

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

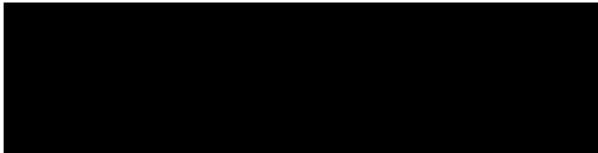
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 23 2010
LIN 08 133 51317

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing 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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on April 4, 2009, 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 did not demonstrate the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate the receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 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, filed on April 1, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a pianist.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).

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

The petitioner claims eligibility for this criterion based on the following submitted documentation:

1. Teng Prize in the Fourth National Chopin Competition of Taipei on April 8, 1995;
2. Award of Distinction in the Final Round of the First National Piano Concerto Competition of Taiwan, R.O.C. on December 5, 1997;
3. Third Prize Joint Winner at the Province of Foggia on October 26, 2002;
4. Second Place at the 21st Annual Ohio Music Teachers Association on March 20, 2005;
5. Beryl Chempin Bach Prize for Pianists at the University of Central England (UCE) on March 26, 2001;
6. Doris Newton Music Club Prize at the UCE on May 18, 2001;
7. Birmingham Conservatoire Piano Prize at the UCE on May 18, 2001;
8. Symphony Hall Recital Prize at the UCE on May 18, 2001;
9. Anthony Cross Memorial Prize at the UCE on June 29, 2001;
10. Finalist of the Ludlow Philharmonic Concerto Prize at the UCE on March 14, 2002;
11. Winner of the John Ireland Competition at the UCE on April 17, 2002;
and

12. First Place at the Women in Music 2004-2005 Scholarship Competition for Advanced Musical Study on March 6, 2005.

Regarding item 1, counsel claims on appeal:

The judging panel is composed of well known national and international musicians. There are four rounds which get cut in half each round. Winners are awarded a monetary sum and are awarded Master's classes after the competition, and will provide airfare and traveling expenses to compete in the Chopin Piano Competition in Europe.

In addition, regarding item 3, counsel claims:

This annual competition is opened to pianists of all nationalities and consists of selective and final tests. The selective test has to be performed within 35 minutes and must include a Prelude and Fugue from "Il clavicembalo ben Temperato" by Bach, a piece by Chopin or Liszt, a piece by Debussy, Scriabin, Rachmaninov, or Bartok and a Sonata by Hayden, Mozart or Clementi. The final test is to be performed in an hour and must include a Sonata by Beethoven at least one piece from the romantic period, and at least one piece from the historical century. Both tests are performed by memory and only six candidates are chosen to perform the final test based on the selective tests. The winners are awarded a monetary amount and must perform in a final concert presented by the Commission and

However, counsel failed to submit any documentary evidence supporting his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 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).

Regarding items 1 - 4, there is no evidence showing that the petitioner's awards and prizes had a significant level of recognition beyond the presenting organization. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence demonstrating that the petitioner's awards and prizes are tantamount to nationally or internationally recognized prizes or awards for excellence in the petitioner's field of endeavor. In addition, regarding items 1 and 2, the petitioner failed to establish the significance of the Teng Prize and Award of Distinction as they relate to nationally or internationally recognized prizes or awards. Regarding item 3, the award appears to a provincial award within Italy rather than a national award. Regarding item 4, the award appears to be a state award rather than a national award.

Regarding items 5 – 11, the awards were won by the petitioner at student level competitions at the UCE. Therefore, we cannot conclude that such awards indicate that he “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.¹ Likewise, it does not follow that a student pianist who has had success in student level competitions should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

In this case, there is no evidence showing that the petitioner’s awards commanded a significant level of recognition beyond the context of the events where they were presented. For example, there is no evidence showing that the petitioner’s awards were announced in major media or in some other manner consistent with national or international acclaim. Accordingly, the petitioner has not established that the student competitions at the UCE resulted in his receipt of nationally or internationally recognized prizes or awards. In addition, there is no evidence demonstrating that the petitioner’s awards and university honors are tantamount to nationally or internationally recognized prizes or awards for excellence in the field. The petitioner’s awards are limited to local or regional and student level competitions and institutional recognition rather than national or international recognition. The petitioner’s receipt of such awards offers no meaningful comparison between him and experienced professionals in the field who have long since completed their educational training.

Notwithstanding the above, regarding item 12, the petitioner’s award appears to have been for a scholarship competition for advanced musical study. However, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic competitions for scholarships cannot be considered a prize or award in the petitioner’s field of endeavor. Moreover, academic competitions for scholarships are limited to other students. Experienced experts in the field are not seeking scholarships. Thus, they cannot establish that a petitioner is one of the very few at the top of his field.

