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

U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
LIN 06 267 52541

Office: NEBRASKA SERVICE CENTER

Date: MAR 17 2009

IN RE:

Petitioner:
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, Nebraska 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 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 submits a brief and an additional letter of recommendation. For the reasons discussed below, the petitioner has not overcome the director’s valid and well-reasoned concerns.

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 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 violinist and violin instructor. The petitioner is a member of the faculty at Peabody Institute of Music, Johns Hopkins University. 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 petitioner has 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.

The petitioner received a Prix du Conservatoire for the 1997-1998 academic year issued by the Quebec Conservatoire de Musique et d'Art Dramatique where the petitioner received his Master's degree. In addition, in 2002 the petitioner received a \$7,500 Presser Music Award based on the petitioner's nomination by his institution and the Presser Foundation's approval of the petitioner's plan for "the constructive use of these Award funds." The letter advising the petitioner of the Presser Music Award also refers to it as a "stipend." Materials submitted about Theodore Presser reveal that the Presser Music Award is limited to students.

The record contains two Certificates of Distinction from the French Ecoles D'Art Americaines Conservatoire Americain, Palais de Fontainebleau. The certificates identify the petitioner as a participant in the school during the summer sessions of 2000 and 2001. In 2000, the petitioner received scholarships from the Quebec Organization for Youth and the Peabody's Career Development Fund to pay the registration fees for the summer program at the Conservatoire Americain in Fontainebleau. The petitioner also received the Theodore A. Martin Violin Scholarship from the Peabody Institute to attend that institution.

Finally, in 1998, upon graduation from the Quebec Conservatory, the petitioner received a scholarship from the alumni association, which requires the receipt of both the Prix du Conservatoire and the Diplome d'Etudies Superieures II, which the translation equates to a Master's degree.

On June 13, 2007, the director requested evidence as to the criteria, scope and nature of the above competitions and noted that competitions restricted to youth or students cannot serve to demonstrate that the petitioner is at the top of his field, including the most experienced and renowned members of the field. In response, counsel asserted that while each award individually may not indicate national or international acclaim, the awards in the aggregate serve to meet this criterion. The petitioner submitted a June 3, 2007 Excellence in Teaching honor from the Peabody Institute.

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 awards submitted initially were academic or student awards and that the teaching award submitted subsequently postdated the filing of the petition and, thus, could not be considered. In reaching this decision, the director relied on *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

On appeal, counsel asserts that not all students at the Conservatoire de Musique in Quebec receive the Prix du Conservatoire and that the judges of the competition for this award are independent of the conservatory. Finally, counsel asserts that the Excellence in Teaching award, while issued after the petition was filed, was in recognition of qualities the petitioner possessed at that time and that its significance is not diminished by being limited to faculty at a preeminent institution.

Counsel is not persuasive. The pool of candidates for the Prix du Conservatoire is limited to graduating students at the Conservatoire de Musique. As the most experienced and renowned members of the field do not compete for this award, it cannot serve to demonstrate that the petitioner is within the small percentage at the top of his field. Similarly, the most experienced and renowned members of the field do not compete for scholarships and, thus, they cannot serve to meet this criterion.

The regulation requires evidence of the "alien's receipt" of qualifying prizes or awards, not merely eligibility for such a prize or award. It remains, the teaching award postdates the filing of the petition. The director correctly cited *Matter of Katigbak*, 14 I&N Dec. at 49. *See also* 8 C.F.R. §§ 103.2(b)(1), (12). We cannot "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (Comm'r. 1998) citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981). Regardless, while the Peabody Institute may be a prestigious institution, a teaching award limited to teachers at the institute cannot serve to meet this criterion.

