture Promotion Association "Ganmanatlebeli" (the "Association"). The letter from Association members indicates that the petitioner was recommended for membership by "the Chairman of Composer's Association [REDACTED], Director of Georgian State Philharmonic Society Merab Donadze and the leader of the ensemble 'Rustavi' Anzor Erkomaishvili." The letter from [REDACTED], Director of Culture Promotion for the Association, states that the Association was founded by three famous Georgian performers. Although the letter submitted indicates that the petitioner was recommended by respected artistic figures in Georgia, it does not state how membership in this organization is actually chosen and nothing in that letter or the other information submitted about the Association indicates that membership is predicated upon outstanding achievement in the field. In addition, this information does not indicate who decides on membership so that we are unable to conclude that membership applications are judged by nationally or internationally recognized experts in the field. On appeal, the petitioner states that the recommendation from [REDACTED] "was decisive factor [sic] that allowed [her] to be awarded the membership." Again, 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 165.

Accordingly, the petitioner does not establish eligibility under this criterion.

(iii) 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 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

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.

The petitioner submitted an article about her that appeared in the *Khashuri Messenger*, an article about her that appeared in the January 12, 2007 *Courier*, and “My Life – is Music” which appeared in a 2006 *Shalom Aleykhem*. Although these articles are all primarily about the petitioner, she did not submit evidence that the publications amount to professional or major trade publications or other major media such as through circulation statistics, distribution levels, or rankings. On the top of the translation of the first article, a notation appears that the *Khashuri Messenger* began publication in 1931 and has a circulation of 2,000. Not only was no objective evidence provided to support this notation made by an unknown source, no information was provided to show how that circulation number compares to other publications operating in Georgia or the region so that we are unable to conclude that this number evidences a high circulation indicative of major media. No information was provided about the other publications outside of the petitioner’s representations that their “circulation area encompasses completely Northeast region of the United States.” 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972)).

Accordingly, the petitioner does not establish eligibility under this criterion.

(iv) 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.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. 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). For example, judging a national competition for top artists is of far greater probative value than judging a regional, youth, or student competition.

The letters submitted by the Directors of [REDACTED] stated that the petitioner routinely serves on a jury for the Association. The letter from [REDACTED] and [REDACTED] stated that the petitioner produced, organized, and served on the jury of the 2002-2005 “Zone and General Caucasus Olympiads of talented children.” No further information about the competitions judged by the petitioner appears in the record. From this scant description of the petitioner’s judging, we are unable to determine what kind of competition was judged by the petitioner so we are unable to determine that she judged a competition in her field. In addition, the information indicates that the competition was a youth competition and not a competition among professionals or a competition that is otherwise consistent with or conveys national or international acclaim.

For all of the above reasons, the petitioner has not established eligibility under this criterion.

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

The petitioner submitted letters of recommendation purportedly supportive of her claim of eligibility under this criterion. While letters such as these provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in her field beyond the limited number of individuals with whom she has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim.

The letter from [REDACTED], director of Art School "Melodia" of Khashuri, states that the petitioner was a talented student and "she always made [the school] proud" in her performances and as a competitor. The letter from [REDACTED], producer for Art Emes Entertainment, states that the petitioner "is a very talented pianist who has performed in many concerts." The letter from Nana Ivaneishvili states that the petitioner "is remarkable dancer, player and singer which wonderfully express her energetic and original personality." She felt that the petitioner's compositions were "enchant[ing in] the depth and earnestness of them." The letter from [REDACTED] states that the petitioner "is a great talent." The letter from [REDACTED] states that the petitioner has "always appeared successfully" at concerts and contests and that she "is the author of some musical works and some songs." The letter from [REDACTED] states that the petitioner served as concertmaster and was "diligen[t], ab[le to] improvis[e] and professional." The letter from [REDACTED] states that the petitioner "has individual and original performance manner. She is also the author of many songs and composition." The letter from [REDACTED] states that the petitioner "is educated, purposeful and sociable young woman" and that she successfully completed her musical education and received many awards. The letter from [REDACTED] states that the petitioner "was always distinguished by her musical and choreographic talent." The letter from [REDACTED] states that the petitioner "is talented musician performer [who] . . . distinguishes by her individuality, delicacy manner of performance and high professionalism." The letter from [REDACTED] states that the petitioner is "a talented pianist . . . [who] has original manner of performance, keen hearing and she is characterized as professional pianist." The letter from [REDACTED] states that the petitioner "is an excellent musician, she is distinguished by her professionalism and diligence." The letter from [REDACTED] states that the petitioner distinguished herself in school "by her talent and virtuosic performance." The letter from [REDACTED] states that he is "inspired by [the petitioner's] style and penetration to the music. Georgian spirit and aspiration is deep in her soul. She is very diligent and smart person, she wonderfully plays piano." The letter from [REDACTED] states that she is also "most impressed with [the petitioner's] talent and excellent creative work." In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. Although these letters are complimentary of the petitioner's abilities, they do not state nor demonstrate that she has made original contributions of major significance to the field.

