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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



U.S. Citizenship  
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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 25 2009  
LIN 07 127 51222

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

On appeal, counsel asserts that the petitioner 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.

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. 60897-99 (Nov. 29, 1991). 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 composer. With the original submission, the petitioner provided award certificates, letters of recommendation, and concert

programs. In response to a Request for Evidence (RFE) dated April 9, 2007, the petitioner provided additional letters of recommendation, additional concert programs, and information about the organizations that bestowed awards upon her. 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 2002 and 2004 American Society of Composers, Authors and Publishers (ASCAP) Foundation Morton Gould Young Composer award. The information submitted about the ASCAP awards indicate that only those persons under the age of 30 are allowed to enter and that the petitioner was one of 26 honored in 2002 and one of 25 honored in 2004. The competition was not open to professional composers of all ages, and the petitioner presented no evidence to show how a competition restricted to composers of a particular age would constitute an award for excellence in the field if it did not allow all of those working in the field to participate.

USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>1</sup> In addition, although the petitioner submitted press releases from the ASCAP Foundation and articles from *New Music Box* website and *Playback* magazine announcing the winners of the ASCAP awards, she presented no information about these publications to show that such articles are indicative of national or international recognition for this award. The petitioner also submitted two letters from professional musicians who commissioned the petitioner's work, [REDACTED] and [REDACTED], stating that this award is prestigious. The petitioner presented no objective evidence supporting the assertion of the petitioner's colleagues. We note that counsel's description of the awards on appeal state that they are "impressive indicators of potential for success" and that many famous composers won the awards during their early years. This highly restrictive visa classification requires that the petitioner already have achieved great success so as to place them at the top of their field, not that they have a potential for success later. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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<sup>1</sup> While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

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

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

The petitioner submitted evidence of her receipt of the following prizes or awards: honorary mention in the 2006 Tsang-Houei Hsu International Music Composition contest, winner of the 2006 Ensemble X competition, first place in the 2002 Music From China International Composition Competition, 1986 National Youth Keyboard Performance Competition Award, 1988 Spring Art Festival Award for Piano Performance, and the prix award in the 1989 Jiang Xi Youth Music Performance contest. We note that the awards photographed and identified as those from the Spring Art Festival and the Jiang Xi Youth Music Performance concert are not “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” as required by 8 C.F.R. § 103.2(b)(3). The program from the Music From China competition indicates that it is open only to contestants under the age of 30. As stated above, a competition generally limited by age of competitor will not qualify an applicant under this criterion as a competition limited in such a way will exclude those potential competitors at the top of the profession. The petitioner submitted a program booklet for the Tsang-Houei Hsu contest and no additional information about any of the other contests. The petitioner submitted no information, such as news articles, about these contests to indicate that the prizes or awards given are recognized for excellence within the field. Although counsel asserts that these contests are nationally or internationally recognized, she submitted no evidence to support her claims. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute 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 petitioner also submitted evidence that she was commissioned to compose a new piece in honor of George Crumb’s 75<sup>th</sup> birthday, was invited to perform at a 2003 “New Voices from China: Contemporary Composers under 30” concert, was invited to attend a 2002 Pacific Music Festival Composition Course, was accepted into and given a fellowship to attend the Aspen Music Festival, and was invited to attend and given a fellowship to the 2002 Composers Conference at Wellesley College. The information submitted about the commissioned piece for [REDACTED] birthday indicates that the commission was a part of the Oregon Bach Festival Composers Symposium. The petitioner presented information about [REDACTED] and about the Oregon Symposium. No information about any contest with regard to [REDACTED]’s birthday was submitted. The plain language of the criterion requires that any award or prize be nationally or internationally *recognized* within the field. The petitioner presented no evidence that the commission of this piece was recognized either through the media or by any other method. Similarly, the only information submitted about the “New Voices” concert is a letter from the managing director. The letter does not indicate that an invitation to participate is an award or prize or that any such award or prize is recognized for excellence within the field. The information about the Aspen Music Festival and the Pacific Music Festival does not state that being chosen to participate in either Festival amounts to an award or a prize nor did the petitioner submit evidence showing recognition for either of the festivals’ attendees. The Wellesley College conference material states that ten composers are selected from around 100 applicants to attend the conference each summer. The letter from [REDACTED] states that the Wellesley College program is competitive and that “[m]any [of the participants] go on to successful composing and teaching careers.” The petitioner submitted no evidence showing that being selected to participate in the Wellesley College program, competitive as it may be as described by [REDACTED], is recognized nationally or internationally as an award or prize within the field.

The petitioner presented evidence of her receipt of certain educational assistance including a scholarship to attend the doctoral program at Cornell, an invitation to join Pi Kappa Lambda honors fraternity, the 2005 Chinese Government Award for Outstanding Self-financed Students Abroad, and a scholarship to attend the

Master's program at the Conservatory of Music at the University of Missouri at Kansas City (UMKC). Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Similarly, experienced experts do not compete for fellowships, thus, neither scholarships nor fellowships establish that a petitioner is one of the very few at the top of her field.

