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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 08 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Marie Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 pertinent regulations 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.

Counsel asserts "[t]he petitioner is a pianist of international renown." The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines 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. The petitioner has submitted evidence which, counsel claims, meets the following criteria.

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

The petitioner has won prizes at several piano competitions, although we cannot ignore that each of these competitions has an age restriction that prevents the most experienced pianists from participating. The petitioner won First Prize in the 2001 Hilton Head International Piano Competition. The prize included $10,000 in cash and several recital performances, including a performance at Carnegie Hall in New York. Clearly, this is not an

insignificant award. Materials submitted by the petitioner refer to "young applicants" for the competition. Officials of the competition state that entrants must be between the ages of 17 and 30.

The petitioner won second prize at the William C. Byrd Young Artist Competition in 1999. The very name of the competition suggests a limited range of competitors.[1] The petitioner also won fourth prize at the First International Piano-e-Competition in 2002. A brochure in the record states that the competition is limited to "[p]ianists . . . who are no older than 32 years of age." Third prize in the Piano-e-Competition was not awarded. The record offers no explanation as to why, if only two pianists were judged to be better than the petitioner, the petitioner was not found to qualify for the third prize, and received the fourth prize instead.

The regulatory definition of "extraordinary ability" at 8 C.F.R. § 204.5(h)(2) requires that one has "risen to the very top of the field of endeavor." Young pianists do not occupy a different field than older pianists, and unlike athletics, where age can rapidly take its toll on an athlete's abilities, it is not rare for classical pianists to maintain active careers into advanced age. The petitioner takes pains to establish the reputation of his mentor, Alexander Toradze, but Mr. Toradze is too old to participate in any of the competitions that the petitioner has won. Considering these facts, it appears that the purpose of these "young pianist" competitions is not to recognize the achievements of the very top pianists, but rather to provide some recognition and encouragement to advanced students and new artists who have yet to enter the realms of paid concert performances and commercial recordings.

Also in the awards category, counsel cites an "Artist Diploma issued to petitioner from Indiana University on December 31, 2001 for superior artistic achievement in piano performance." The relevant portion of the diploma actually reads "In recognition of successful completion of studies, and of superior artistic achievements in Piano performance." A diploma for "successful completion of studies" is not a prize or award, let alone one that is nationally or internationally recognized. It is, rather, the expected outcome of a university education.

Considerably greater weight would attach to a prize or award for which any musician could compete, without age limitation, such as a Grammy award. The petitioner has claimed no such prize.

> *Published materials 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.*

An article from the *Island Packet* discusses the outcome of the 2001 Hilton Head International Piano Competition, focusing on the petitioner, who won first prize. Other *Island Packet* articles review, or preview, local performances by the petitioner. The petitioner has not shown that the *Island Packet* constitutes major media, rather than a local newspaper for the Hilton Head area.

The *Flint Journal* reviewed a March 2000 performance by the petitioner. The review begins "[a]lthough [the petitioner] may not yet be widely known on the concert scene, he has gained many appreciative fans in the Flint area." Earlier articles from the *Flint Journal* report the results of the 1999 Byrd competition, mentioning the petitioner only briefly, in the context of discussing the various participants. Like the *Island Packet*, the *Flint Journal* seems to be primarily a local newspaper rather than national or international media. Most of the other articles appear, likewise, to derive from local publications and community arts guides which, by their nature, are

[1] According to information available at http://www.byrdartists.com/elig.html, "[t]he William C. Byrd Young Artist Competition is open to all artists who will be no more than 30 years old by the date of the competition."

intended for circulation only in the immediate area for the benefit of readers who are close enough to be able to visit the concerts, plays, and exhibitions publicized therein.

The status of the *New York Times* as a major publication is beyond serious dispute. Articles, however, must be "about the alien" to fulfill the regulatory requirements. One *Times* article submitted by the petitioner is about the 2002 Piano-e-Competition. The petitioner's name appears only twice throughout the substantial article. Even then, the petitioner was not singled out due to his talents. Rather, the author of the article was discussing the electronic reproduction of concert pieces played by contestants in the competition; the sample piece that the reporter heard happened to be the petitioner's performance. Another Times article reviews a tribute to the composer Prokofiev. The lengthy piece contains no mention of the petitioner until the final sentence, which identifies "[t]he other pianists who performed," including the petitioner and two other musicians. The article does not even comment on the petitioner's performance; it simply identifies the petitioner and the sonata that he played. The featured performer, Alexander Toradze, was one of the petitioner's teachers, and the article indicates that the concert was performed by "Mr. Toradze and six of his students and colleagues." Thus, the petitioner's involvement in the concert derived not from his own reputation or acclaim as an artist, but from the fact that his teacher was the principal performer.

Another major paper, the *International Herald Tribune*, discusses a music festival in Italy in 1999. The focus of the article is the festival itself, with only two sentences devoted to the petitioner. The general pattern of the evidence is that the petitioner was the principal subject of local reviews, which are routine in the performing arts rather than the exclusive province of the most acclaimed performers.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

As part of his prize from the Hilton Head International Piano Competition, the petitioner performed solo at Carnegie Hall on February 4, 2002. A headline performance at this unquestionably distinguished venue satisfies this criterion.