In light of the above, the petitioner has not established that he 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 initially submitted evidence of his membership in the Society of Pi Kappa Lambda and the College Music Society (CMS). While the director failed to raise concerns about these memberships in the request for additional evidence, counsel's appellate brief does not challenge the director's conclusion, based on Internet research, that the petitioner did not establish that either society requires outstanding achievements of its members. Thus, we reaffirm the director's conclusion that the petitioner has not established that he 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 a press release and announcements in what appears to be a local Annapolis paper, *The Strad* and a Peabody Conservatory Office of Career Counseling and Placement newsletter regarding the selection of several new musicians, including the petitioner, to positions with the Annapolis Symphony Orchestra (ASO). The petitioner also submitted an article in the *Washington Post* about a competition at the Kennedy Center which mentions that the Peabody Quartet presented the premiere of the winning composition. This article does not mention the petitioner by name. The petitioner also relies on schedules of events listing upcoming performances by the petitioner included in Johns Hopkins' *Gazette*, the information bulletin of the Gatineau Music Conservatory and the Fairfax County Public Library's newsletter. The record includes a brief acknowledgement of a St. Benit-Abbe Church concert that included the petitioner posted on [REDACTED]. The petitioner did not submit evidence suggesting that [REDACTED] website can be considered a publication or other major media.

A 2002 review in the *Washington Post* praises a concert by five students of the Conservatoire Americain Fontainebleau. The petitioner was named in this review. A 2002 edition of Fontainebleau's alumni bulletin contains a photograph of the French Ambassador to the United States with several Fontainebleau students, including the petitioner. A 2001 edition of the same publication has a photograph of the petitioner receiving a prize at the conservatory. The petitioner is not identified by name in this publication. The petitioner also relies on a promotion of the petitioner's upcoming concert at the Universite Laval in the school's own newsletter and a press release promoting the same event by the university. The record also contains a review of a concert by the Conservatoire Americain Fontainebleau in *La Republique de Seine-et-Marne* that does not mention the petitioner by name. A 1996 article in *Le Soleil* discusses a tour by 75 students of Quebec's conservatories. The petitioner is quoted in this article. Finally, one of the more than 1,000 citations contained in "The Violin: A Research and Information Guide" cites to the petitioner's Ph.D. dissertation, which appears to be unpublished.

The director requested evidence as to the importance of the publications covering the petitioner. In response, counsel asserts that the petitioner is now providing information about three of the publications and notes that, after the date of filing, ASO concerts were reviewed in the *Baltimore Sun*. Counsel requested that the director "consider the extent to which [the petitioner's] performances and music have been referred to in other media sources. The above references to the newspapers [are] in addition to other websites and forums that reference and report on him and his various exulted performances." (Emphasis in original.)

The petitioner submitted March 23, 2007 and April 20, 2007 reviews of an ASO performance in the *Baltimore Sun*. One review devotes a single sentence to the petitioner while the other does not mention him at all. Both reviews postdate the filing of the petition. ASO concerts were also reviewed after the

date of filing in the *Washington Post* and *Hometown Annapolis*. Neither review mentions the petitioner by name.

The petitioner also submits evidence that the circulation of the *Washington Post* is 715,181 on weekdays, 660,182 on Saturdays and 983,243 on Sundays and that the weekly circulation of Quebec's *Le Soleil* is 618,982. Other information about *Le Soleil* reveals that it is primarily a Quebec newspaper. The information about *Le Soleil* is all from the collaborative online encyclopedia, *Wikipedia*.² Reliance on *Wikipedia* is inappropriate. See *Badasa v. Mukasey*, 540 F. 3d 909 (8th Cir. 2008). The petitioner also submitted general information about the *Baltimore Sun* that does not provide circulation numbers or whether the paper enjoys a significant national distribution.

The director concluded that the materials were not primarily about the petitioner, noting that several of them failed to mention him at all. The director also concluded that some of the publications were institutional or regional and, thus, could not be considered major media. The director acknowledged that the *Washington Post* is nationally circulated, but concluded that the petitioner had not demonstrated that the reviews appeared in a nationally circulated section of that paper. Regardless, the director noted that one review in this paper did not mention the petitioner at all and that the other was not "about" him as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Finally, the director noted that the articles submitted in response to the request for additional evidence were not about the petitioner and, regardless, postdated the filing of the petition and, therefore, could not be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

On appeal, counsel asserts that the only reviews for a classical musician performing in an orchestra will be reviews of the entire performance. Counsel further asserts that the materials are, in fact, about the petitioner (including those materials that do not mention him by name) in addition to also being about the performance as a whole. Finally, counsel asserts that both *Washington Post* reviews appeared in the nationally circulated portion of the paper. 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).

