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FILE: WAC 06 273 55205 Office: CALIFORNIA SERVICE CENTER Date: OCT 11 2007

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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.

for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an entertainment company. The petitioner seeks O-1 nonimmigrant classification of the beneficiary, as an alien with extraordinary ability under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him temporarily in the United States as a singer/entertainer.

The director denied the petition, finding that the petitioner failed to establish a proper itinerary, or that the beneficiary has received sustained national or international acclaim and exhibits a degree of skill and recognition substantially above that ordinarily encountered to the extent that the beneficiary is renowned, leading, or well-known in the field of arts.

On appeal, the petitioner submits a brief and several new exhibits.

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

8 C.F.R. § 214.2(o)(1)(i) states that a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. 8 C.F.R. § 214.2(o)(3)(ii) defines an "event" in pertinent part as:

an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event.

In the initial filing, [REDACTED] owner of the petitioning entity, stated:

We represent many of the finest bands, DJs, vocalists and entertainers in this tri-state area. . . .

The events for which we perform include, but are not limited to Weddings, Bar/Bat Mit[z]vahs, Theme Parties, Birthdays, Exclusive Private Parties, Public Concerts and Events and Corporate Entertainment. . . . [I]n addition to representing singers of all types, we also produce events with top classical ensembles, jazz ensembles and calypso steeldrum trios.

On September 30, 2006, the director issued a request for evidence (RFE), instructing the petitioner to "[p]rovide an explanation of the nature of the events or activities and a copy of any itinerary for the events or activities" for which the petitioner sought to engage the beneficiary as an O-1 nonimmigrant.

In response, the petitioner submitted a bookings schedule that appears to have been transmitted by facsimile. The beneficiary's name has been added to the top of this document, but otherwise the beneficiary's name appears nowhere else in the schedule. Under "Name of Band," every booking shows the name "Stolen Moments" (the name of the petitioning entity). Most of the bookings are in New York, New Jersey and Connecticut, with some bookings in Massachusetts as well. The document is dated November 9, 2006, and includes bookings from November 4, 2006 through July 4, 2008.

The director denied the petition on January 4, 2007, in part because the petitioner had not shown any "contract agreements for specific events." The director acknowledged the list of bookings submitted in response to the RFE, but noted that the engagements were booked under the name "Stolen Moments" rather than under the beneficiary's name. The director concluded: "[n]othing indicated the beneficiary was actually the featured performer instead of the band 'Stolen Moments.' No contracts, advertisements or playbills were submitted. Therefore, a proper itinerary of the beneficiary's performances has not been submitted."

On appeal, counsel states:

Please note that "Stolen Moments, Inc." is the petitioning company, and there is a band called Stolen Moments which is owned by the petitioning company. . . . When someone hires the petitioning company to provide the entertainment with regards to the beneficiary . . . , the client would specifically ask for [the beneficiary] as the singer/entertainer and sometimes, the band that supports the singer and provides the background music is Stolen Moments. If, on the other hand, the client has less money and does not want to hire a live band, then [the beneficiary] can also perform with a DJ and provide the vocals off recorded music. In either event, the beneficiary IS the star for the event and he would not be performing unless the client SPECIFICALLY ASKED FOR THE BENEFICIARY.

(Counsel's emphasis.) Counsel states that the previously provided bookings schedule shows "54 actual bookings for [the beneficiary] to be the main or principal singer," but counsel does not explain why the events were booked with "Stolen Moments" as the band name, rather than under the beneficiary's own name. As noted previously, the beneficiary's name has apparently been added after the fact to the schedule. The schedule, therefore, is not conclusive evidence unless it is corroborated by other documentation.

The petitioner submits confirmation sheets for 28 events between March 17, 2007 and December 15, 2007. Every one of these sheets was executed and signed on February 1, 2007. Most of the events are weddings, but there is also a bar mitzvah and a "Sweet 16" party. For some of these events, the beneficiary was set to perform with the band Stolen Moments. For other events, the beneficiary was set to perform with a disc jockey or with another band, Moonlite Silhouettes. Some confirmation sheets, apparently submitted in error, concern not the beneficiary, but other singers.

