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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
and Immigration
Services

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MAY 19 2009

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
LIN 07 035 51881

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

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

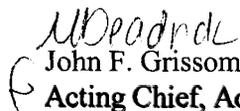
ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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).

We note that the petitioner is the beneficiary of a nonimmigrant visa in a similar classification. While U.S. Citizenship and Immigration Services (USCIS) has approved at least one P-3 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc.*

v. INS, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I. & N. Dec. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

This petition, filed on November 16, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a singer. Initially, the petitioner submitted supporting evidence including a list of accomplishments, information about concerts played, news articles, information about Nepalese publications, judging invitations and appreciations, pictures, certificates of appreciation, and letters of recommendation. In response to a Request for Evidence ("RFE") dated December 28, 2007, the petitioner submitted information about United States performances, the Kantipur F.M. awards, information about judging activities, news articles, information about Nepalese publications, letters of recommendation, top 10 pop music weekly lists, information about the Music Association of Nepal, and album contracts. 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.

The petitioner submitted evidence that he won awards for four years in a row awarded by Kantipur FM: third place, band category in 2000; fifth place, band category in 2001 and 2002; and sixth place, band category in 2003. The evidence submitted about Kantipur FM states that the awards are given "on the basis of position they secure on the air play of their songs" based on "request by the listeners and play[s] in the FM Station in various programs by the listeners" and that ten artists receive awards in each category. This documentation does not establish that these awards are nationally or internationally recognized as awards for excellence in the field. Instead, the information suggests that the awards recognize bands that receive the greatest amount of airplay and listener requests as opposed to recognition by the industry for excellence. The information submitted about Kantipur FM as a station suggests that it enjoys great popularity in the eastern part of the country and capital, but contains no information about its reach in the western part of the country. On appeal, counsel argues that as Kantipur FM is a station with a nationwide broadcast, its awards must be nationally recognized. We are not persuaded by this argument. First, the evidence does not show that the station enjoys substantial listeners throughout the entire country so as to amount to national recognition. Second, the information does not suggest that the awards are nationally recognized even if the broadcasting medium is available throughout the country. Similarly, the fact that the competition draws entrants from across the country does not make the prize awarded a nationally recognized prize.

The award referenced by [REDACTED] is the Sajjan Smiriti “Best Singer with Album of the year Award – 1999.” The November 1, 2006 letter from [REDACTED] states that this award is given to a musician “continuously involved with his extraordinary contribution in the music industry for no less than a period of 7 years” and that the album honored “should be one that has the highest number of sales that particular year along with it being featured as chartbusters in various FM, Radio and TV stations and has received coverage in the national newspapers within the year.” This award was organized by Santana Records and the only information presented comes from the record company. The information does not indicate that the award is open to musicians who are represented by or work with other record companies. As such, the record does not establish the national or international recognition of this award.

The petitioner submitted a letter from [REDACTED], station manager at Image 97.9, stating that the petitioner was selected as the Artist of the Month in January 2003. The letter states that the artist honored “is selected on the basis of popularity and listener’s demand.” Again, the petitioner has failed to establish that this recognition by the radio station is a nationally or internationally recognized award. Further, as the award seems to be given monthly to different artists, selection for recognition is not indicative of a national award or consistent with this highly restrictive classification.

In any event, 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 2003, three 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 he meets this criterion.

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

Although counsel did not specifically claim that this criterion applies, evidence in the record shows that the petitioner belongs to the Music Association of Nepal (“Association”). The letter from [REDACTED], president of the Association, states that membership is given to those with “at least . . . minimum one album to be released and two super hit songs. S/he has to be commercially popular. S/he has to have come out with numerous music albums and has to have performed nationally and internationally in many live shows.” The letter states that the applicant must “also have had an experience of judging a musical competition, worked as a music coordinator and has been successful in creating a name for him/her self in the Nepali music industry.” The letter gives no standards for determining what constitutes commercial popularity, a super hit song, or how many albums are “numerous.” Even if we considered the requirements of membership to equate to outstanding achievements, which we do not, the letter does not indicate who makes the selections for membership in order to establish that membership is judged by recognized national or international experts in the field as required by the regulation.