² Online content from "Wikipedia" is subject to the following general disclaimer:

Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on March 4, 2009 and incorporated into the record.

First, schedules posted in institutional newsletters cannot be considered published materials in major media. Similarly, local or regional publications cannot typically serve to meet this criterion. Second, the regulation does not simply require evidence of published material about the alien's work, *compare* 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers and professors, but materials that are about the alien relating to his work. While we recognize that the petitioner performs in ensembles, the statute requires individual acclaim. We will not presume such acclaim by association, either with the institution where he teaches or the ensemble with which he performs. The petitioner's inability to meet this criterion does not suggest that we may waive the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). It cannot be credibly asserted that an article that does not mention the petitioner at all is somehow "about" him. Moreover, we are not persuaded that reviews and articles that include only a sentence about the petitioner are sufficiently "about" him to meet this criterion.

In light of the above, the petitioner has not established that he meets this 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 is a faculty member at the Peabody Institute. His contract reveals that the inherent duties of all faculty include attending placement auditions, assisting with and serving on exam committees, participating in the program feedback process and adjudicating signature recitals as assigned by the Dean.

The director requested evidence that the petitioner's teaching duties set him apart from other music teachers. As noted by the director in the final decision, the petitioner's response did not address this criterion. On appeal, however, counsel once again asserts that the petitioner meets this criterion through his faculty position and Principal Second Violin position with the ASO. Counsel asserts that the petitioner judged competitions at the Peabody Institute and at other unidentified locations. Counsel continues that the petitioner served on committees at the Peabody Institute evaluating other faculty and has been invited to observe other strings faculty in the Baltimore-Washington area. According to counsel, the petitioner served as the Accompanist Coordinator for the String Department at the Peabody Institute, hiring professional accompanists for the students and auditioned new members for the ASO. As stated above, the unsupported assertions of counsel do not constitute evidence. *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.

The record does not support counsel's assertions. As stated above, many of the duties counsel asserts are significant are contained in the boilerplate faculty contract submitted initially. Thus, they are inherent to the petitioner's position. Moreover, extra collateral duties within his own institution do not demonstrate his recognition outside of that institution. Inquiries from other professors in the Baltimore-Washington area do not demonstrate national or international acclaim. Finally, while the Second Principal Violinist may be the leader of the second violins of a given orchestra, the record does not establish that this position is a judging position.

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

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

Counsel initially asserted that the petitioner meets this criterion through his performances with distinguished groups at distinguished venues. Counsel referenced the evidence of performances by the petitioner, the awards discussed above and reference letters. The initial letters are all from individuals who have taught or played with the petitioner and provide general praise of the petitioner's talent rather than identifying specific contributions and explaining their impact on the field.

The director requested documentary evidence of the petitioner's original contributions of major significance to the field. In response, counsel reiterates that the petitioner has performed with distinguished groups at distinguished venues. Counsel references the evidence submitted to meet the awards, published material, display and leading role criteria. 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (vii), (viii). That evidence has been considered above and below as it relates to those criteria. Counsel also reviews the reference letters submitted. The petitioner submits new letters, some from more independent sources such as Los Angeles Philharmonic Orchestra. While [REDACTED], Principal Concertmaster for this orchestra provides praise of the petitioner, whose performances he has seen, he does not identify any specific original contributions or explain their impact. [REDACTED], author of the book that cited the petitioner's dissertation, asserts that the dissertation "is an important work that offers a welcome reassessment of an unjustly neglected composition." The record lacks evidence, however, that the petitioner's dissertation is frequently cited or assigned reading at multiple institutions.

The director concluded that the petitioner had not demonstrated an impact on the field through objective documentary evidence. On appeal, counsel asserts that the director's conclusion is based on a misunderstanding of classical music. Counsel asserts that violin performing has not changed and that the "contributions of violinists have always been measured through their involvement in performances and their teaching." Counsel concludes that the petitioner's contribution involves "passing along the great principles of violin playing of the Franco-Belgian school of violin to generations of American students."

The regulation requires both that an alien's contributions be "original" and of "major significance." The static nature of violin playing techniques cannot overcome the plain wording of the regulation at 8 C.F.R. § 204.5(h)(3)(v). Passing on an established technique is not original. Moreover, a single citation of the petitioner's unpublished dissertation cannot establish a widespread impact.

