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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 1090
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: MAR 31 2009
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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 Grissom
John 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 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 required for classification as an alien of extraordinary ability.

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.

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).

This petition, filed on November 21, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a folk singer. Initially, the petitioner submitted supporting evidence including award certificates, news articles, a membership decree for the Independent Association of Music Artists of Serbia, concert promotional materials, copies of her compact disc and record covers, and letters of recommendation. In response to a Request for Evidence ("RFE") dated December 19, 2007, the petitioner submitted a copy of her latest compact disc and album cover, background information about "gypsy jazz," additional news articles, confirmation of concert broadcasts, information about television appearances, and additional letters of recommendation. We

address the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not addressed below.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In the original submission, counsel stated that the petitioner "has won hundreds of awards . . . throughout Europe." However, the petitioner submitted evidence only of the following awards: 1993 Golden Sabor for the best interpretation in the Mesam International Music Festival; 1996 Sumadijski Sabor award for best interpretation; 1997 award in the Moravski Biseri competition; the 1995, 1996, 1997, and 1998 Zlatni Melos publishing award; and the 2000 Moravski Biseri publishing award.

Although documentation of these various awards appears in the record, information about the significance of and national or international recognition of the festivals is notably absent. For example, the record contains no information about the contests, the number of participants in the event or the standing or recognition of the other participants. Counsel states that the 1993 Golden Sabor award "is the highest and most prestigious award granted at [the Mesam Music Festival] each year" and that the Mesam Music Festival "is comparable to the Grammy Awards in the US." A notation is found on the certificate for the Golden Sabor award which states that the Mesam Music Festival is equivalent to the United States Grammy awards, however, this notation does not appear on the original certificate and the origins of the notation are unclear. The petitioner submitted no evidence to support the claims of counsel. 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 secondary evidence appearing in the record includes an article from 1995 entitled "Zlatni Melos to the Best." The article was not accompanied by a full translation nor did it indicate the author of the article or the publication in which the article appeared as required by 8 C.F.R. § 103.2(b)(3). The petitioner submitted one other article entitled "Mesam – Anual [sic] Music Awards." The translation submitted was only of a portion of the article and also did not indicate the author of the piece as required by 8 C.F.R. § 103.2(b)(3). Without a translation meeting the regulation's requirements, we are unable to conclude that the awards are nationally or internationally recognized.

In the response to the RFE, counsel asserts that letters of recommendation in the record "evidence the significance and recognition" of the petitioner's awards, however, many of the letters identified by counsel merely verify that the petitioner won the awards claimed. The petitioner's receipt of the above awards is not in question, however, the petitioner failed to establish the recognition associated with the awards. The letter from [REDACTED] states that the Mesam Music Festival "was held from 1984 to 1996 . . . and on which participated the biggest music stars of popular music from former Yugoslavia nad [sic] about 30 more countries from all continents." The letter from [REDACTED] stated that the "Festival 'Moravski Biseri' is the only festival that is still holding such a manifest about the traditional music in Serbia, and having such a high reputation, is recognized and validated by government institutions." Letters from the petitioner's colleagues are insufficient to establish national or international acclaim associated with the awards as they do not come from an impartial source and do not indicate how the authors learned of the information.

On appeal, counsel states that in addition to these testimonials, “several of the articles in major media confirm . . . the importance of the awards.” We are unable to find any articles in the record that discuss the festivals or their importance instead of merely noting the petitioner’s receipt of the awards. Merely mentioning the petitioner’s receipt of awards in an article not focused on the results of the competition is insufficient to show that the awards are nationally or internationally recognized.

Lastly, we note that even if the petitioner had established that these awards are nationally or internationally recognized, the last award in the record is dated 2000, six years prior the filing of this petition and is thus insufficient to establish the *sustained* acclaim required for this highly restrictive classification. Section 203(b)(1)(A)(i); 8 C.F.R. § 204.5(h)(3).

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.

The petitioner submitted a number of articles including the two referenced above, “In Fashion of Eurosong;” “The Song is also Making the Name” published in 1994; “[The Petitioner] – [redacted] published in 1994 in *Pan Zabavnik Magazine*; “Those are Lies” published in *Sabor* in 1995; “[redacted] [the Petitioner]” and “[redacted] published in *Sabor* in 1996; “If Everything is the Pleasure” published on July 11, 1996 in *Radio TV Revija*; “Walking into the Dreams” published on August 5, 1996 in *Sabor*; “Songs from the Soul” published on February 20, 1997 in *Politika Express*; “In Estrade Mix” published on June 22, 1998 in *Sabor*; “Folk Melodies in Urban Way” published on April 29, 1999 in *Politika Express*; “[The Petitioner] – [redacted] [the Petitioner]” published in *Novosti* on July 7, 1999; “Deceptions not Excepted” published in *Sabor* on February 14, 2000; “He Doesn’t have to be Rich, but Could be Handsome as Colic” published in *OKO* on January 21, 2001; “Fear’s Beautiful Eyes” published in *Sabor* on April 23, 2001; “A Lot of Work for Less Money” published on September 6, 2001 in *U focusu*; “Mothers and Daughters” published on February 1, 2002; and “[redacted] is Crazy in Positive Way” published on July 1, 2004 in *TRN*. We also note that a number of the translations submitted appear to be incomplete in that the translator only provides a translation of a portion of the article, which does not meet the requirements of 8 C.F.R. § 103.2(b)(3).