The previously submitted bookings schedule shows that the band Stolen Moments was booked for 42 events during the same time period (March 17 through December 15, 2007). There is some overlap between the events described on the confirmation sheets and those shown on the bookings schedule, but only for events that identify Stolen Moments as the band on the confirmation sheets. The booking schedule does not show

any of the events where the beneficiary was scheduled to appear with a DJ or with Moonlite Silhouettes. Furthermore, the bookings schedule for Stolen Moments shows numerous events for which the record contains no corresponding confirmation sheets. This suggests that the beneficiary participated in some, but apparently not all, of the performances shown on Stolen Moments' bookings schedule.

The available evidence supports the director's assertion that the bookings schedule is for the band Stolen Moments, not for the beneficiary. Based on this evidence, we cannot accept the repeated assertions that Stolen Moments' bookings schedule was actually the *beneficiary's* bookings schedule. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). We acknowledge counsel's assertion on appeal that "everything we have submitted is bona fide, true and not fraudulent or a misrepresentation in any way," but a claim of this kind cannot immunize the petitioner's evidence against inquiry.

We affirm the director's finding that "a proper itinerary of the beneficiary's performances has not been submitted." The petitioner has, instead, submitted a copy of Stolen Moments' bookings schedule, apparently altered after the fact by addition of the beneficiary's name to the top of each page. The beneficiary's involvement in *some* of the bookings shown is not sufficient to persuade us that the petitioner accurately and in good faith described the bookings schedule as relating to the beneficiary rather than to the band Stolen Moments. The director correctly found that the petitioner seeks O-1 status for the beneficiary not so much for already-planned specific events, but rather to have the beneficiary available for bookings that may occur during the intended period covered by the petition.

In the context of the reliability of the petitioner's claims, and counsel's interpretations and defenses thereof, we note that the petitioner originally stated, on the Form I-129 petition, that the beneficiary would earn "\$800/wk." The petitioner then obscured this information with correction fluid and overtyped it with "\$870/wk," an amount roughly equivalent to \$45,240 per year. Paul Scattaretico, in his initial letter, stated that the beneficiary "would be performing a minimum of 8-10 events per month. . . . The salary for this position will be a minimum of \$45,000.00 per year."

The petitioner's subsequent RFE response included a copy of an "Independent Contractor Service Agreement" between the petitioner and the beneficiary. Counsel, in describing this agreement, stated "the Beneficiary's weekly salary will be \$870/week as per Form I-129." The agreement, dated November 29, 2006, does not show a salary of \$870 per week. Rather, it indicates that the petitioner will pay the beneficiary "compensation in the amount of \$2,000.00 per month," which (annualized to \$24,000 per year and divided by 52) is about \$461.54 per week, barely half (about 53%) of the amount previously claimed. The Service Agreement is the only evidence we have of the terms to which both parties have mutually agreed in writing. The confirmation sheets, discussed earlier, specify that the beneficiary is to be paid \$200 for each "gig" (the term used on the confirmation sheets). At "8-10 events per month," this translates to between \$1,600 and \$2,000 per month paid to the beneficiary – in line with the figure stated in the Service Agreement. To earn \$45,000 per year, at \$200 per "gig," the beneficiary would have to perform 225 engagements per year, averaging about three engagements every five days.

Paul Scattaretico indicated that his company “produces approximately 350 events” each year, and that these bookings are divided among “singers of all types . . . classical ensembles, jazz ensembles, and calypso steeldrum trios.” There is no evidence that the beneficiary alone accounts for two-thirds of all the petitioner’s bookings (which he would have to do, in order to earn \$45,000 per year at \$200 per booking).