¹ While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

Accordingly, 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 claims eligibility for this criterion based on the following two articles:

1. [REDACTED] Solo Concert Takes Place Tonight, UDN News, June 7, 2000; and
2. Young Musicians Festival Showcase, Yorkshire Post, February 23, 2001.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication or from a publication printed in a language that the vast majority of the country's population cannot comprehend. Some newspapers, such as the New York Times, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

Regarding item 1, the petitioner failed to submit any documentary evidence establishing that UDN News is a professional or major trade publication or other major media. Regarding item 2, the article is not primarily about the petitioner. Instead, the article is a review of a showcase by the Birmingham Conservatoire. *See generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). In fact, the petitioner is only mentioned one time in the entire article. In addition, the petitioner failed to submit any documentary evidence establishing that the Yorkshire Post is a professional or major trade publication or other major media.

Notwithstanding the above, we cannot ignore that the statute requires the petitioner to submit "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). We do not find evidence that the petitioner had a single article published about him over seven years from the filing of the petition and another article that mentions him

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the Washington Post, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

one time over eight years from the filing of the petition is sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

We also note that counsel claims the petitioner's eligibility for this criterion based on the petitioner being "featured in two released CDs." However, the plain language under 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." As this criterion specifically requires the title, date, author and any necessary translation, compact disks do not qualify the petitioner under this criterion. However, we will consider the fact that the petitioner is featured in two released compact disks as they relate to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and discussed later.

Accordingly, 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 specialization for which classification is sought.

The petitioner claims eligibility for this criterion based on a letter from [REDACTED] Coordinator for Graduate Teaching Associates for the Ohio State University (OSU). [REDACTED] stated:

In the position of Graduate Teaching Associate, [the petitioner] had the responsibility of assisting the graduation projects of undergraduate and graduate students, as well as the teaching many of our students at the college. One of the duties is to judge students' juries every quarter. He always gave the most helpful insight and effective practice techniques that would guarantee the accomplishment of the goals.

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." The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.³ 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, evaluating the work of accomplished pianists as a member on a national panel of experts is of far greater probative value than evaluating the work of student pianists.

³ We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

We find that the routine duties performed by the petitioner as part of his job responsibilities as a graduate teaching associate are insufficient to meet this criterion and inconsistent with the level of acclaim required for this highly restrictive classification. Regardless, judging local, amateur, or student competitions is not indicative of “that small percentage of individuals that have risen to the very top of their field of endeavor.” *Matter of Price*, 20 I&N Dec. at 954. *See also, Kazarian v. USCIS*, 580 F.3d 1030, 1035 (9th Cir. 2009). (Internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion).

Accordingly, 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.

The petitioner claims eligibility for this criterion based on the statements and assertions made in a single letter of recommendation from [REDACTED] of Music at the OSU. [REDACTED] stated:

Outstanding as he is as a soloist, the thrust of [the petitioner’s] great importance to central Ohio probably lies with his accompanying. News of his extraordinary accompanying skills spread so quickly, and demand for his help grew to such an extent, that it seemed for a time he was assisting almost every student in the School of Music. Although he is primarily on the payroll at Otterbein now, Ohio State still turns to him when they need the very best accompanying for important visitors and faculty. This whole part of the state has come to depend on his musicianship.

While not specifically claimed by the petitioner for this criterion, we note that the record contains numerous other recommendation letters. We cite representative examples here:

[REDACTED] OSU, stated:

My most outstanding DMA, MM and undergraduate performance majors continue to seek his collaboration for both recitals and competitions because of his extensive knowledge of the clarinet repertoire, and for his outstanding gifts as a chamber musician.

[REDACTED], Contemporary Art Studio, stated:

[The petitioner] is without question an extremely accomplished pianist, but being an outstanding musician does not necessarily translate to being a good teacher. In the case of [the petitioner] it absolutely does. Regardless of whether he is teaching a 6 year old beginner or a 50 year old adult, he has an ability to connect with his students in a way that very few teachers do so. He is able to motivate and

solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030 at 1036.

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. The petitioner's submission of a single letter of recommendation and the assertions contained therein do not reflect that he has made an original musical contribution that has impacted his field of music. To be considered a contribution of major significance in the field of music, it can be expected that the petitioner's work has been adopted or otherwise influenced the music industry as a whole. While the record reflects the petitioner's talent as a pianist, the petitioner's reference letters do not provide examples of how the petitioner's work is already influencing the field beyond assisting other student musicians and fall short of establishing that the petitioner has already made original contributions of major significance.

Accordingly, the petitioner 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 claims eligibility for this criterion based on his international stage performances. This criterion, however, relates to the visual arts. As the petitioner is a pianist, it is inherent to the field of music to perform on stage. Not every stage performance is an artistic exhibition or showcase. Nevertheless, the plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for pianists such as the petitioner. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. We find that the petitioner's performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and discussed later.

Accordingly, the petitioner has not established that he meets this criterion.

