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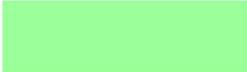
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090



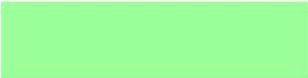
U.S. Citizenship
and Immigration
Services



Date: **DEC 04 2013**

Office: TEXAS SERVICE CENTER FILE: 

IN RE:

Petitioner:
Beneficiary: 

APPLICATION: 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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On appeal, the petitioner asserts that the director did not explain in the NOIR why the approval was in error. Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* In the NOIR, the director explained that the petitioner had not submitted the requisite evidence set forth in the pertinent regulations.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts as a musician, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. See section 203(b)(1)(A)(i) of the Act 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 categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must

submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner asserts that the director did not fully consider and properly weigh all the evidence of record.

I. LAW

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of

evidence submitted to meet a given evidentiary criterion.¹ 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.* at 1121-22.

The court stated that the AAO’s evaluation 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 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria²

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The petitioner previously submitted evidence under this criterion. The director’s revocation decision concluded that the petitioner did not meet this criterion and the petitioner does not identify any factual or legal error relating to this criterion on appeal. Consequently, USCIS concludes that the petitioner abandoned this claim. See *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

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. 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner initially submitted foreign language articles with incomplete translations in support of this criterion. In the NOIR, the director advised that the petitioner had not submitted proper translations

¹ 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).

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

or evidence that the publications constituted professional, major trade publication or other major media. The petitioner's response did not address this criterion and in the final NOR the director reiterated the concerns from the NOIR. The petitioner does not raise this issue on appeal. USCIS, therefore, determines that the petitioner abandoned this claim. *See Sepulveda*, 401 F.3d at 1228; *Hristov*, 2011 WL 4711885 at *9.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The director determined in the NOIR and NOR that the petitioner did not satisfy the requirements of 8 C.F.R. § 204.5(h)(3)(v). On appeal, the petitioner asserts that the director did not properly weigh the evidence submitted under this criterion, which included letters from experts, and evidence of his participation in two Georgian ballet troupes.

The petitioner submitted multiple groups of support letters during various stages of these proceedings, some of which do not appear on letterhead. Along with the Form I-140 petition, the petitioner submitted a set of letters from the following individuals: (1) [REDACTED] Bandmaster of the company [REDACTED] (2) [REDACTED] Head of the Folklore Department at the [REDACTED] (3) [REDACTED] a musician; (4) [REDACTED] Director of the [REDACTED] (5) [REDACTED] a director and actor, jointly with [REDACTED] general director and actor (both associated with [REDACTED] Municipal Department of Social Services and Culture) ; (6) [REDACTED] head of [REDACTED] and (7) a letter bearing an illegible signature that does not otherwise identify the author.³ The regulation at 8 C.F.R. § 103.2(b)(3) requires that: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The submitted letters in this group all required translations, but the translations either contain the stamp of a translation service with no certification from the translator, or are accompanied by a single blanket certification that does not identify any specific document. Because these translations do not comply with 8 C.F.R. § 103.2(b)(3), they lack probative value. Even if the translations satisfied the regulation, the authors of the letters appear to be the petitioner's immediate colleagues who provide vague praise of the petitioner's talents as a musician. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).⁴

The petitioner submitted another group of letters along with his response to the director's Notice of Intent to Revoke, which included letters from the following individuals: [REDACTED] Art Director of the [REDACTED] General Manager at [REDACTED] [REDACTED] a folk musician; [REDACTED] Director of the [REDACTED]

³ As neither the relationship to the petitioner nor the alleged expertise of the unidentified author in the field is apparent, the letter lacks probative value.

⁴ In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

[REDACTED] a folk musician for the [REDACTED] Organizer of the festival [REDACTED] Chief Conductor of the [REDACTED] President of the Professional Union of [REDACTED] Director of the [REDACTED] [REDACTED] a musician; and [REDACTED] a musician.⁵ The majority of the letters from this group (8 of 12 letters) lack probative value because the translator did not comply with the certification requirements of 8 C.F.R. § 103.2(b)(3). Regardless, the translated letters simply praise the petitioner's talent and professionalism but do not identify any original contributions by the petitioner and explain their impact in the field. The remaining letters are in English but also do not assist the petitioner in satisfying the requirements of this criterion. Regarding the letters from [REDACTED] while they are complimentary of the petitioner's skills as a musician, the two authors represent the petitioner's employers and solely attest to the petitioner's contributions to their organization and not to his contributions in the field. Similarly, [REDACTED] appear to be local musician colleagues and their letters primarily contain bare assertions of acclaim and vague claims of contributions. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The petitioner also claims that his participation in two Georgian ballet troupes, [REDACTED] and [REDACTED] demonstrates his eligibility under this criterion. The record, however, does not substantiate the petitioner's claims. While the petitioner asserts that both ballet troupes are world class and obtained global acclaim, the only evidence that the petitioner provides relating to the reputation and recognition of [REDACTED] is a *Wikipedia* entry. However, there are no assurances about the reliability of the content from this open, user-edited internet site.⁶ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909, 910 (8th Cir. 2008). For Sukhishvili, the petitioner submitted a pamphlet about the troupe that the [REDACTED] issued. USCIS need not rely on the self-promotional material of the publisher. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Regardless, the petitioner does not explain how performing with two ballets, one of which he claims has a lengthy history, is an original contribution of major significance in the field. Specifically, the record contains no

⁵ [REDACTED] who submitted a letter with this group also appears to have submitted a letter with the previous group under the name, [REDACTED]
⁶ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on November 7, 2013, a copy of which is incorporated into the record of proceeding.

evidence that the petitioner's performances are novel and have impacted his field at a level consistent with an original contribution of major significance.

Accordingly, for all of the above reasons, the petitioner has not satisfied the plain language requirements of this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The director determined that the evidence the petitioner submitted in support of this criterion met the requirements of the regulation. Petitioner's submissions relating to this regulatory criterion consisted of documentary evidence of various musical performances. However, the interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *See Negro-Plumpe*, 2:07-CV-820-ECR-RJJ at *7 (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, and is instead a musician, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Accordingly, the petitioner has not satisfied the regulatory requirements and the AAO withdraws the director's finding with regard to this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x).

In the NOIR, the director noted that while the petitioner had submitted evidence of audio and video discs, he had not submitted sales data. In response, the petitioner referred to Erisioni's "global acclaim" as apparent from a *Wikipedia* page and, in the following paragraph, claimed that an [REDACTED] show, "[REDACTED]" had an audience of 150,000 and sold 100,000 compact discs. The director concluded in the NOR that the petitioner did not establish this criterion because while he submitted compact discs and listed the audience statistics for a live performance, the record did not include evidence of the number of sales or revenues that substantiated the claim of commercial success. On appeal, the petitioner notes that he included the *Wikipedia* web address that provided the number of ticket sales and compact disc sales that the director failed to consider.

As noted above, with regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site. *See Badasa*, 540 F.3d at 910. Moreover, the record contains no evidence regarding the petitioner's specific role for this performance such that the audience and compact disc sales could be considered evidence of the petitioner's commercial success rather than the success of a large ensemble. For example, the record contains no evidence that he was featured prominently on the promotional material or comparable evidence of his contribution to the ensemble's commercial success.

Accordingly, the petitioner has not met the regulatory requirements under 8 C.F.R. § 204.5(h)(3)(v).

B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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” 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁷ Rather, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.* at 1122. The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁷ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I-&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).