The Service Agreement further stipulates: “[a]ny amendment or modification of this agreement or additional obligation assumed by either party in connection with Agreement will only be binding if evidenced in writing signed by each party or an authorized representative of each party.” The record contains no mutually signed agreement that the beneficiary’s minimum annual compensation will be \$45,000 rather than \$24,000.

On appeal, counsel states: “[r]egarding [the beneficiary’s] salary as \$870 per week which we submitted with the application, that is only an estimate and reflects the minimum he will be getting paid.” In the same paragraph, counsel mentions the previously submitted “Independent Contractor Agreement,” but counsel does not acknowledge that this very document indicates a far lower minimum rate of compensation. The petition form and Paul Scattaretico’s accompanying letter, on the one hand, and the Service Agreement on the other, effectively amount to contradictory claims regarding the beneficiary’s anticipated compensation.

The above discussion illustrates that the petitioner has made inconsistent claims regarding the beneficiary’s compensation, further undermining the petitioner’s overall credibility. Pursuant to *Ho*, we will not disregard these inconsistencies when weighing the credibility of other unsupported claims offered by the petitioner.

The second issue raised in the denial of the petition concerns the extent of the beneficiary’s recognition in the arts. O-1 nonimmigrant classification is available to qualified aliens who have extraordinary ability in the arts, which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation and who are coming temporarily to the United States to continue work in the area of extraordinary ability. Section 101(a)(15)(O)(i) of the Act; 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(1)(ii)(A)(I).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states:

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

██████████ offers this synopsis of the beneficiary’s qualifications:

From an early age and throughout his life, [the beneficiary] has demonstrated an unusual and exceptional ability for music, voice and dancing. He developed his violin and musical lecture studies at Dellas Artes at Santiago, Dom[inican] Rep[ublic]. He also participated in various choral groups and was continually selected to be the lead soloist in these groups.

Because of his artistic talents, in 1996, [the beneficiary] received a scholarship to Pontificia Universidad Catolica Madre y Maestra (PUCMM), which is one of the most renowned universities of the Dominican Republic. He received Bachelor of Arts Degrees in Marketing Research and Business Administration in the years 2000 and 2002, respectively. While attending PUCMM, he participated in and made a huge name for himself by becoming part of the University Groups TUNA, Los Aces and the Vocal Musical Group at PUCMM. He performed in literally hundreds of events and concerts during this period and received numerous awards, certificates, trophies and plaques in appreciation for his various roles he played. [The beneficiary] was known for his excellent interpretation, versatility, stage presence, vocalization and overall entertainment savvy. . . .

In the years after graduating from PUCMM, [the beneficiary] continued to perform in concerts and other events including being chosen to host the Welcome Home Party for Ms. [REDACTED] a Dominican Republic national who was selected in 2003. In 2004, [the beneficiary] moved to the United States to attend Farleigh Dickinson University in New Jersey to pursue a degree in Hospitality Management, which he is still attending. [The beneficiary] is still honing his skills and in 2004 won the famous "El Chaco de la Trompeta" Trophy on the popular Saturday night television show, *Sabado Gigante*. He has continued to give concerts in the Dominican Republic and played a prominent entertainment role in the Bronx, NY Dominican Parade on 03/27/2005 for which he received an award.

As recently as August 1, 2006, [the beneficiary] was awarded a District Council Certificate from his hometown, La Canela, Dom[inican] Rep[ublic] for their appreciation of his dedication, integrity and role model behavior which he has demonstrated over the years to his community. With his innovative style, command of the stage and charisma, [the beneficiary] is a newly arriving star who represents the Dominican Latin culture and Pop music scene. As [a] result, we believe that [the beneficiary] is a unique talent who is just beginning to become known more internationally and for whom we are proud to sponsor for [sic] this O-1 visa.