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 claims eligibility for this criterion based on his salary with Otterbein College, Jefferson Academy of Music and Contemporary Arts Studio. The petitioner submitted the following:

1. A Performance Agreement between Jefferson Academy of Music and the petitioner, dated March 26, 2008, for the petitioner's participation in the musical concert "Young Professionals" on February 8, 2009;
2. Three pay stubs from Otterbein College for the pay dates of November 7, 2008, January 30, 2009, and February 27, 2009;
3. Two pay stubs from Jefferson Academy of Music reflecting dates ranging from September 24, 2008 to January 31, 2009;
4. Wage information for the Foreign Labor Certification Data Center's website (www.flcdatcenter.com) for musicians and singers in the Columbus, Ohio area from July 2008 to June 2009;
5. 2006 Form W-2 from OSU reflecting \$2396.00 in yearly wages;
6. 2006 Form W-2 from Eastern Music Festival, Inc. reflecting \$1855.00 in yearly wages;
7. 2006 Form 1099 from Jefferson Academy of Music reflecting \$1866.00 in yearly wages;
8. Two pay stubs from Otterbein College dated November 21, 2007, and December 7, 2007, reflecting year-to-date earnings of \$1738.90; and
9. Pay stub from Jefferson Academy of Music for the pay period of November 1, 2007 to December 31, 2007, reflecting year-to-date earnings of \$3105.00.

Regarding items 1-4, the petition was filed on April 1, 2008. These items reflect events occurring after the filing of the petition. Eligibility must be established at the time of filing. Therefore, we will not consider these items as evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. We acknowledge regarding item 1 that the contract was made on March 26, 2008, prior to the filing of the petition. As indicated above, the contract was for a chamber music concert occurring on a future date, February 8, 2009. The petitioner must establish that he commanded a high salary or other significantly high remuneration prior to the filing date of the petition. However, we note that according to the compensation clause, payment will be made "on the first business day following completion of services set forth in this contract." In addition, according to its own terms, the contract could be terminated by "Act of God and Cancellation" such as sickness, accident or disaster, or severe weather conditions. Given these terms, it is apparent that the contract could be terminated prior to the petitioner receiving any compensation. Such evidence does not establish that the petitioner "has commanded" a high salary at the time of filing.

The plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has commanded a high salary "in relation to others in the field." Regarding items 5-9, while the documentary evidence reflects that the petitioner has earned various salaries, the documentary evidence does not reflect that the petitioner has earned a high salary in relation to

others in his field. We note that the petitioner's salaries appear to have been earned in limited engagements in connection with a festival and educational institutions. For 2006, the petitioner earned a combined income from three different employers of approximately \$6117. For 2007, the documentary evidence reflects the petitioner's yearly salary of \$1738.90. Even if we were to accept the information from item 4, which we do not, the level 1 wage for musicians, which is the lowest level, is \$33,155 per year. We note that the highest level 4 wage is \$74,547 per year. The petitioner failed to establish that he is even near to earning the lowest level 1 salary, let alone earning the highest level 4 salary. The petitioner failed to establish that he as commanded a high salary or other significantly high remuneration for services, in relation to others in the music field.

Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner has never claimed eligibility for this criterion at the time of filing or on appeal. However, the petitioner submitted the following documentary evidence that relates to this criterion:

1. Advertisement reflecting the petitioner's pre-concert recital at the London Philharmonic Orchestra on December 3, as the winner of the Symphony Hall-Birmingham Conservatoire Competition;
2. Program reflecting the petitioner's performance at the Young Musicians Festival on February 22, 2001;
3. Program featuring the petitioner at the Birmingham Conservatoire on December 3, 2001;
4. Program reflecting the petitioner's piano recital at Steinway Hall on April 10, 2002;
5. Program reflecting the petitioner's piano recital at the Taipei Philharmonic Foundation for Culture and Education on December 17, 2003;
6. Program reflecting the petitioner being featured at the OSU Symphony Orchestra on February 2, 2005; and
7. Program reflecting the petitioner's piano recital at the Graves Recital Hall on November 29, 2007.

In addition, as mentioned previously, the petitioner submitted two compact disks which featured the petitioner. This regulatory criterion requires evidence of commercial successes in the form of "sales" or "receipts." While the documentary evidence reflects evidence of the petitioner's performances at various venues, the record does not reflect evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of his field. Further, there is no evidence showing that the petitioner's performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar

performances that did not feature him. In addition, there is no evidence showing any sales information for the petitioner's compact disks.

Accordingly, the petitioner has not established that he meets this criterion.

Finally, counsel addresses the petitioner's intent to continue to work in the United States and refers to the director's request for evidence on January 28, 2009. The record reflects that the director requested the petitioner to submit evidence pursuant to 8 C.F.R. § 103.2(b)(8)(i) demonstrating the petitioner's intent to continue to work in the United States. In the director's decision on April 4, 2008, he specifically discussed the petitioner's employment in the United States and found that the petitioner was likely to continue working in his field in the United States. Nevertheless, even though counsel addresses this favorable finding on appeal, we concur with the decision of the director and find the petitioner likely to continue employment in his field in the United States.

In sum, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). While the petitioner has earned the respect and admiration of the individuals offering recommendation letters, the petitioner failed to establish that he has amassed a record of accomplishment which places him among that small percentage at the very top of his field. We agree with the experts' assertions that the petitioner possesses talent as a pianist, but the evidence of record does not establish that he has sustained national or international acclaim.

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 or 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 eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.