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U. S. Citizenship and Immigration Services
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FILE:

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Office: TEXAS SERVICE CENTER

Date:

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IN RE:

Petitioner:

Beneficiary:

PETITION:

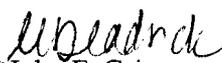
Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

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, initially approved the employment-based immigrant visa petition, but upon further review, the Director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke (NOIR), and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined that the petitioner had not established the sustained national or international acclaim requisite for classification as an alien of extraordinary ability. On appeal, counsel contends that the petition was revoked in error because the evidence previously submitted demonstrates the petitioner's sustained acclaim.

For the reasons discussed below, we find that the visa petition was initially approved in error and we uphold the director's revocation of that approval. Counsel's contentions and the evidence submitted initially and in response to the NOIR do not overcome the deficiencies of the petition and the appeal will be dismissed. Counsel states that he submitted evidence in response to the director's NOIR. We note that the record is equivocal regarding whether such evidence was submitted prior to the decision. However, as the petitioner had the opportunity to present the claimed evidence on appeal, it is unclear what remedy would be appropriate beyond the appeal process itself.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I. & N. Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I. & N. 450 (BIA 1987)).

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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a musician and teacher. The evidence submitted, counsel's contentions, and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria under 8 C.F.R. § 204.5(h)(3) 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 of her receipt of the following prizes or awards as a musician: "The Performance Award" in the Guzheng Professional Group in 1989; third place in the Shancheng Cup TV Award Competition for Traditional Chinese Instruments in 1989; gold prize in the musical instruments category of the Shenzhen City labor union competition of 1997; and excellent composition in the 2001 National Communication of Zheng Compositions and the Proseminar for Composing Theory sponsored by the Chinese Traditional Orchestral Music Association. The petitioner submitted evidence of her receipt of the following prizes or awards as a teacher: Award for Outstanding Musical Education from the Ministry of Culture of China in 2005, Excellent Tutor in the Chinese Dafeng Cup Guzheng Invitational Competition in 1997, outstanding

teacher by the Shenzhen City People's Government in 1996, and Outstanding Teacher as recognized by the Sichuan Academy of Music in 1989. None of these awards are accompanied by individual certifications of translation. Instead, the single certification contained in the record states that the "attached translations from the annexed documents" are true and complete. 8 C.F.R. § 103.2(b)(3) requires that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Because the certification does not specify which document or documents it purports to apply to, we are unable to conclude that these documents were properly translated and will, therefore, accord minimal weight to this evidence.

The petitioner identified her third place finish in the Shancheng Cup TV Award Competition as her most prestigious award. This award is the only award recognizing musical talent for which the petitioner submitted any background information. The petitioner submitted an invitation letter sent by China Central Television which states that the competition is national in scope and is "paid great attention to by people of all insiders and the nation-wide audience." This letter is insufficient on its own to demonstrate the contest's prestige as it did not include information about the broadcast such as the breadth of coverage, the number of households that watched the broadcast, the number of participants or the standing or recognition of the other participants to indicate that it is regarded as a national competition that recognizes the top performers in the field. Accordingly, as the record lacks evidence showing that the recipients of the awards were announced in major media or in some other manner consistent with national or international acclaim at the very top of the field, it is unclear that the prize was afforded any recognition beyond the awarding body itself. Even if the China Central Television letter had been sufficient to prove that the award conveyed the requisite national or international acclaim, the petitioner submitted no evidence that placing third as opposed to winning the competition would convey the requisite national or international acclaim.

As it relates to the Award for Outstanding Musical Education from the Ministry of Culture of China in 2005, the petitioner submitted the judging criteria, which state that the award recipient is nominated by the school and then selected from those nominees by a team of Ministry of Culture employees. The nominees must "[h]ave a special teaching method and be welcomed by the students," cannot have won the award previously, and must have certain professional titles or experience. The petitioner also submitted a news article titled "[The Petitioner] from Shenzhen Awarded National Prize for Musical Education," that appeared in *Shenzhen Special zone Daily* on November 21, 2005. This article stated that the petitioner was one of 53 recipients of the Award for Outstanding Musical Education awarded by the Chinese Ministry of Culture. The judging criteria and news article do not demonstrate that receipt of the award conveys national or international acclaim or that the petitioner's receipt of the award as one of 53 other recipients is nationally or internationally recognized as an award for excellence in the field.