The petitioner did not submit evidence showing that any of these publications amount to professional or major trade publications or other major media. Instead, counsel directs us to certain letters that appear in the record. The letter from [redacted] states that he was the executive director for *Sabor* magazine from 1991-2004 and “in that period of time, [*Sabor*] published huge ammount [sic] of articles, dedicated to the work and artist creativity of well known ethno music singer [the petitioner].” That letter said nothing about *Sabor* such as the usual circulation of this publication or any other evidence that the source of this article is a professional, major trade, or other major media publication. The letter from [redacted] states that she wrote “about 20 articles about [the petitioner]” as a journalist for *Sabor*, but this letter also contains no information about *Sabor* as a publication. Similarly, the letter from [redacted] details his journalistic career with a multitude of Serbian publications and his feature of the petitioner in a number of those articles, however, his letter contains no information about the publications for which he worked. The letter from [redacted] states that *Vesti* is the “bestselling Serbian newspaper aboard [sic]” that “reach[es] 19 countires [sic] in Europe, and also United States of America, Canada and Australia” and “print[s] 90.000 copies” daily. Although [redacted] letter states that the petitioner has been featured in *Vesti*, no articles from that publication appear in the record.

Finally, it is noted that the articles date from 1994-2004, at least 2 years prior to the filing of this petition. As stated above, the petitioner must demonstrate *sustained* acclaim according to 8 C.F.R. § 204.5(h)(3).

In response to the RFE, counsel stated that the petitioner also met this criterion by virtue of her appearance on television and radio programs. The petitioner submitted letters from radio and television directors confirming her appearances on these programs. We first note that appearances on radio and television programs are not “published” and that the plain language of this criterion also requires that an author’s name be included which references a written article instead of participation in a television or radio program. In any case, the petitioner submitted no evidence about the regular viewing of these programs including whether they enjoy a significant national or international audience or otherwise constitute major media.

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

(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.

In response to the RFE, counsel stated that the petitioner was invited to judge other music performers through her selection as president “of the technical commission for the selection of new stars of Melos Marketing.” The letter submitted in support of this assertion, authored by [REDACTED], verifies the petitioner’s selection. 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 record in this case does not include supporting evidence establishing the level of acclaim associated with the petitioner’s position as president of the commission. Mr. [REDACTED] letter does not demonstrate that the petitioner judged artists already working in her or an allied field in a manner consistent with national or international acclaim.

Consequently the petitioner has 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.

We acknowledge the petitioner’s submission of many reference letters praising her talent as an artist. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim, however. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I. & N. Dec. 791, 795 (Comm. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts

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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an artist who has sustained national or international acclaim at the very top of the field.

A sampling of the letters submitted by the petitioner reveal that she is a respected vocalist in the field of Balkan folk music. For example, the November 13, 2006 letter from [REDACTED], a television journalist in Belgrade, states that the petitioner is a "true professional" that "show[s] a great level of interpretation, and [is] one of the most knowledgeable person [sic] in our ethno music." The November 11, 2006 letter from [REDACTED], a Belgrade musician, states that the petitioner is "one of the best vocal solist [sic] in [Serbia]." The November 4, 2006 letter from [REDACTED], a vocalist, states that the petitioner "is extraordinary artist [sic] with great interpretation capabilities and vocal talent." The November 16, 2006 letter from [REDACTED] music artist, states that the petitioner is an "extraordinary artist" who has a "perfect voice, interpretation and amazing talent" and that he would award her "the highest professional grade." [REDACTED] musician and producer, stated in a November 16, 2006 letter that the petitioner has "amazing vocal capabilities and extraordinary interpretation skills" and that she will "forever . . . be remembered for [her] exceptional music works." The October 24, 2006 letter from [REDACTED] states that the petitioner "is for sure foremost artist. With her matchless vocals abilities and incredible and warm 'voice collor' fantastic sentiment, and knowledge of any style" that she is a "national diamond." The November 16, 2006 letter from [REDACTED] and [REDACTED] journalists, states that the petitioner "is very respected artist in [Serbia]." A November 15, 2006 letter from [REDACTED] President of Birach Broadcasting Corporation, states that the petitioner is "very well known" and that she is quite popular in the United States "on . . . radio stations with mostly ethnic programs." [REDACTED] stated in a January 29, 2008 letter that the petitioner is "one of the best vocal soloists of Ethno Balkan Music" who has "amazing talent and presence when she performs." The letter from [REDACTED] journalist, states that the petitioner "is one of few singers that at the same time was receiving excellent reviews [sic] from criticas [sic] and from the fans." While the letters indicate that the petitioner is considered a successful singer, the record lacks evidence showing that she made original contributions that have significantly influenced or impacted the field.