The petitioner also submitted some examples of music she composed. While those providing letters of recommendation recognize that the petitioner composes, there is no evidence that her work has had major significance in the field at large. For example, the record does not indicate the extent of the petitioner's influence on other artists nationally or internationally, that her pieces have been performed, nor does it show that the field has somehow changed as a result of her work.

Accordingly, the petitioner has not established eligibility under this criterion.

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

Frequent performances are intrinsic to the music profession. Duties or activities which nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the occupation itself. 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, or through other indicia of sustained national or international acclaim. The petitioner submitted evidence of her participation in, and awards from, municipal, regional, student and amateur competitions, as discussed above under the first criterion. The petitioner also submitted evidence of her performances at the Tbilisi City Temple of Saint Trinity as part of a charitable concert and with the Georgian State Philharmonic. The petitioner failed to show that she was either the main attraction at her performances or that her participation was otherwise indicative of sustained national or international acclaim.

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

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

In order to meet this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner submitted evidence regarding the Georgian State Philharmonia, which as the director noted, establishes that it is an organization with a distinguished reputation. The letter from [REDACTED] states that the petitioner's "stage activity with the team is always successful and the spectators like it very much. She belongs to those collaborators of Georgian State Philharmonia, who are in the high-paid category." Another letter from Mr. [REDACTED] states that the petitioner is a soloist with the Philharmonia and participated on a tour with the group throughout the Caucasus. No other information appears in the record concerning the number of other soloists, the concerts actually performed by the petitioner with the Philharmonia, or other information distinguishing her role from that of other performers or artistic management to indicate that her role was leading or critical for the Philharmonia. We note that the letter from [REDACTED] indicates that he was the featured performer and soloist for at least some of these performances while the petitioner acted as his "concertmaster," but the record contains no other evidence of the petitioner's work as a concertmaster. [REDACTED] also does not indicate that the role of concertmaster was a usual one for the petitioner as opposed to a special event when he performed.

The letter from [REDACTED], producer for Art Emes, states that the petitioner "has performed in many concerts" produced by the company. The information submitted about Art Emes shows that the company puts on cultural and ethnic events and celebrations, but this evidence does not establish that Art Emes enjoys a distinguished reputation. In addition, the petitioner's role as performer was not established to be a leading or critical one for the organization as the petitioner submitted no evidence as to which or how many shows she participated in or how her participation advanced the goals of the organization in such a way to make her role leading or critical.

The letter from [REDACTED] states that the petitioner worked as a piano teacher for the Art School of Khashuri "Melodia" and that the petitioner "was held in high respect and had a good authority as over the pupils, so over the parents and pedagogues collective" and that the petitioner's students performed

“brilliant[ly].” No evidence was submitted about the Art School so we are unable to conclude that it enjoys a distinguished reputation. The letter from [REDACTED] is insufficient to show that the petitioner’s role as a piano teacher was leading or critical for the Art School as no information appears to show how her role was any different than other teachers or administrators with the school.

The letter from [REDACTED] and [REDACTED] details the petitioner’s work as a soloist for the group [REDACTED]” however, this is a dance group instead of a music group and the petitioner submitted no evidence to show that involvement with this troupe evidences national or international acclaim as a musician. Even if the petitioner had shown that her work with [REDACTED] falls within her field, she submitted no information about the troupe to show that it enjoys a distinguished reputation, the evidence of the one award being insufficient. Also, the evidence submitted does not indicate how many soloists perform with the troupe or that the petitioner’s role was leading or critical as compared to other dancers with the troupe.

Accordingly, the petitioner has not established eligibility under this criterion.

In addition to the criteria discussed above, the statute and regulations require that the petitioner seek to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. In response to the RFE, the petitioner submitted a contract entered into between her and Art Emes Entertainment for unspecified services to begin on January 20, 2008 at a charge of \$1,500. Information was submitted about events produced by Art Emes from 2001-2007, however, the contract did not specify the nature of the petitioner’s duties under its terms. A letter was also submitted from [REDACTED] Art Emes President, who states that the contract lasts for one year and its intent is to “guarantee concerts, further cooperation, producing, advertising, sponsoring and introducing Americans with the creation of [the petitioner].” As this contract is not specific as to what the petitioner is expected to do, we are unable to conclude that the petitioner seeks to continue working in her area of expertise.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The record in this case does not establish that the petitioner achieved sustained national or international acclaim as a musician placing her at the very top of her field. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed. This decision is rendered without prejudice to the filing of a new petition under section 203(b)(1)(A) of the Act with the requisite supporting evidence.

ORDER: The appeal is dismissed.