Pursuant to 8 C.F.R. § 214.2(o)(3)(iv), an alien of extraordinary ability in the arts must be recognized as being prominent in his or her field of endeavor as demonstrated by either: (A) evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or (B) at least three of six other specified forms of documentation. The petitioner does not claim that the beneficiary has won significant national or international awards or prizes to satisfy 8 C.F.R. § 214.2(o)(3)(iv)(A). The petitioner claims to have met the following criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B).

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications. 8 C.F.R. § 214.2(o)(3)(iv)(B)(2.)

The petitioner's initial attempt to satisfy this criterion consists of a single article by [REDACTED] in *The Latin Post*, published on August 30, 2006. After a biographical sketch of the beneficiary, worded very

similarly to parts of [REDACTED] letter (quoted above), the article indicates that the beneficiary "is working on his first musical production, which has themes written by him. The first single, 'Tu Foto,' composed by [REDACTED] promises to be a hit that will take this young artist to reach the musical peak in the city of New York and worldwide." The article describes the beneficiary not as an individual who has already attained prominence and distinction in the arts, but as an ambitious young artist who *hopes* to reach such levels in the future: "With his studies having come to a conclusion, this young man hopes to take his artistic career to a professional level and transcend the musical market."

In an accompanying letter, [REDACTED] (identified as a "Journalist/Publicist") stated:

I met [the beneficiary] in 2003, when I went to the Dominican Republic to attend "*Elegante Noche*," an award ceremony that takes place every year in the city of Santiago.

I was very impressed after seeing [the beneficiary] performing. . . .

I have confidence in him. He has great talent and a fervent desire to become a professional singer.

I am so convinced that [the beneficiary] has the possibilities [*sic*] to become an internationally acclaimed singer that I decided to write an article to portray him as the gifted artist he is.

In other words, the beneficiary's reputation as a singer has not led to media coverage. Rather, one of his supporters has written an article about him in the hopes that the favorable publicity will boost the beneficiary's career. The record contains no evidence that "Tu Foto" was ever released as a single, let alone whether that single enjoyed significant sales or airplay. It is not entirely clear from the article whether "Tu Foto" had even been recorded.

In the RFE, the director stated that the evidence previously submitted does not establish national or international recognition. The director requested additional evidence.

In response, counsel claimed: "[w]hile it is true that the Beneficiary may not be known that well in the United States . . . the Beneficiary *is* well known in the Dominican Republic. . . . It is our position that we have submitted enough evidence to establish that the Beneficiary has achieved *national recognition* to the extent required by the Immigration Laws" (emphasis in original).

The petitioner submitted a compact disc of his work, but it is a recordable disc, or CD-R, rather than a commercially pressed disc, and the disc does not show any insignia of a commercially released recording.

The petitioner submitted a copy of an electronic mail message from an official of the Miami-based Latin Recording Academy, indicating that the beneficiary's "voting membership application has been processed" and that the beneficiary would soon "receive [his] membership card." Background documentation indicates that an application for voting membership must include "documents . . . which show that your credits are

commercially released in a Latin country or North America.” The record does not contain documentation of the beneficiary’s commercial releases. While the beneficiary’s Academy membership is secondary evidence of the existence of commercial recordings (which the beneficiary evidently demonstrated to the Academy’s satisfaction), the record tells us nothing about those releases.

We further note that the message informing the beneficiary of his membership is dated December 12, 2006, three months after the petition’s filing date and two and a half months after the issuance of the RFE. The record contains no evidence that the beneficiary had applied for Academy membership before the filing date, or that he had commercially released any recordings prior to the filing date. The issuance of recordings after the filing date cannot, even if successful, retroactively establish eligibility as of the filing date. Material changes after the filing date cannot remedy a deficient petition. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998). Even if the beneficiary had already been an Academy member at the time of filing, neither this membership nor the existence of released recordings would inherently demonstrate national or international recognition.