In addition to these awards, the petitioner claims that she meets this category by virtue of her selection of inclusion in *The Chinese Musicians Dictionary* in 2005 and by virtue of being selected to perform before the Chinese President, Primer, and the President of Cuba. There is no evidence showing that a selection to perform is a nationally or internationally recognized award for excellence. Similarly, appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim. The petitioner also claims that her appointment as senior instructor by the Guangdong Personnel Bureau constitutes an award or prize. The appointment as a senior instructor reflects institutional recognition rather than national or international recognition and the petitioner presents no evidence that being named a senior instructor is a nationally or internationally recognized prize or award.

Accordingly, the petitioner failed to establish that she meets 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 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 claims to meet this criterion by virtue of her position as vice president of the Shenzhen Futian District Musicians' Association and member of the China Shenzhen Futian District Literature and Artistic Association. However, as the petitioner submitted no evidence regarding the membership requirements of these organizations she failed to show that membership is predicated upon outstanding achievement in the field. She also presented no evidence that membership applications for these organizations are judged by nationally or internationally recognized experts in the field.

The petitioner also claims to meet this criterion by virtue of her membership in the Chinese Musicians' Association ("CMA"). The petitioner submitted the membership qualifications for the CMA, which indicate that "[a]ny one with high culture quality has achieved outstanding attainments or certain influences in his/her professional circle can apply for the member qualification." The qualifications page states that the members are recommended by two "associators of CMA" and then the membership application is judged "by the representatives presented at the business meeting, which is hosted by the stationing president." These criteria do not state who those "representatives" are or provide any evidence to establish that they are nationally or internationally recognized experts in the field. The petitioner also presented evidence of her appointment as director of the Guzheng Academy of the CMA, council member of the Guzheng Committee of the Chinese National Orchestral Music Academy of the CMA, and council member of Guzheng Academy of the CMA. This evidence indicates that the local chapter of the CMA chose or elected the petitioner to represent that chapter in various capacities. The petitioner presented no evidence that the choice or election was made based on any outstanding achievements within the field nor has she shown that other local chapter members are recognized national or international experts in the field. As such, her election by the local chapter members does not establish eligibility under this criterion. The petitioner's role with these organizations will be considered under the discussion of 8 C.F.R. § 204.5(h)(3)(viii).

Finally, the petitioner failed to submit any evidence regarding this criterion as it relates to her claimed occupation as a teacher.

Accordingly, the petitioner failed to establish that she meets 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

The petitioner submitted several articles that are primarily about her including “The love for zheng persisting in my heart forever,” which appeared in *City Consumer* on November 16, 2004; “Nobleness and Elegance sent by Zheng,” which appeared in *Jing Daily* on January 2, 2004; “[The Petitioner’s] Dream of Guzheng,” which appeared in *Shenzhen Culture and Entertainment*” on August 1, 1993; and “[The Petitioner] from Shenzhen Awarded National Prize for Musical Education,” which appeared in *Shenzhen Special zone Daily* on November 21, 2005. Those articles, however, appear to have been published in regional or local publications. The articles in the record were published in *Chinese National Music*, *Shenzhen Daily*, *City Consumer*, *Jing Daily*, *Shenzhen Evening News*, *Shenzhen Economic Daily*, *Shenzhen Culture and Entertainment*, *Chengdu Evening News*, *Shenzhen Special zone Daily*, *Shenzhen News*, *Wen Wei Po*, and *Witness Shenzhen*. The petitioner submitted no evidence to show that these publications are professional or major trade publications or other major media such as through circulation statistics, distribution levels, rankings, or other indications that the publications are not purely local media. Although in her initial submission counsel referred to the publications as “major media in music in China” and “major media in Shenzhen,” statements of counsel are not evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980).