Accordingly, the petitioner failed to establish that he 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 that mentioned him as part of a group or otherwise focused on something other than him, but were not specifically about the petitioner or his work. The articles include: "Tour for goodwill & new horizons," published on August 29, 2006 in *The Kathmandu Post*; "Haresh Mathema and Angel's bands' cultural show presented," published on October 1, 2006 in *Vishwa Sandesh*; "Kathmandu festival to mark Queen's birthday," published on February 16, 2003; "Tarun cultural nite organized," published in the September 25, 2002 edition of *The Kathmandu Post*; and on a list of songs in *Wave*; and "Musicians Speak – The Nanglo Get Together." These articles are not primarily about the petitioner as required by 8 C.F.R. § 204.5(h)(3)(iii) as opposed to being about a tour or show including multiple music groups. Although the petitioner also submitted a picture of himself which appeared in *The Rising Nepal* on September 24, 2006, pictures published by a publication do not amount to published material under this criterion as the criterion references written material which requires an *author's* name which a picture will never have.

Although the petitioner did submit a number of articles that were primarily about him or a band to which he belonged, the petitioner failed to establish that the articles were published in professional or major media. The articles include: "Okely Wakes Up," published on January 14, 2003 in an unidentified publication; "Okely's third presentation," published on January 19, 2003 in an unidentified publication; "Okely returns," published on January 14, 2003 in *The Himalayan Times*; "Music Field's exemplary band 'Okely,'" published on August 5, 2002 in *Hamro Pahel*; an interview that appeared in the January/February 2002 edition of *X-Pose*; "Big lyricists look for big musicians" published in the July 12, 2001 edition of *Space time Daily*; "Okely Gets Reunited," published on December 15, 2000; "Let's go OKELY" published in *Epsian*; "Okely The Band" published in the April-May 1997 edition of *The Entertainer*; and "Rock Kids" published in *Wave*. As it relates to these publications, the petitioner submitted evidence about only three of the publications. However, the evidence does not establish that they amount to professional or major trade publications or other major media. The statement from [REDACTED] regarding *The Himalayan Times* indicates that the paper is rated sixth with an "A" categorization. The statement contains no information about overall circulation statistics, a definition of what qualifies a publication for such a categorization, or any other information to place the information relayed in context. The letter from [REDACTED], desk editor of *Wave Magazine*, states that "WAVE is an English language youth magazine . . . has a hardcopy readership base of 30,000, including subscribers." A letter from [REDACTED], founding editor of *WAVE*, states that *WAVE* is "the most read youth magazine in Nepal." A letter from [REDACTED], chief editor of *Vishwa Sandesh*, states that the publication was the first produced for the Nepali Diaspora and has a distribution of around 20,000 copies. These letters do not state many copies similar publications distribute or how these numbers compare to other publications. The petitioner submitted no evidence about any of the remaining publications so that we are unable to conclude that they amount to professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish that he 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.

The petitioner submitted evidence that he judged the 6th internal single dance competition at the Ganesh Boarding High School, the musical competitions held by [REDACTED] and University Campuses of Tribhuvan University, a music competition at Future Stars High School, and a poetry recitation at Tribhuvan University. 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 or a competition for top artists is of far greater probative value than judging a regional, youth, or student competition. The evidence submitted indicates that the petitioner judged students in dance and poetry, fields not related to the petitioner’s field of endeavor. Moreover, as the students and competitions judged by the petitioner involved local high schools and colleges, this claimed evidence of his judging the work of others is not indicative of the national or international acclaim required by this highly restrictive classification.

Consequently the petitioner has failed to establish that he 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 his talent as an artist. Certain letters submitted contain very little, if any, additional information about the petitioner’s original contributions to the area of Nepali pop music. These letters were written by: [REDACTED], president of Association of Ex-Namuna Students; [REDACTED], third secretary for the Embassy of Nepal; [REDACTED], secretary general of the Tamrakar Society; [REDACTED], coordinator for Tewa philanthropic women’s fund; [REDACTED], executive director of Singha Brewery; [REDACTED], advisor for the Nepalese Student Association of the University of Central Oklahoma; [REDACTED], head of the faculty of education at Tribhuvan University; [REDACTED], chief administrative officer of Music Nepal; [REDACTED], chairman of Harati Cassette Center; [REDACTED], editor of *WAVE Magazine*; [REDACTED], representative of Music.com; [REDACTED] and [REDACTED], secretaries of the Village Development Committee; [REDACTED], assistant manager at Nepal Tourist Center; [REDACTED], programme director of Radio Nepal; [REDACTED], vice president of the Association of Music Industries Nepal; and [REDACTED], managing director of Indreni Audio Cassette Center.