In response to the RFE, the petitioner submitted translated copies of three published articles. An August 2002 article from *Listin Diario* discusses an upcoming performance, in Santo Domingo, of the Caribbean Rhythm Music Tour 2002. The article states that the tour offers “as principal attraction the salsero [redacted] Rosa and as national talent the talented [beneficiary].” In context, it is not clear whether the phrase “national talent” means that the beneficiary is nationally known in the Dominican Republic, or, rather, simply refers to the fact that the beneficiary is from the Dominican Republic and therefore represents that country while other participating artists hail from different countries. The translated headline shows the beneficiary’s name and calls him “a Representative of the Good Music in Dominican Republic,” which, again, supports the interpretation that the beneficiary is a “national talent” in the sense that he, unlike the other acts, originated from the Dominican Republic, thereby “representing” that nation on the tour. Although the beneficiary is named in the headline, the accompanying article devotes less than one sentence to him. The article devotes more space to logistical arrangements (such as tourist lodging) regarding the tour.

Another article, identified as originating from *La Informacion* in July 2002, appears to be a listing of various events scheduled for the day. A one-sentence segment of the article refers to an upcoming evening performance by “[t]he fashionable group ‘Piel Cafe,’” which included the beneficiary. The performance was to take place at “Ipanema Bar Cafe.”

Finally, the petitioner submitted an article from June 2002, previewing the Casa de Teatro Jazz Festival 2002. The material submitted does not clearly identify the publication (from the byline, it appears that the title may be *El Caribe*). The piece, two pages long in the original Spanish, devotes a short paragraph to each of the Festival’s featured acts. The passage relating to the beneficiary indicated that the beneficiary’s “powerful voice and so expected participation in the festival will be one of the main attractions that will delight the present public. [The beneficiary] will have the opportunity to interact with a national and international public and finally will be the best representation of our country.”

Although the director had specifically instructed the petitioner to provide “circulation figures” to show that the stories appeared in “major newspapers,” the petitioner’s response included no information about the

publications that carried the above articles. The petitioner has, therefore, not shown that the beneficiary has ever received national or international recognition in major newspapers. The petitioner has shown the existence of three articles from 2002, only two of which included the beneficiary's name and only one of which devoted more than a sentence fragment to the beneficiary. The record shows no further coverage until 2006, when, just before the filing date, one of the beneficiary's admirers wrote an article about him with the goal of furthering the beneficiary's career.

The director denied the petition, stating that the outcome of the decision "is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence," and stated that the petitioner had not shown that the submitted articles "were in major newspapers or publications as required."

On appeal, counsel protests that the director "has totally either ignored or discounted [the] value" of newspaper articles submitted previously. The director had previously advised the petitioner that it was not sufficient simply to establish the existence of newspaper articles; the regulation specifically requires coverage in "major newspapers," and it falls upon the petitioner to demonstrate that the articles appeared in major newspapers rather than in minor, local publications.

Counsel further states:

Listin Dario [sic] is a very well respected and well known national newspaper in the Dominican Republic, but apparently the Examiner has never heard of it so therefore the Examiner has concluded that it is not a prominent newspaper. One only has to [visit] google.com and type in *Listin Dario*. If you do that, you can easily determine that [it] is a very well known national newspaper in the Dominican Republic. I did."

(Counsel's emphasis.) The director did not, as counsel claims, conclude that *Listin Diario* "is not a prominent newspaper," nor would the director have to arrive at that conclusion in order to find the petitioner's evidence deficient. Rather, the director concluded that the petitioner had not shown that it *is* a prominent newspaper. This is not a trivial distinction. A finding that *Listin Diario* is not a prominent newspaper is a finding of fact that could be reversed by evidence of the newspaper's reputation and circulation. On the other hand, a finding that the petitioner had failed to establish the paper's reputation rests not on the reputation itself, but on the petitioner's efforts (or lack thereof) to demonstrate that reputation.