The remainder of the articles contained in the record focus on concerts given in which the petitioner performed with other artists. The articles do not focus on the petitioner or her contribution to the concerts but instead reporting on the concerts and other performers as a whole. For example, the article “Zheng wows locals” appearing in the *Shenzhen Daily* on November 6, 2000 reported on a concert in which 14 zheng players performed. Although the petitioner’s name was mentioned in the article, she was not its focus. As such, we do not find these articles are about the petitioner.

The petitioner also submitted a chapter from a book entitled “Popularize Guzheng Around The World” in support of her claim for eligibility under this criterion. The petitioner did not, however, submit the book in its entirety so we are unable to conclude that this material is primarily about the petitioner. A single chapter of a book in which the petitioner is briefly named is insufficient to demonstrate that the publication is about the petition. In addition, the record contains insufficient evidence regarding whether the book can be considered major media as well as the date of publication. Without the date of publication, the petitioner has failed to establish that the book was published prior to the petition being filed. The petitioner must establish eligibility at

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 time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971).

In the appellate brief, counsel argues that the petitioner further meets this criterion by virtue of an invitation issued in January 2008 by the Culture and Art Central Department of the Chinese Ministry of Culture to appear in a publication highlighting the 100 most influential artistic masters in China and the book chapter discussed above. These publications may not be considered, however, as it occurred after the date the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. §§ 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971).

Accordingly, the petitioner failed to establish that she meets this criterion as either a musician or a teacher.

(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 petitioner submitted letters of appointment for the following competitions with her initial petition: Millennium National Music Competition sponsored by the Taipei National Music Orchestra; Ehru and Guzheng Concerto Competition sponsored by the Hong Kong Music Association; the 1st, 2nd, and 3rd “FangYin Cup” National Guzheng Competition; and Teachers’ Specialty and Technique Qualification Judgment Committee sponsored by the Shenzhen Education Bureau. The petitioner submitted no information about any of these competitions so that we are unable to conclude that the entries judged were those of professionals or that her participation as a judge was otherwise consistent with national or international acclaim.

In response to the NOIR, the petitioner submitted an invitation by China Central Television to serve as a judge in their 2007 competition, a letter of appointment to serve as chief judge at the second “Yayun Cup” Guzheng Competition, and a letter of appointment to serve as a judge at the 12th “Huaxi Summer” Art Festival and “Huayu Cup” Youth Guzheng Competition. These invitations may not be considered as they were issued after the filing of the petition. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I. & N. Dec. at 49.

For all of the above reasons, the petitioner failed to establish that she meets this criterion as either a musician or a teacher.

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

As evidence of the petitioner's eligibility under this criterion, counsel cited the petitioner's patent for a new model of guzheng instrument. This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I. & N. Dec. 215, 221 n. 7, (Commr. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The petitioner submitted no information that this new musical instrument has been licensed, marketed, or used. Although the new instrument may be original, without documentation of its impact on the field, we cannot conclude that the contribution was of major significance to the field.

The petitioner also submitted seven letters of recommendation in support of her claim of eligibility under this criterion. The October 11, 2005 letter from [REDACTED] states that the petitioner "established her own unique performing and playing style by synthesizing the characteristics of various schools and embedding her own feature." The October 9, 2005 letter from [REDACTED] states that the petitioner is a talented musician and "makes contributions to Guzheng teaching." The letter notes that the petitioner "integrates the music from the world and recomposes them into Guzheng music" so as to make the ancient instrument contemporary. The October 9, 2005 letter from [REDACTED] states that "[a]fter many years practice and research, [the petitioner] has formed her own performing style, exquisite elegant and profound" and that the petitioner attracts students from all over the world "by her outstanding performing skills and special teaching method." The October 6, 2005 letter from [REDACTED] states that the petitioner is a "famous Guzheng player" who "keeps learning and practicing seriously" and also "made innovative designs on instruments" resulting in the patent. The June 28, 2005 letter from [REDACTED] states that the petitioner "is not only a diligent student; she also is a seriously demanding teacher." 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. Although all of these letters, written by the petitioner's colleagues and friends, are complimentary about the petitioner's abilities as both a musician and a teacher, they do not establish that the petitioner, her style, or her methods have made a contribution of major significance in the field.

