

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

FILE: [REDACTED]
SRC 07 123 51576

Office: TEXAS SERVICE CENTER Date: MAR 03 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:

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, Texas Service Center. The petition 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 for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 has 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 he 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 pianist. 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.

The documentation submitted with the petition did not specify the specific job title or position for which the petitioner sought entry into the United States. In a request for evidence (RFE) dated July 19, 2007, the director indicated that the position sought was presumably that of a pianist, and noted that the petitioner had failed to submit sufficient evidence to meet at least three of the regulatory criteria. The petitioner did not contest or clarify the position in his response to the RFE.

In response to the RFE, the petitioner alleges that he was the recipient of a major, internationally recognized award based on his winning first prize in the 1998 18th Bartók -Kabalevsky International Piano Competition. The petitioner submitted a copy of a certificate of recognition from the Radford University College of Visual and Performing Arts indicating that he participated in the 18th Bartók-Kabalevsky International Piano Competition and a partial copy of the list of winners at the competition. The list, which does not rank the winners and appears to be in alphabetical order, indicates that the petitioner was one of three winners at the collegiate level. Five other levels of winners were identified, including two winners at the "adult level" and a single winner at the grade "K-3 level." The evidence does not reflect that the petitioner won "first prize" at the competition.

The petitioner also submitted a copy of his evaluation from one of the judges of the competition. The petitioner indicates that the judge was [REDACTED] who "was considered one of the greatest pianists of our time" and that "[f]rom his critique, one can see [REDACTED] was very impressed with [the petitioner's] interpretation of Bartok's music." The petitioner submitted copies of [REDACTED] 2005 obituary that he states is evidence of [REDACTED] standing as a pianist and the value of his evaluation of the petitioner's performance. However, the signature on the judge's evaluation form is illegible and it is unclear who signed the form. Additionally, regardless of [REDACTED] reputation, the petitioner submitted no evidence that he actually won first prize at the competition or that the first prize award is considered a major, internationally recognized award.

In the RFE and his decision, the director considered the evidence of this award under the first criterion listed below. Additionally, appellate counsel also discussed this award as evidence of the petitioner's receipt of a lesser nationally or internationally recognized prize or award. The AAO will also consider whether this award is evidence of the petitioner's eligibility under this criterion.

The petitioner also submitted evidence that he 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.

As discussed above, the petitioner alleged that he won first prize in the 18th Bartók-Kabalevsky International Piano Competition but submitted no evidence that the competition awarded such a

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

prize. Additionally, the petitioner has submitted no evidence that any award by the Bartók-Kabalevsky International Piano Competition is a nationally or internationally recognized prize or award of excellence in the field.

The petitioner also alleges that he meets this criterion based on his performance in the Music Teachers National Association's (MTNA) Young Chang America Collegiate Artist Competition in 1999. The petitioner submitted a copy of a January 29, 1999 certificate of recognition indicating that he received "honorable mention" at the competition and a February 7, 1999 letter of congratulation from the chair of the Southern Division Collegiate Artist Chair noting his selection as an honorable mention at the competition. The petitioner alleged that he won first prize at the state competition but submitted no documentation to confirm this. 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 no documentation to establish that any award by the MTNA is a nationally or internationally recognized prize or award.

The petitioner alleges that he also meets this criterion based on winning first prize at the 2003 Sidney Wright "Accompanying" Competition and Award, a 2002 "Austin Pre-emptive Recruitment Fellowship," a 2002 University of Texas "Pre-emptive Recruitment Fellowship," a Phi Kappa Phi Artist Award in 2002, a Tallahassee Music Guild Award in 2001, the 1999 Byrd Piano Competition, and the 1997 Tallahassee Winter Festival Competition. The petitioner submitted no documentation regarding the "pre-emptive" recruitment fellowships, the Byrd Piano Competition or the Tallahassee Winter Festival Competition. Further, the petitioner submitted no documentation that any of these awards or prizes is a nationally or internationally recognized award or prize. If participation in these competitions was limited to individuals within to those living within a certain region or students within a certain school system, then these could not be considered nationally or internationally recognized prizes or awards.

The petitioner's evidence did not establish that he meets this criterion.

Published materials 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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a copy of a newspaper article written in Portuguese and summarizes the document. However, because the petitioner failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner also submits a copy of an article from the August 1999 *Florida Music Director* that named the winners of the Byrd Piano Ensemble Competition and included a brief biography of the petitioner. Although the article may be considered about the petitioner, the petitioner submitted no documentation to establish that the *Florida Music Director* is major media or a major trade publication. On appeal, counsel asserts that the *Florida Music Director* "is the leading music journal in the state of Florida for more than 50 years," and states that the magazine is distributed to 5,000 educators, students and other subscribers. This does not establish the publication as a major trade publication. Not only does it have a limited state distribution, it also appears to be directed primarily to educators and students, and therefore does not establish it as a major trade publication in the music industry.