The petitioner bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. It is the petitioner's responsibility to procure and submit the evidence necessary to establish the beneficiary's eligibility; it is not the director's responsibility to conduct research on the petitioner's behalf. While the director has the discretion to seek verification of the petitioner's claims, the AAO will not fault the director for failing to do the petitioner's work by researching the newspapers that carried articles about the beneficiary. Even on appeal, the petitioner does not submit any evidence that *Listin Diario* is a national publication.¹ Counsel merely states that

¹ With respect to researching "Listin Dario" on a search engine such as <http://www.google.com>, we note that the name of the newspaper is "*Listin Diario*." The translator misspelled the name, but the correct spelling can be seen in the Spanish-language original. Given the nature of search engines, misspelling the name can significantly reduce the number of "hits" obtained by the search.

he learned that it “is a very well known national newspaper.” The 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).

Whatever the reputation or significance of *Listin Diario*, the record does not establish that *Listin Diario*'s coverage of the beneficiary extends beyond a sentence fragment from a 2002 article. A single mention of this kind is not *prima facie* evidence that the beneficiary has ever achieved national recognition for his accomplishments in the Dominican Republic.

Counsel next refers to the article relating to the *Casa de Teatro Jazz Festival 2002*, stating that it “speak[s] directly to the issue of the beneficiary having a national reputation.” We note that counsel never identifies the publication that carried the article, information without which it is clearly impossible to establish that the article appeared in a major newspaper or other publication. Leaving aside this major defect, the article, as translated, is ambiguously worded and could just as easily be interpreted to mean that the beneficiary will “finally” have exposure to “a national and international audience,” not having had such exposure previously.

The record shows only that the beneficiary has received minimal press coverage, and the petitioner has not shown that the beneficiary received any coverage at all between late 2002 and summer 2006. We concur with the director that the petitioner has not satisfied this regulatory criterion.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials. 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

The petitioner submits a letter from [REDACTED], Dean of Students at PUCMM, who affirms that the beneficiary attended that university and “was a great collaborator” in several “artistic groups,” but the record contains no objective evidence to show that any of these groups enjoy a distinguished reputation in the arts.

The petitioner submits copies of photographs showing the beneficiary in performance. Counsel states: “One can easily determine from these photos that [the beneficiary] was playing the leading role in these productions.” The photographs, however, do not establish that these performances were for organizations and establishments that have a distinguished reputation. In addition, the photographs are not part of articles in newspapers, trade journals or other publications, or directly referenced by testimonials.

In the RFE, the director instructed the petitioner to submit evidence that more closely conforms to the wording of the regulation. In response, counsel asserted that the beneficiary “has played a lead and starring role for many organizations that have a distinguished reputation such as PUCMM and the petitioning company.” Counsel identified no other organizations by name, instead offering the vague assertion, supported only by photographs, that the beneficiary “has been the star performer in many concerts over the years.” The petitioner submitted nothing to establish the distinguished reputations of PUCMM or the petitioning company. The petitioner’s own self-serving promotional materials, designed to attract clients, are not and cannot be evidence of a distinguished reputation.

In the denial notice, the director stated “[t]he petitioner provided photos [of] the beneficiary performing at the University Theater in Santo Domingo but did not provide satisfactory evidence that he was the lead or star of any of these events.” On appeal, counsel states that the photographs show “the beneficiary [at] center stage, with microphone in hand and dressed extravagantly for the event at hand and none [sic] can easily determine that he was the star or co-star of the event.” Counsel protests that the director failed to consider other photographs and promotional materials that similarly establish a starring role. We note that the lead singer of an opening or supporting act, appearing onstage before the main attraction, would tend to stand at center stage holding a microphone. More importantly, even acknowledging that the beneficiary was a leading performer at some events, the burden was on the petitioner to establish the significance of those events, and the time to meet that burden was at the time of filing or, at the latest, in response to the RFE.