In the brief on appeal, counsel states that the petitioner met this criterion by having "a degree of recognition in her field" and that the petitioner has otherwise made an original contribution of major significance to the field. Recognition or success within the field does not demonstrate eligibility under this criterion as recognition and success are not contingent upon originality or significant impacts on the field. Counsel does not identify how the petitioner made an original contribution of major significance beyond her recognition or success and we find no evidence in the record to support counsel's assertion. 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). In the original submission, counsel seems to equate a significant contribution in the field by means of popularity or success, however, again, popularity or success does not convey eligibility under this criterion.

Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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 counsel claimed in the initial submission and in her brief on appeal that the petitioner's performances "throughout Serbia, Europe, and Australia" and on "the most popular music programs on television" fall under this criterion, 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. Yet the regulation requires that evidence under this criterion demonstrate sustained national or international acclaim, not simply document an alien's continued employment in her field. The advertisements for the petitioner's concerts date from 1994-1999, the latest concert being seven years prior to the filing of this petition. As such, her concert performances do not evidence sustained acclaim in her field. Even if the concerts had been more temporally proximate, the advertisements submitted evidence that the petitioner was performing at restaurants, clubs, and other small venues. The petitioner submitted no information about these venues to show that performing at any of them would reflect national or international acclaim within the field. Even though the petitioner submitted evidence such as the letter from [REDACTED] stating that she performed "in biggest venues in Serbia, as well as in other countries," she provided no objective evidence to support his claims. Similarly, the petitioner submitted letters from television executives concerning her performance on television shows, however, she submitted no evidence showing that appearing on any of these television shows conveys national or international acclaim. For example, she submitted no evidence that any of these television shows routinely receives high ratings, is highly regarded within the industry, or otherwise recognizes or conveys national or international acclaim.

As a result, 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.

In the response to the RFE, counsel states that the petitioner demonstrates eligibility under this criterion by virtue of both "sales of her CD's as well as the chart placement of her songs." The petitioner submitted a letter from [REDACTED], a record store owner, which stated that the petitioner's CDs "are sell[ing] in big numbers." A letter from [REDACTED], director of TV Galaksija 32, states that the petitioner "is at the top 10 list of most popular music artist that are present in media and public performances of interpretation of Serbian traditional music." A letter from [REDACTED], in the business of selling musical recordings, stated that the petitioner sold "12 to 15 thousand of copies on annual basis" in the United States and that such a number made the petitioner "one of the best and most popular artist of traditional ethno music from Serbia." The petitioner submitted no evidence showing how the sales figures contained in the letters from the store managers compare to the number of sales of other albums in her music's category or that the numbers presented otherwise show commercial success. In addition, the petitioner submitted no evidence of her commercial success within Serbia which is where she claims to enjoy acclaim.

In the initial submission, counsel claims that the petitioner also met this criterion by virtue of her live performances and performances on radio and television. The petitioner submitted no box office receipts or any other evidence of the proceeds received from any of these performances as required by the plain language of this criterion. The copies of the petitioner's album covers do not provide evidence of commercial success as the availability of an album does not equate to commercial success or viability of that album. The top hits list

submitted by the petitioner does not provide primary evidence of commercial success as the translation states that the petitioner achieved her number 5 ranking by receiving 16 votes but not specifying what the votes were based on, who was casting those votes, or whether the votes were based on some sort of commercial success.

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

On appeal, counsel cites *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), for the proposition that we may not find that she does not meet a criterion by virtue of her failure to establish sustained national acclaim. First, we note that in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is only bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I. & N. Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, the court's discussion of the alien's contributions in *Buletini* only expresses concern that the denial failed to even consider the evidence relating to those contributions. *Buletini*, 860 F.Supp. at 1232-1233. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v), which is binding on us, requires that the contributions be of "major significance." Thus, the argument that we cannot evaluate the significance of the contributions is not persuasive.

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 evidence in this case indicates that the petitioner is a singer who has enjoyed some degree of success. However, the record does not establish that the petitioner achieved sustained national or international acclaim so as to place 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 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. The petitioner here has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.