In light of the above, while the petitioner has clearly impressed his immediate circle of colleagues, talent alone is not an original contribution of major significance that can serve to meet this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence that his dissertation is catalogued in Johns Hopkins' library. As stated above, this dissertation was cited as one of over 1,000 citations in a book. The regulation at 8 C.F.R. § 204.5(h)(vi) requires evidence of scholarly articles "in professional or major trade publications or other major media." (Emphasis added.) While the record contains no evidence that the petitioner's dissertation has appeared in any publication or other major media, the director did not contest that the petitioner had one published work and requested evidence as to its impact. Rather, the director ultimately concluded that authorship of a dissertation, by itself, was not commensurate with the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, counsel no longer asserts that the petitioner meets this criterion and we concur with the director's conclusion that the petitioner does not. As stated above, the record lacks evidence that the petitioner's dissertation was published. Thus, he has not established that he meets this criterion.

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

The petitioner submitted evidence of several performances, including as a member of the ASO. The director's request for additional evidence noted that performing is inherent to the field of performing artist. In response, counsel asserts that the petitioner has performed at more than 60 concerts, which have been well publicized. The petitioner submits additional information about some of the events at which the petitioner has performed.

The director reiterated that it is inherent to the petitioner's occupation to perform and concluded that the petitioner's performances were either in conjunction with university studies, at local venues or as part of a large orchestra. On appeal, counsel asserts that the petitioner has performed at prestigious venues and that being part of a large orchestra should not preclude eligibility under this criterion.

This criterion relates to the visual arts. The petitioner is a performing artist. We concur with the director that the petitioner's performances, while at distinguished venues, are not comparable to the exclusive exhibitions designed to showcase an individual visual artist's work. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner submitted his faculty contract with the Peabody Institute and his contract with the ASO in the position of Principal Second Violin. The petitioner submitted materials indicating that the Peabody Institute "is one of the nation's major sources of professionally trained musicians" and a mission statement for the ASO indicating that the orchestra serves the region. The record contains letters from [REDACTED], Director of Conservatoire Americain Fontainebleau, advising that the

petitioner served as concertmaster under his direction. The petitioner submitted evidence that the conservatory, founded in 1921, “has played a major role in the training of a large number of famous American musicians such as Aaron Copland.”

The director requested additional evidence regarding the significance of the Principal Second Violin position. In response, the petitioner submitted letters discussing the importance of this role. Specifically, [REDACTED], General Manager of the ASO, explains that each string section has a leader. Because of the number of violinists, the violins are divided into two sections. The concertmaster leads the first violins and the Second Principal Violin leads the second violins. The director concluded that while this role is important, it is not leading or critical as contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The director also concluded that the petitioner had not established that the ASO enjoyed a distinguished reputation outside of Maryland.

On appeal, counsel asserts that the petitioner’s faculty position at the Peabody Institute meets this criterion and reiterates the importance of the role of a Principal Second Violin. Counsel also challenges the director’s concerns regarding the limited rehearsal schedule for the ASO. Counsel does not, however, address the director’s concern that the record does not establish that the ASO enjoys a distinguished reputation outside of Maryland.

At issue for this criterion is the job or position the petitioner was selected to fill and the reputation of the entity that selected him. The job or position must be such that the very selection to fill that position is indicative of or consistent with national or international acclaim. While the Peabody Institute enjoys a distinguished reputation nationally, we are not persuaded that a general faculty position, even with collateral duties, serves as a sufficiently leading or critical role such that it is indicative of or consistent with national or international acclaim.

We do find that a Second Principal Violin is a leading or critical role in an orchestra. As stated above, however, the petitioner has not responded to the director’s concern that the record does not establish that the ASO enjoys a distinguished reputation outside of Maryland.

Finally, while the concertmaster position is also leading or critical, we cannot ignore that the Conservatoire Americain Fontainbleau was ultimately a student orchestra.

In light of the above, the petitioner has not established that he meets this 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 himself as a violin performer and teacher 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 shows talent as a violin performer and teacher and is esteemed among his immediate colleagues, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.