In response to the RFE, the petitioner submitted evidence of her receipt of the 2007 5<sup>th</sup> edition of the Northridge Composition Prize, finalist in the percussion ensemble category of the 2007 Fourth International Jurgenson Competition of Young Composers, and the 2006-07 Robbins Family Prize in Composition. These prizes and awards were all bestowed upon the petitioner after the date that this petition was filed. 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 a result, we will not consider these additional awards in our decision.

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 submitted her membership card in the ASCAP. The information about ASCAP indicates that it has 285,000 members who are "composers, songwriters, lyricists, and music publishers." The evidence about ASCAP also indicates that it boasts established musicians as well as "many thousands of writers in the earlier stages of their careers." We note that such a large number of members does not indicate the exclusive nature of an organization that requires outstanding achievement as a precondition for membership. The evidence submitted contains no information regarding the membership requirements of this organization and, in fact, the evidence presented indicates that membership is open to anyone working in the industry as opposed to limiting membership only to those who have made an outstanding achievement in the field. She also presented no evidence that membership applications for this organization are judged by nationally or internationally recognized experts in the field.

In response to the RFE, counsel also claims that the petitioner is eligible under this criterion due to the invitations issued to her by the conferences and festivals discussed under 8 C.F.R. § 204.5(h)(3)(i) above. The petitioner presented no evidence to show that an organization or association of artists invited to any of these conferences or festivals exists nor did she submit evidence to demonstrate the membership criteria for any association that does exist to show that membership criteria is based on extraordinary achievement as judged by recognized experts in the field.

Accordingly, the petitioner failed to establish that she meets 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 claims eligibility under this criterion by virtue of her fusion of classic Western music with Eastern flavor and her use of traditionally Eastern instruments. Counsel cites the performances of the petitioner's compositions as proof of her impact on the field. Although compositions by their very nature will be original, the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that an alien's contributions 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. The petitioner presented no evidence that her fusion style is being adopted by her field in general or that it otherwise impacted her field. In addition, each criterion under 8 C.F.R. § 204.5(h)(3) is separate and distinct. The petitioner's argument that she made a significant contribution to the field by having her pieces performed would mean that the performances considered under criterion 8 C.F.R. § 204.5(h)(3)(vii) would also qualify as major achievements within the field under this criterion. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

The petitioner submitted letters of recommendation furthering her claim of eligibility under this criterion. These letters from [REDACTED], executive director of Music From China; [REDACTED] Curators' Professor of Music at UMKC; [REDACTED] Professor in Music Composition at UMKC; [REDACTED] Professor of Composition at Cornell University; [REDACTED] Associate Professor at Cornell University; [REDACTED] Director of Wind Ensembles and Assistant Conductor at Cornell University; [REDACTED] Professor of Music at Cornell University; [REDACTED]; and [REDACTED] Professor of Music at Syracuse University; merely relate the petitioner's achievements and generally state that she is a successful composer. None of these letters assert that the petitioner's work has made a contribution of major significance to the field. 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 a musician, they do not establish that the petitioner has made a contribution of major significance in the field. In addition, many of these letters rely upon the petitioner's receipt of the awards discussed under the criterion at 8 C.F.R. § 204.5(h)(3)(i). Again, the criteria are separate and distinct. The petitioner presented no evidence to show that winning the awards described above amount to an original contribution of major significance to the field of musical composition.

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

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

This criterion generally applies to the visual, not performing, arts. However, because the petitioner presented evidence of her performances with the festivals discussed above and with her schools, we have considered the relevant materials as comparable evidence of the petitioner's eligibility pursuant to the regulation at 8 C.F.R.

§ 204.5(h)(4). Frequent performances are intrinsic to the musical profession just as display of art is inseparable from the profession of a visual artist. Given the statutory requirement for sustained national or international acclaim, the evidence under this criterion must reflect sustained national or international acclaim, not simply document an alien's continued employment in her field. The petitioner presented numerous playbills and programs evidencing the performance of the pieces she composed, however, the majority of those programs and playbills were for performances of the petitioner's pieces in the festivals discussed under 8 C.F.R. § 204.5(h)(3)(i) or by UMKC or Cornell University ensembles. The lack of the choice by independent ensembles or orchestras indicates that the performances were performed because of the petitioner's affiliation with the festival and educational establishments. In addition, none of the playbills or programs indicate that the petitioner's pieces were highlighted or were the main attraction at any of the performances. As this visa classification is highly restrictive, an alien must show that the display of her work demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of her field of endeavor. Performances by fellow students in a learning environment such as with UMKC and Cornell University or in a festival such as those named above do not demonstrate national or international acclaim.

Accordingly, the petitioner failed to establish eligibility under this criterion.

In this case, the petitioner has failed to demonstrate that she received a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Review of the record does not establish that the petitioner has distinguished herself to such an extent that she 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 petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established her eligibility pursuant to section 203(b)(1)(A) of the Act and her petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.