The remaining letters of recommendation submitted on the petitioner’s behalf are also insufficient to meet this criterion. The letter from [REDACTED] states that the petitioner “has become an important and indispensable member of [the] Newah community of late. He is a nationally recognized popular and award winning artist/singer of Nepal with many hits [sic] songs and musical contribution in numerous concerts.” The letter also said that the petitioner “has contributed tremendously to the advancement of the cultural heritage of the Nepalese people here in the Washington Metropolitan Washington [sic] and around the country.” The letter from [REDACTED], president of Association of Nepal in the Americas (“ANA”), states that the ANA invited the petitioner to perform at their annual convention because of his popularity in Nepal and states that the petitioner’s performance at he convention “was very much liked by the audience” so the ANA asked the petitioner to organize the next convention’s musical event. The letter from [REDACTED] states that the petitioner is part of a music group “considered one of the prominent ones in the history of Nepali pop music and still enjoys a sizeable fan following.” The letter from [REDACTED] states that the petitioner “is one of the renowned and establish singer of Nepal” and that the petitioner “went on to create many commercially and

musically successful song that are still played and referred to as one of the most popular songs in Nepali music.” The letter from [REDACTED], managing director of Taal Music, states that the petitioner’s latest album, released in 2003, “was very well received” and that the songs on the album “are still in demand loved by the listeners.” The letter from [REDACTED] states that the petitioner is “a highly professional, courageous singer and musician” who received awards “for his extraordinary contribution.” The letter from [REDACTED] department chief of information and communication of Kathmandu, states that the petitioner “is one of the known and popular singers of kingdom of Nepal” based “mainly because of his unique style in voice and presentations.”

These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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.

Although we acknowledge that the petitioner’s songs were clearly original in that he created music that had never been heard before, according to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. While the petitioner’s music has earned the admiration of those providing letters of recommendation, there is no evidence that his work has had major significance in the field at large. For example, the record does not indicate the extent of the petitioner’s influence on other artists nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

Accordingly, the petitioner has not established that he 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 consistently claimed that the petitioner’s “over approximately 600 live concerts” 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). The advertisements for the petitioner’s concerts state that the petitioner was performing at high school auditoriums and the Birendra International Convention Centre. These advertisements, however, do not list the petitioner as a headliner. For example, the poster for the September 23, 2006 performance at Oakton High School in Vienna, Virginia had the headliner of [REDACTED] with the Angles Band. The petitioner is the third name down on the “featured” performer list. The petitioner’s performances at the Birendra center were as a part of “Save Nepal Live Concert,” “Shiva Parvati Saajh, Feast’98,” and “Singha Rock and Roar.” These concerts consisted of a group of artists and the petitioner submitted no evidence that he was a headliner or otherwise performed and showcased his work in a manner consistent with this highly restrictive classification.

Similarly, the letter from [REDACTED] managing director of The Hidden Treasure, stated that the petitioner participated during the music festival “[REDACTED]” the letter from [REDACTED], president of

Association of Nepalis in the Americas, stated that the petitioner performed “with other acclaimed artists from Nepal” and the letter from [REDACTED], president of Newah Organization of America, stated that the petitioner performed as a part of Nepal Fest in 2007. The letter from [REDACTED], coordinator of Tewa, stated that the petitioner participated in a fundraiser concert for the group in 1996. A letter from [REDACTED] states that the petitioner was one of three musical guests invited to perform at the University of Central Oklahoma. Again, however, none of these letters indicated that the petitioner headlined the listed events or provided any additional evidence consistent with this classification.

In addition, the Nepal Fest concerts occurred in 2007, which was after this petition was filed. 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. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). The letter from [REDACTED] states that the petitioner participated in a number of musical events such as the ones contained in the letters above and that the petitioner participated in “more than 500 other live musical events in [Nepal] as well as abroad.” Participation in these events is not enough to meet the stringent requirements imposed upon these visa applicants. 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 his field.

