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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 26 2009
SRC 08 030 52268

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in the performing arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the petitioner’s album sales and coverage in the major media demonstrate her eligibility for this classification. As will be discussed below, the petitioner must meet at least three of ten regulatory criteria to be eligible for the exclusive classification sought; yet counsel discusses only two on appeal. Moreover, counsel does not address any of the director’s specific concerns. For the reasons discussed below, we uphold the director’s decision.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below.

It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a singer and recording artist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

At the outset, we note that the petitioner submitted letters attesting to her popularity in Burma. Insofar as those letters address the regulatory criteria, they will be discussed below. The opinions of experts in the field, however, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). USCIS, however, is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). In general, unsupported broad attestations of talent and popularity are insufficient. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The petitioner has submitted evidence that, she claims, meets the following criteria.¹

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 a November 7, 2000 award certificate from the Myanmar Central Committee for Drug Abuse Control recognizing the petitioner for "perseverance of patriotic spirit to participate in Anti-narcotics campaign." A second certificate from the same date from the State Peace and Development Council recognizes the petitioner's dedication and passionate participation in the "television series of MRTV – Myanmar Radio and Television during the period of 1999 and 2000." Finally, the petitioner submits a July 22, 2007 Certificate of Recognition from the Thin Gyan Association for Burmese Arts and Culture recognizing the petitioner for participating in the Burmese New Year Water Festival.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The director concluded that the certificates were not evidence of *sustained* acclaim. Counsel makes no mention of these awards on appeal.

The 2000 “awards” appear to actually be certificates of appreciation for participating in an anti-drug campaign and a television program. The record is absent any evidence that these certificates were issued to recognize excellence as a singer. In fact, the entity that issued the anti-drug certificate appears to be a law enforcement or health entity rather than an artistic entity.

Finally, the 2007 certificate merely expresses appreciation for the petitioner’s performance at a cultural event in New York rather than recognition for excellence in the field. Moreover, the petitioner has not submitted any evidence that this certificate is nationally or internationally recognized.

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

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted certification of her membership in the Myanmar Music Association. As noted by the director, the petitioner did not submit any evidence of the membership requirements for this association. Counsel does not address this deficiency on appeal. Thus, we concur with the director that the petitioner has not established that she 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 submitted the following news article:

1. An August 2007 article in the *Mandalay Gazette* naming the petitioner’s performance as the “significant part” of the New York Summer Burmese Water Festival and a lengthy interview with the petitioner in the same issue. The circulation is listed on the front page as 12,000. The paper has a California address.
2. A September 2007 article in the same publication about the petitioner’s performance for a Buddhist Temple fundraiser in San Francisco.
3. A translation of a British Broadcasting Corporation (BBC) interview about a Fundraising concert for Burmese patients with HIV/AIDS at the University of

Maryland, Shady Grove Campus and confirmation of the interview from the Burmese Service Head of the Burmese BBC Service in London.

4. A 1996 article about the petitioner in a Japanese “newsletter.”
5. Untranslated articles apparently about the petitioner in what appear to be Burmese magazines, and
6. A letter from the Chief of the Burmese Service of Voice of America (VOA) confirming that the VOA interviewed the petitioner in June 2007.

The director concluded that this evidence did not demonstrate sustained national or international acclaim and also noted the lack of evidence of the circulation of the newspapers and magazines covering the petitioner. The petitioner submits no new evidence on appeal.

First, the petitioner did not comply with the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3) regarding the articles in the Burmese magazines. Specifically, the petitioner did not submit complete and certified translations including the title, date and author. Second, the record contains no evidence of the circulation of the 1996 Japanese newsletter or the Burmese magazines. Third, the *Mandalay Gazette* has a circulation of only 12,000 and appears to be primarily aimed at the Burmese population in California. Publications aimed at a small ethnic population in a language the vast majority of the population cannot comprehend cannot be considered major media. Thus, the print media submitted cannot serve to meet this criterion.

The director concluded that the two 2007 interviews with the BBC and VOA could not demonstrate sustained acclaim. The petitioner submitted no evidence regarding how many Burmese have access to the BBC or VOA or even if the Burmese government tolerates either broadcast. Without additional evidence regarding the audience for these broadcasts, we cannot conclude whether either service constitutes major media.

In light of the above, the petitioner has not demonstrated that she meets this criterion. Even if we found that the BBC and VOA interviews were sufficient, for the reasons discussed above and below, the record falls far short of establishing that the petitioner meets at least three of the regulatory criteria as required.

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

Initially, counsel asserted that the petitioner performed in a leading or critical role for a Burmese Chinese Buddhist Temple fundraising event, the New York Summer Burmese Water Festival and the University of Maryland HIV/AIDS Burmese fundraising event. As stated above, the petitioner

submitted published material covering her performance at these events. The petitioner also submitted confirmation from a Burmese radio station that the petitioner's music is played on the air.

We are not persuaded that every artist who performs at a benefit concert performs a leading or critical role for the organization or establishment that organized the concert. While the *Mandalay Gazette* asserts that the petitioner performed in a significant role at the New York Summer Burmese Water Festival, the petitioner has not demonstrated that this festival enjoys a distinguished reputation nationally that sets it apart from the myriad of cultural events that take place in New York. Moreover, not every artist whose music is played on the radio performs a leading or critical role for that radio station.

In light of the above, the petitioner has not established that she meets 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 petitioner submitted nine compact discs. Initially, counsel asserts that those discs were "distributed successfully." 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). In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] director of Excellent Creation, Co., Inc. stating that the petitioner's greatest hits album in 2002 sold "up to" 250,000 cassettes, compact discs and video compact discs.

The director explained that 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Thus, the director concluded that [REDACTED] letter alone could not serve to meet this criterion. The petitioner submits no additional evidence on appeal.

[REDACTED] statement that the petitioner's 2002 album sold "up to" 250,000 items is ambiguous. Moreover, his statement would be bolstered if supported by contracts and payments to the petitioner from Excellent Creation. Assuming the petitioner did indeed sell 250,000 items in 2002, those numbers are consistent with national acclaim. FM Radio confirms that it still plays the petitioner's songs on the radio. Thus, considering the evidence in the light most favorable to the petitioner, she appears to meet this criterion. For the reasons discussed above, however, the record falls far short of establishing that she meets a third criterion. In fact, counsel's statement on appeal only focuses on the published material and album sales, failing to address a third criterion.

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

Review of the record, however, does not establish that the petitioner has distinguished herself as a singer and recording artist 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 indicates that the petitioner shows talent as a singer and recording artist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.