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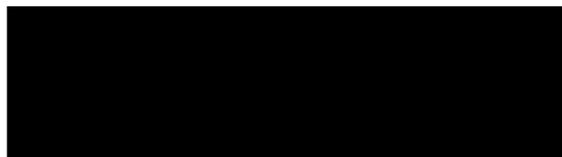
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [REDACTED] SRC 07 123 51576

Office: TEXAS SERVICE CENTER Date:

APR 08 2010

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:

SELF-REPRESENTED

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 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).

*M. DeAdnde*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied this employment-based immigrant visa petition on November 16, 2007. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on March 3, 2009. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

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.

On motion, the petitioner continues to argue that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

## **I. Law**

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner must demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her achievements. See 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 implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten criteria that call for the submission of specific objective evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). Through the submission of required initial evidence, at least three of the ten regulatory criteria must be satisfied for an alien to establish the basic eligibility requirements.

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, 60898-99 (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 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 the following 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.

- (i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (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;
- (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;
- (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 specialization for which classification is sought;
- (v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's procedure for evaluating evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's approach rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at \*6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at \*3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

## II. Analysis

### A. Evidentiary Criteria

On motion, counsel provided the following additional evidence:

1. A letter from [REDACTED] from Radford University, dated March 26, 2009, who was the Director of the Bartok-Kabalevsky International Piano Competition in 1998. Her letter confirmed that the petitioner was a “first prize winner at the collegiate level” and that “being a first place winner is a high accomplishment.” Additionally, [REDACTED] letter verified that [REDACTED], a famous pianist, was a finalist judge at the 1998 competition.
2. A letter from [REDACTED] dated March 27, 2009, who confirmed that the petitioner won the state competition of the “Collegiate Artist Competition,” which was sponsored by the Florida State Music Teachers Association (FSMTA), an affiliate of the Music Teachers National Association (MTNA). According to [REDACTED] the petitioner’s win at the state level qualified him to compete at the MTNA Southern Division Competition, in which he received “Honorable Mention.” The letter was accompanied by a certificate from the MTNA Southern Division Competition indicating the petitioner won “Honorable Mention,” which was previously submitted in response to the Request for Evidence (RFE).
3. An article from [www.entrepreneur.com](http://www.entrepreneur.com), entitled “Steinway Sponsors MTNA Collegiate Artist Competition,” dated August 1999, that quotes the Executive Director of the competition as saying, regarding the Collegiate Artist Piano Competition, that “the students who compete at this level are the very best in the nation.”
4. A letter from [REDACTED] Competition at Florida State University, dated March 27, 2009, which confirmed the petitioner won the Byrd Piano Ensemble Competition in 1999 and explains that the contestants are from “all over the state, and often include international students.” The letter was accompanied by a web page from [www.mtna.org](http://www.mtna.org) which provided information regarding the purpose of the organization.
5. A certificate that appears to present the petitioner with a two-year award, 2002-2004 for the Pre-emptive University Recruitment Fellowship at the University of Texas.
6. An internet page from *Florida Music Director’s* website, a “leading state music journal,” that indicates the journal is distributed to “more than 5,000 music teachers, school principals, school district superintendents and music/art department supervisors, public and university libraries, college music education students, and subscribers.”
7. An article from the *Daily Siftings Herald*, dated April 29, 2002, entitled “Bianchi in guest artist recital at Ouachita.”

The petitioner’s brief in support of his motion to reopen also indicates that it has provided a letter from [REDACTED], but we did not receive this letter. Allegedly, this letter confirms that the petitioner judged the Virginia Queen Piano Competition on April 28, 2002.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of “new,” a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>2</sup> A review of the evidence that the petitioner submits on motion reveals no fact that could be considered “new” under 8 C.F.R. § 103.5(a)(2). All evidence submitted was previously available and could have been discovered or presented in the previous proceeding. The petitioner’s motion is not an opportunity for counsel to bolster his previous claims. It is noted that the petitioner has submitted evidence with this motion that was originally requested by the director in a request for additional evidence dated August 22, 2006. *Matter of Soriano* 19 I&N Dec. 764 (BIA 1988), held that a petitioner may be put on notice of evidentiary requirements by regulations, written notice such as a request for additional documentation or a notice of intent to deny, or an oral request at an interview. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered “new” and will not be considered a proper basis for a motion to reopen.