The letter from [REDACTED], president of New York Nepalese Youth Club, states that the petitioner “was selected as the main attraction for the ANA convention’s featured concert.” The petitioner submitted no promotional materials or any other evidence to demonstrate that his performance at the ANA convention was consistent with national or international acclaim especially as the concert was held outside of Nepal, specifically targeting a small portion of the New York, Nepalese ex-patriot community. A letter from [REDACTED] secretary of the Village Development Committee, stated that the petitioner performed in an event organized with the local citizens’ society in 2003. The letter states that the concert was a “national level program,” but contains no evidence supporting the statement that a concert organized by local groups was a national event or otherwise garnered national acclaim.

In response to the RFE, counsel stated that the petitioner is eligible under this criterion by virtue of the airplay of his songs as evidenced by the songs’ appearances on the Kantipur Weekly Top Ten List. The last time that one of the petitioner’s songs appeared on the Top Ten list was in 2001, which was five years prior to the filing of this petition. Even if this criterion could be met by the appearance of the petitioner’s song on such a list, a five year lapse would be insufficient to demonstrate *sustained* acclaim in the petitioner’s field.

Although we have considered evidence of the petitioner’s performances as comparable evidence, he has failed to establish that his performances are indicative of the statutory standard. As a result, the petitioner failed to establish that he meets this criterion.

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

In order to meet this criterion, a petitioner must establish the nature of the alien’s role within the entire organization or establishment and the reputation of the organization or establishment. In the initial submission, counsel claimed that the petitioner qualified under this criterion by virtue of his participation with various fundraising concerts. However, the petitioner presented no evidence showing how participation in fundraising

event amounts to a leading or critical role for the organization as a whole. In addition, the petitioner presented no evidence about these organizations regarding their reputations. We note that the petitioner's performance at these various concerts have been addressed in the preceding criterion.

Counsel also argued that the petitioner met this criterion through his service on the Executive Committee of the Mahendra Adarsha Vidyashram Alumni Association (MAVAA). This argument is not persuasive. First, the petitioner failed to show how serving with an alumni association relates to his field of music. Even though the letter from [REDACTED] states that the petitioner "volunteer[ed] his services and provide[d] his talents particularly in Singing" for fundraising events, this action is separate from his overall service on the Committee. Second, the petitioner provided no evidence that he plays a leading or critical role for MAVAA. Third, the petitioner provided no evidence that MAVAA enjoys a distinguished reputation.

For all of the above stated reasons, the petitioner failed to establish that he meets this criterion.

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted a copy of a contract with Little Media for a series of concerts and performances throughout Nepal. Although the contract sets forth the remuneration to be received by the petitioner for participating in these concerts, no evidence was submitted to show how this remuneration compares to the amount received by others in the field for musical performances to demonstrate that he has commanded a high salary in relation to others in his field.

As such, the petitioner failed to establish that he 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.

The petitioner submitted the letter from [REDACTED] which stated that the petitioner's 1997 album "Let's go to Nepal" has sold 435,000 copies. A letter from [REDACTED] chairman of Harati Cassette Center, states that his stores have sold 45,000 copies of the petitioner's album. On appeal, counsel states that the petitioner's "albums and continued sales confirm that [he] remains wildly successful in the Nepali music market." Counsel presents no evidence to support his statements, however, in that these letters contain no information as to how these numbers evidence commercial success as no comparison is made to other albums' sales. 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 Obaighena*, 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 addition, evidence was submitted only about the one album which was released in 1997, almost a decade prior to the filing of this petition. Counsel submitted no evidence showing that one successful album released nine years ago evidences the *sustained* acclaim required by section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The petitioner also submitted a contract between himself and Taal Music regarding the distribution rights of an album to be distributed at the end of 2002; a contract between himself and Harati Cassette Center regarding distribution of an album in 1995; a contract between himself and Santana Records conveying rights to an album

in 1997; and two contracts between himself and Little Media Pvt.Ltd. running from January 2, 1998 to December 31, 2000 and January 1, 2001 to December 31, 2003 conveying rights to an album and concert appearances. These contracts do not indicate commercial success in that they contain no evidence of music sales. Even if the contracts did evidence commercial success, a finding we do not make, the contracts ended by 2003, three years prior to the filing of this petition. Again, a time lapse such as this one does not evidence *sustained* acclaim in the field.

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

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 him at the very top of his field. He 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.