On appeal, the petitioner submits additional promotional materials from concerts in 1998 and 2001. As with much of the evidence submitted previously, the evidence shows only that the concerts were scheduled to take place; the significance of the events is not self-evident. Counsel never explains why, if these concerts were significant enough to demonstrate the beneficiary’s eligibility, the petitioner never mentioned them in any way until the appellate stage.

Counsel maintains that the beneficiary’s appearances at PUCMM qualify as leading roles for an establishment with a distinguished reputation, but the materials submitted on appeal simply reassert that the beneficiary performed in student groups while studying at PUCMM.

With respect to the beneficiary’s performances for the petitioner, counsel concedes “[t]here are no playbills or advertisements for these types of private events so none can be provided.” The evidence indicates that the beneficiary has accumulated little documented experience in his field, and virtually nothing from after 2002. The petitioner has submitted no articles in newspapers, trade journals or publications and no testimonials sufficient to meet this criterion. Rather, the evidence shows that the beneficiary works for a company that provides entertainment for private functions such as weddings and parties.

We affirm the director’s finding that the petitioner has not satisfied this regulatory criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author’s authority, expertise, and knowledge of the alien’s achievements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

In a two-paragraph letter, [REDACTED] the New York General Consul of the Dominican Republic, stated that the beneficiary “is a virtuoso in music who can interpret music and has the firm desire to advance himself to new heights especially in the difficult art combination of sound and tempo.” This letter does not amount to significant recognition for achievements from a governmental agency. [REDACTED] did not establish his authority, expertise, or knowledge of music, and a general reference to the beneficiary as “a

virtuoso in music” does not recognize any particular achievements, and cannot suffice to demonstrate the beneficiary’s distinction, prominence or sustained acclaim in the arts.

The initial filing includes a “List of Certificates, Awards, Plaques, and Trophies.” The burden is on the petitioner to demonstrate that these items constitute significant recognition for achievements consistent with “sustained national or international acclaim,” as stated in section 101(a)(15)(O)(i) of the Act, and the regulatory definition of extraordinary ability in the arts at 8 C.F.R. § 214.2(o)(3)(ii).

Many of these claimed awards clearly fall far short of the regulatory and statutory thresholds; they merely attest to the beneficiary’s membership in musical ensembles, concert performances, and participation in local events such as parades. For instance, the beneficiary received a “Diploma” in 1991 for working at a “children’s afternoon party.” Another document is a contract for the beneficiary’s musical group to play at a “Piano Bar” on two days in February 2003.

The petitioner submits a photograph of a trophy, with the caption “Florida Radio Station WRMF 97.9 FM Award – 2003 / Finalist in Singing Contest.” The inscription on the trophy is only partly legible in the photograph. The inscription on another trophy has been translated as: “COLLEGE OF NOAH’S ARC [sic], To the Capellan Liriano Brothers for Representing not only La Canela but also the Country with Pride, 04/04/2003.” An April 2004 certificate reads: “9x9 Roberto Recognizes Your Great Artistic Talent In its new version of the Voice Festival ‘Looking for Fame.’” The petitioner’s initial submission contains no further documentation or information regarding these materials. The burden is on the petitioner to establish that these items represent significant recognition at a level consistent with the statutory and regulatory threshold for extraordinary ability.

The petitioner submits a photograph of an “*El Chacal de la Trompeta*” statuette, displaying the *Sabado Gigante* logo. The petitioner states the beneficiary won this statuette in 2004 “for his singing abilities on the extremely popular Saturday night television show entitled ‘Sabado Gigante.’” The only background information that the petitioner provides about *El Chacal de la Trompeta* is a May 2006 press release from Univision, the Spanish-language television network that shows *Sabado Gigante* in the United States. The record contains no other documentation regarding *El Chacal de la Trompeta*. The press release states that, to commemorate a significant anniversary on the program, several “[p]opular Univision Radio personalities . . . will test their singing abilities in the popular ‘El Chacal de la Trompeta’ segment to win a donation for their hometown charity.” This indicates that *El Chacal de la Trompeta* is a talent contest between a limited pool of contestants. The petitioner has not shown that the beneficiary’s prize from *El Chacal de la Trompeta* constitutes significant recognition for his achievement from an organization, critics or other recognized experts in his field. The petitioner submits no evidence clearly indicating the authority and expertise of the *Sabado Gigante* producers, directors or other individuals responsible for the *El Chacal de la Trompeta* contest in 2004.

