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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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FILE: [Redacted]
SRC 09 100 50853

Office: TEXAS SERVICE CENTER Date:

JAN 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:
[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 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. Deadrick
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on April 15, 2009, and is now before the Administrative Appeals Office (AAO) 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 receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that “the standards of 8 CFR Section 204(h) do not readily apply to [the petitioner’s] occupation as a Gospel Recording Artist based in Belize.” We are not persuaded by counsel’s argument. The regulation at 8 C.F.R. § 204.5(h)(1) provides that an alien may file “for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in the sciences, arts, education, business, or athletics” (emphasis added). See also section 203(b)(1)(A)(i) of the Act and 8 U.S.C. § 1153(b)(1)(A)(i). In this case, the petitioner is a gospel recording artist. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, counsel has submitted evidence addressing four of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

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 she has sustained national or international acclaim at the very top level.

This petition, filed on February 11, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a gospel recording artist. 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).¹

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 a letter from [REDACTED] of the Association for Belizean Artists First, stating that “[the petitioner] has won many awards including a \$1,000 cash prize for her album ‘Vision’.” The letter fails to indicate the specific awards and number of awards allegedly won by the petitioner. In addition, the letter fails to establish that the petitioner’s claimed awards were nationally or internationally recognized.

The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” The petitioner failed to submit documentary evidence demonstrating her receipt of nationally or internationally recognized prizes or awards. We do not find that a single letter that generally indicates that the petitioner received many awards is sufficient to establish eligibility for this criterion.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision

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

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.

The petitioner submitted the previously mentioned letter from [REDACTED] stating that the petitioner is a member of the Association for Belizean Artists First (ABAF). [REDACTED] also states:

ABAF has a membership of just over 200 Belizean artists at home and abroad. Aspiring members fill out a duplicate of the application form, and the Association keeps one on file, and the artists keeps [sic] a copy. Members not living in Belize receive regular updates on the association's plans and activities.

The petitioner also submitted a membership application for ABAF reflecting that the petitioner signed and dated the application on May 6, 2002, attesting that "[a]s a member of this association, I promise to give my full support whenever possible, and to obey it's rules, and regulations at all times."

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Based on the membership application, membership with ABAF requires only the applicant's "full support" of the association and obeying the rules and regulations. The petitioner failed to submit any documentary evidence such as ABAF's charter or bylaws establishing that membership with ABAF requires outstanding achievement of its members as an essential condition for admission to membership.

Accordingly, the petitioner has not established that she 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 submitted a single article from [REDACTED] titled, [REDACTED] dated February 8, 2009, by [REDACTED]

The article discusses the petitioner's album, *Vision*, and provides a brief history of the petitioner's singing career. The petitioner also submitted evidence from www.amandala.com indicating that "AMANDALA is the nation's leading newspaper."

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

We find that information from AMANDALA's own website is insufficient to establish that AMANDALA is a professional or major trade publication or other major media without corroborating, independent evidence. As we can not determine whether the evidence supports the petitioner's claims, the petitioner failed to establish that she had published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought.

In addition, 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 her is sufficient to establish the level of acclaim required for this highly restrictive classification.

Accordingly, the petitioner has not established that she 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 submitted the following:

1. Hilltop Recording Contract for *Fix Your Eyes on Jesus* for the CD album *Glory*;
2. Hilltop Recording Contract for *I Know My Lord He's Able* for the CD album *The Light of the World*;
3. Hilltop Recording Contract for *Lift Up Holy Hands* for the CD album *The Light of the World*;

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.

4. Invitation to minister at the Deeper Life Christian Fellowship;
5. Invitation to be a guest at New Hope Gospel Ministries;
6. Appreciation letter for attending the women's conference at New Revelation Pentecostal Church;
7. Appreciation letter for ministering at the summer conference at Vision for Zion Ministries Worlwide;
8. Reference letter from [REDACTED] of Tabernacle Christian Center Ministries;
9. Reference letter from [REDACTED] of Fountain of Life Ministries;
10. Appreciation letter for ministering at the Church of the Nazarene;
11. Booklet of songs allegedly written by the petitioner; and
12. Website page from [REDACTED] featuring the petitioner's album, *Vision*.

On appeal, counsel claims that “[t]he 2 albums and 2 CD’s (evidenced by the Hilltop Commercial Recording Contracts and [the petitioner’s] website information), book of songs that [the petitioner] has written, and invitation letters to perform at churches meet this requirement.” However, the submitted documentation does not demonstrate that the petitioner created “2 albums and 2 CD’s.” The three Hilltop Recording Contracts reflect that the petitioner signed into a contractual agreement to sing one song for the CD album *Fix Your Eyes on Jesus* and two songs for the CD album *The Light of the World*. In fact, the petitioner failed to submit any documentary evidence establishing that she fulfilled her contractual obligations and sang the songs for the albums. Moreover, the booklet of songs fails to reflect that the petitioner actually wrote the songs as claimed by counsel. A review of the booklet reflects that the petitioner indicated her name at the bottom of each of the songs. The petitioner failed to submit documentation establishing that her songs were originally written by her, such as proof of copyright for the songs. Furthermore, while a review of the website from [REDACTED] credits the petitioner with two albums, *Vision* and *I Believe*, we note that the website is the petitioner’s personal website. The petitioner failed to submit independent, corroborating evidence establishing the creation of these two albums.

Regarding the invitation and appreciation letters, we note that four of them invite and thank the petitioner for ministering at the churches (not for a performance as a gospel recording artist), and the other appreciation letter thanks the petitioner for attending the women’s conference. With regard to the petitioner’s achievements as a vocalist, the reference letters do not specify exactly what her original contributions in gospel singing have been, nor is there an explanation indicating how any such contributions were of major significance in her field.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 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 from experts supporting the petition 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 experts' 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 a vocalist who has sustained national or international acclaim.

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. For the reasons stated above, the submitted documentation by the petitioner fails to establish that she has made original artistic contributions of major significance to the gospel recording field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed, or widely accepted throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

In this case, we concur with the director's finding that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she 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).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved the 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 her significantly above almost all others in her 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.

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.