Accordingly, the petitioner failed to establish 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.

Counsel claims that the petitioner established eligibility under this criterion through her participation in concerts and as part of international delegations. The petitioner submitted evidence that she was performed in Italy at the 2005 Spoleto Summer Festival; as a guest with the Hong Kong Ling Nan Orchestra in 1997; at the Conservatoire National de Region in France in 2003; as part of the 4th Chinese Art Festival with the Shenzhen Symphony

Orchestra; as part of an exhibition in Cairo, Egypt; as part of a delegation to Vienne, France; and as part of a delegation sent to France and Holland. Although the petitioner may have been asked to travel to represent China and the guzheng instrument, she has failed to show that she did so as a part of an organization or establishment. In addition, even if she had shown that the delegations constituted an organization or establishment, she submitted no evidence that such an organization or establishment enjoys a distinguished reputation. To the extent that the petitioner intended to contend that the festivals and exhibitions constituted the organizations or establishments for which she played a role, she submitted no information about any of these festivals or exhibitions to indicate that they enjoy a distinguished reputation.

Even if she satisfied the requirement to show that she participated in these exhibitions as a part of an organization or establishment with a distinguished reputation, she submitted no evidence that her performance was in a leading or critical role. In the initial submission, counsel stated that in certain of these competitions, the petitioner was the only guzheng player selected, however, as previously indicated, statements by counsel do not constitute evidence and the petitioner presented no evidence to support these assertions. *Matter of Obaigbena*, 19 I. & N. Dec. at 534 n.2; *Matter of Laureano*, 19 I. & N. Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. at 506. Regardless, the programs for these performances indicate that the petitioner was not the only performer at the events nor was she a featured performer. For example, the program from the Cairo exhibition indicated that the petitioner was to perform in one of four folk instrument performances and one of thirteen overall performances. In addition, that performance was not a solo performance but was instead a quartet and was offered as the first performance of the third section. As such, the petitioner has not demonstrated her leading or critical role in these performances. In addition, the petitioner submitted no evidence of her leading or critical role as a teacher in any organization.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

This regulatory criterion calls for evidence of commercial successes in the form of “sales” or “receipts;” simply submitting evidence indicating that the petitioner participated in various concerts or music compilations cannot meet the plain language of this criterion. Counsel claims that the petitioner meets this criterion through her publication of a textbook for guzheng teachers. The certification from the science and technology press states that 110,000 copies of the textbook were issued and that “the copy number is as high as 59,000, which has ranked in the best-seller.” The publisher further stated that normal circulation for a book of this type would be 5,000. The only information about this textbook comes from an interested party, i.e. the publisher, and no objective evidence was presented to support the assertions that the textbook was a best seller or otherwise achieved commercial success. The petitioner submitted copies of other books containing practice pieces, duet pieces, and providing foundation for the study of guzheng. However, the petitioner provided no evidence as of the commercial success of these additional books.

The petitioner also submitted copies of covers for compact discs on which she played and a how-to video in which she was featured. The record contains no evidence to demonstrate that these musical recordings or instructional video generated any sales, much less that they were commercially successful. Although the petitioner did not specifically claim that she met this criterion by virtue of her performances, we note that although the petitioner submitted evidence of performances, such as those discussed in criterion (viii) above, she submitted no evidence that those performances were commercial successes such as by submitting sales figures

or receipts. Without evidence of sales or other commercial success as a result of her performances, book publication, or CD and DVD sales, the petitioner has not shown that she achieved commercial success in the performing arts.

Accordingly, the petitioner has not established that she meets this criterion as either a musician or a teacher.

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) and the petition may not be approved.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. at 452 n.1; *Matter of Ho*, 19 I&N Dec. at 589. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.