The director, in the RFE, stated “[t]he significance of the beneficiary’s achievements has not been established,” and called for further evidence from the sources specified in the regulation. In response, counsel stated “we have no other evidence to submit” and encouraged the director to re-examine the evidence previously submitted.

The director, in denying the petition, noted the beneficiary's "purported awards" and the testimonials from PUCMM and the Dominican Republic Consulate, but stated that the petitioner's submissions "were insufficient to establish the beneficiary as an outstanding artist." The director noted that the beneficiary's name was not legible on many of the photographs of trophies and statuettes.

On appeal, noting the director's reference to "purported awards," counsel states "[w]e violently disagree with [the] unfounded observation" that the petitioner's documentation was "perhaps fraudulent." It appears that the director's reference to "purported awards" was not so much an allegation of fraud, as an observation that many of the exhibits claimed as "awards" did not appear to be, in fact, awards as such. We have already discussed this issue and need not revisit it here.

A new letter from Tammy Hayes, 97.9 WRMF Marketing/Promotions Director, confirms that the beneficiary "was a participant and finalist in the 2004 97.9 WRMF South Florida Superstar Search Promotion," specifically "one of the top ten finalists." Ms. Hayes's letter indicates that the petitioner received limited recognition as a talent contest finalist in South Florida. Her letter does not demonstrate that the petitioner received significant recognition consistent with distinction, prominence and sustained national (or international) acclaim in his field. Counsel, in the appellate brief dated February 4, 2007, has even conceded that the beneficiary has not yet earned national recognition in the United States.

The petitioner submits no further evidence on appeal regarding the other awards claimed previously, such as *El Chacal de la Trompeta*. Counsel offers no further defense of his prior claims except to "violently disagree" with the director's findings.

The petitioner submits a letter from [REDACTED] Executive Director of Dominican Sunday Inc. Community Services, New York, New York. The letter indicates that the beneficiary has "been nominated to receive the Prize '**ORUGULLO DOMINICAN' in the artistic branch**." The recognition is given to Young artists with talent, charisma, dedication and delivery." (Emphasis in original.) The letter is dated January 21, 2006, and indicates that the "prize will be given on . . . Tuesday, 27th of February." It appears that this letter dates from January 2007 rather than January 2006. Apart from the fact that the petitioner never mentioned this nomination until the appeal was filed in February 2007, we note that February 27th fell on a Monday in 2006, and on a Tuesday in 2007. Also, another letter from the same witness is dated January 27, 2007. Because the appeal was filed before February 27, 2007, the winner had not yet been announced. A 2007 nomination would fall too late for consideration in the context of a 2006 petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Even if we assume the nomination was in 2006, and further assume (with no evidence) that the beneficiary won the prize, the petitioner has submitted no objective evidence to establish the significance of this prize from a community services organization whose "mission is to assist and empower Latinos within the Manhattan Valley and Morningside Heights communities."

For the above reasons, we affirm the director's findings with regard to this regulatory criterion.

The record does not establish that the beneficiary is an alien of extraordinary ability in the arts, which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O)(i) of the Act. The petitioner failed to establish that the beneficiary has received a major, internationally recognized award or that he satisfies at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B). The petitioner also provided questionable and, at times, contradictory documentation about the events for which the petitioner seeks to engage the beneficiary's services, and about the terms under which the beneficiary was to provide those services. Consequently, the petitioner has not shown that the beneficiary is eligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act, and the petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.