Nonetheless, even if we were to consider all the additional information including a proffer of the statements included in [REDACTED] letter, the petitioner still failed to provide enough information to satisfy this criterion.

First, the petitioner in his RFE claimed that his receipt of a first prize award in the Bartok-Kabalevsky International Piano Competition in 1998 qualifies as a major, internationally recognized award.

Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien’s field as one of the top awards in that field.

In his motion to reopen, the petitioner submitted a letter from [REDACTED] (item 1) which confirms his receipt of the award, indicating that he was the “first prize winner at the collegiate level” and that “being a first place winner is a high accomplishment.” However, this letter, as

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<sup>2</sup> The word “new” is defined as “1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . . .” WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

well as the record as a whole, lacks evidence such as an explanation of the selection process for the award, the specific criterion that were judged and the candidates that the petitioner was competing against.

In light of the above, the petitioner has not demonstrated that his award for first prize at the Bartok-Kabalevsky International Piano Competition was an award recognized internationally amongst pianists to which the most renowned pianists worldwide aspire to win.

The petitioner has also failed to demonstrate that he has received any lesser nationally or internationally recognized prizes or awards for excellence in his field pursuant to 8 C.F.R. § 204.5(h)(3)(i). As aforementioned, the letter from Caryl Conger (item 1) indicated that winning the Bartok-Kabalevsky International Piano Competition was a “high accomplishment” but no evidence was provided to demonstrate that the award receives national or international recognition. Similarly, the FSMTA Competition, MTNA Southern Division Competition and the Byrd Piano Ensemble Competition all appear to be regional contests as noted in AAO’s decision, and therefore they cannot be considered nationally or internationally recognized. Although the article from [www.entrepreneur.com](http://www.entrepreneur.com) (item 3), states that “the students who compete at this level are the very best in the nation,” it is not clear whether the competition is open to students from all over the nation as it appears to be a regional contest in Florida. The petitioner also provided a certificate that appears to verify his Pre-emptive University Recruitment Fellowship at the University of Texas (item 5). Again, however, the petitioner failed to establish that a fellowship provided by a university is a nationally or internationally recognized prize or award.

The petitioner provided additional information (items 6 and 7) to demonstrate that material about the petitioner was published in a professional or major trade publication or other major media pursuant to 8 C.F.R. § 204.5(h)(3)(iii). However, the AAO already evaluated the article submitted from the *Florida Music Director* regarding the petitioner and found that it had “a limited state distribution and appears to be directed primarily to educators and students, and therefore does not establish it as a major trade publication in the music industry.” The evidence submitted in the motion to reopen (item 6) reaffirms our position as the internet page provided indicates the journal is distributed to “more than 5,000 music teachers, school principals, school district superintendents and music/art department supervisors, public and university libraries, college music education students, and subscribers.” Similarly, although the petitioner now has provided the article from the *Daily Siftings Herald*, dated April 29, 2002 (item 7), he still has failed to establish that the publication is a form of major media. As such, considering all of the evidence de novo, the petitioner still fails to satisfy any of the criteria.

### ***B. Final Merits Determination***

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to

the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 2010 WL 725317 at \*3.

In this case, the specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion, as well as in the prior decisions, of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The submitted evidence provided by the petitioner is not indicative of his national or international acclaim and there is no indication that his individual achievements have been recognized in the field. In fact, it appears that many of the awards won by the petitioner were earned at the collegiate level, including his fellowship award, the FSMTA Competition, MTNA Southern Division Competition and the Byrd Piano Ensemble Competition. As the awards appear to have been awarded only to college students, the petitioner was not competing against all of those in the field, including professional pianists. Additionally, the awards were geographically limited to Florida, and have not been proven to be nationally or internationally recognized awards. Accordingly, the petitioner has failed to demonstrate that he is at the very top of his field. Further, sustained acclaim required under 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) by this highly restrictive classification cannot be demonstrated where the most recent award (again, a local award for a student competition) was received three years prior to filing this application.

Finally, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden. The motion to reopen will be dismissed.

### **III. Conclusion**

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established his 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.

**ORDER:** The motion to reopen is dismissed, the decision of the AAO dated March 3, 2009, is affirmed, and the petition remains denied.