The petitioner also submits a copy of a November 17, 2006 *Austin Chronicle* article announcing his sonata performance at a local church. This announcement, however, is a simple notice of a performance and is not about the petitioner. The petitioner provides a copy of another notice announcing his performance at Ouachita Baptist University. However, the document, dated April 29, 2002, does not include the name of the publication in which it appeared, and is, again, a notice of an upcoming performance and is not about the petitioner. While the petitioner stated that the announcement appeared in *The Daily Siftings Herald*, he submitted no documentation to corroborate this. 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. Further, the petitioner submitted no documentation to establish that any of these publications is major media or a major trade publication.

The evidence does not establish that the petitioner meets this criterion.

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

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner claims to meet this criterion based on recital appearances with [REDACTED] on the double bass and [REDACTED] on the saxophone, as well as performing at an international double bass festival. The petitioner also claims to meet this criterion based on his position as artistic director of the Chinese Society of Austin and co-founder and artistic director for the Northwest Hills Chamber Music Festival for the summer of 2002.

The petitioner submitted a March 4, 2005 program for the recital by [REDACTED] at Bates Recital Hall at the University of Texas at Austin, which shows the petitioner as the pianist. The program extols [REDACTED] abilities but makes no mention of the petitioner. Another program for a recital during February 26 to March 1, 2007 at the University of Texas at Austin also lists the petitioner as a pianist accompanying other musicians.

The petitioner submitted no evidence that he played a critical or leading role for an organization or establishment with a distinguished reputation. The petitioner submitted no documentation about the Chinese Society of Austin or the Northwest Hills Chamber Music Festival. While the University of Texas at Austin may enjoy some distinction, the petitioner submitted no documentation that its music department also enjoyed that reputation. The petitioner provided evidence that he served as a piano accompanist for other musicians; however, these individuals are not organizations or establishments. Further, the petitioner has not submitted evidence that he played a critical role for the performance of any of these artists or for the music department at the University of Texas at Austin. While he performed as accompanist at recitals for the musicians, the petitioner submitted no documentation to establish that his performance was critical to the success of their recitals.

The evidence does not establish that the petitioner meets this criterion.

Counsel alleges for the first time on appeal that the petitioner also meets the following criterion:

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 petitioner submitted a November 5, 2001 letter from the Division of Music of Ouachita Baptist University, signed by [REDACTED] inviting the petitioner to judge its annual piano competition on April 28, 2002. The petitioner also submits an undated letter from [REDACTED] who now identifies herself as an assistant professor of piano at Ouachita Baptist University, and states that the petitioner "was invited to judge the [Virginia Queen Piano Competition] recently." [REDACTED] described the competition as "an important academic event held at the" university. However, the letter does not specify when the competition was held. Events that occurred after the filing date of the petition cannot be used to establish eligibility for the immigration benefit sought. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Furthermore, neither letter specifies whether or not the petitioner actually acted as a judge in the competition.

Counsel also alleges that the petitioner "has been asked to judge piano events for the MTNA" and that "[i]n 2005 he began to judge for the American College of Musicians/National Guild of Piano Teachers." However, no evidence in the record supports counsel's assertions. 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence does not establish that the petitioner meets this criterion.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: “*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.” [emphasis added]. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. However, we will briefly address counsel's argument in support of this provision.

The petitioner submits a copy of a magazine article by [REDACTED] from a November 1, 1999 edition of *La Scena Musicale* “describing the importance and challenges of being an accompanist.” The article argues that an accompanist often has studied longer than the musician he or she accompanies but it is the musician who gets all of the credit. Counsel asserts that the petitioner has performed as an accompanist with some of the best musicians in the world, and that he could not have done so unless he was equally as talented as these performers.

Nonetheless, even if he is considered their equal, the petitioner has not established that these performers are among that small percentage who has risen to the very top of their field. Their status does not serve to prove his eligibility for this visa preference petition.

The petitioner submits several letters of recommendation from artists with whom he has performed and from his professors. They attest to his skills and ability on the piano and as an accompanist. Mr. [REDACTED] states that the petitioner's performance with him is without peer. \

The petitioner also submits a July 15, 2008 letter from the Chair of the Department of Music at University of Texas at San Antonio, and a December 15, 2008 letter from the Director of the School of Music at Stephen F. Austin State University. Both writers indicate that the petitioner is an applicant for a position at their respective institutions and is the most qualified candidate for the proffered position. Neither letter discusses the pool of applicants for the proffered position or the qualifications that render the petitioner the most suitable candidate.

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 his field of endeavor. The petitioner's evidence shows that while he has some recognition, it appears to be based on his appearances in state, regional, or youth-restricted competitions.

Review of the record, however, does not establish that the petitioner has distinguished himself as pianist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates

that the petitioner is a talented opera performer, but is not persuasive that the petitioner's achievements set him 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.