Beyond the above criteria, the petitioner has submitted several witness letters. The witnesses, including the petitioner's teachers and officials of associations that sponsor competitions in which the petitioner has performed, offer general praise for the petitioner's artistic abilities, but they do not indicate or establish that the petitioner has already earned sustained national or international acclaim as a top artist in his field. Some witnesses refer to the petitioner's potential for future achievement, but an alien must already enjoy sustained acclaim in order to qualify for this highly restrictive immigrant classification.

Counsel also stated that the petitioner had been selected for the first phase of the International Piano Competition in Santander, Spain, and for a recital at Green Lake Festival of Music. There is no indication that these events had actually taken place as of the petition's filing date. Pursuant to *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Subsequent developments cannot convey eligibility on a previously ineligible alien.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, the petitioner has submitted new letters and documents. Some of the documentation has been discussed above, in the context of the regulatory criteria to which they pertain.

Susan K. Laing, an attorney with Anderson, Bennett & Partners, also serves as president of the board of directors of the Northbrook Symphony Orchestra. In a letter dated April 18, 2003, Ms. Laing states:

> [The petitioner] came to my attention in February, 2002 when the pianist, Alexander Toradze, performed as a soloist with the Northbrook Symphony. At that time, I learned of the Toradze Piano Studio, which is based out of Indiana University South Bend, and the talent of the musicians there. Of particular note, Mr. Toradze arranged for me to specifically hear [the petitioner] perform, as our orchestra is always looking to present as soloists young artists on the brink of major national and international careers. Upon hearing him perform, it was immediately apparent to me that [the petitioner's] talent surpasses that of any other pianist of his generation and that in the very near future, he will undoubtedly have a major career.

While Ms. Laing's letter is highly complimentary of the petitioner's musical abilities, it also underscores the petitioner's lack of the required level of acclaim. Ms. Laing states that the petitioner "will . . . have a major career," "in the very near future," but this classification is limited to individuals who already do have "major national or international careers," not who are "on the brink" of such recognition. Ms. Laing's letter demonstrates that the president of an orchestra in Northbrook had never heard of the petitioner, who was only 80 miles away in South Bend, until the petitioner's teacher personally introduced him to her. This also illustrates a larger trend in the record, specifically that much of the petitioner's exposure results from his close association with Alexander Toradze, whose own reputation eclipses that of his gifted students.

Another witness, Professor Alexander Braginsky of the University of Minnesota, founder of the International Piano-e-Competition, states that the petitioner "has all the necessary attributes to become one of the major artists performing piano in the world today." Again, the immigrant classification is for major artists, not those who possess "the necessary attributes to become . . . major artists."

For the most part, the letters submitted are from institutions where the petitioner has studied and sponsors of competitions that the petitioner has won. While some witnesses maintain that the petitioner has already reached the top of his field, more witnesses write in terms of the petitioner's potential. Diane P. Dorn, director of the Steans Institute for Young Artists, states that the petitioner's "acceptance into our program indicates that [the petitioner] is one of the best young pianists performing today," and that the petitioner "is one of a very few young pianists who has reached the top of the field of endeavor." As stated above, the statute and regulations allow for no arbitrary distinction between "pianists" and "young pianists." While the petitioner's admission into the Steans Institute may be an enviable achievement, it does not show that he "is one of the best" in his field. Rather, it indicates that a prestigious institution recognized the petitioner's promise but acknowledged his need for further training. Other witnesses praise the petitioner's selection to study under Alexander Toradze, stating that this is a great honor, but if so, this says more about Mr. Toradze's reputation than any acclaim on the part of his students. Study is not a field of endeavor, but rather preparation for future entry into a field.

The director denied the petition, observing that the record lacks objective evidence that the petitioner is among the most acclaimed pianists (rather than "young pianists") nationally or internationally, and that the petitioner's witnesses generally indicate not that the petitioner *is* nationally or internationally acclaimed, but rather that he is *likely* to earn such acclaim.

On appeal, counsel argues that the director "either ignored or mischaracterized the evidence." For example, counsel states that the director "inexplicably dismisses petitioner's recital at Carnegie Hall." The director expressed reservations about the Carnegie Hall performance because the recital was part of the petitioner's

prize from the Hilton Head International Piano Competition. We agree that the director should have lent more weight to this performance. At the same time, such performances are only one element of the record, and from the construction of the regulations, performances at prestigious venues are not sufficient by themselves to establish sustained national or international acclaim.

We have already discussed the petitioner's claims under the other criteria and such discussion need not be repeated at length here. In summary, piano competitions limited to "young artists" appear to be "launching pads" for professional careers, rather than the culmination of such careers. The petitioner is not the principal focus of articles in major media. The existence of favorable reviews of local performances proves little, because favorable reviews can be found in the newspapers of any community with an active art scene.

When discussing the various regulatory criteria from 8 C.F.R. § 204.5(h)(3), counsel includes "evidence of the petitioner's extraordinary ability as attested to by members of the profession," including previously submitted letters as well as some new letters offered on appeal. This is not a regulatory criterion, and letters from witnesses that the petitioner has personally selected to write on his behalf do not carry the same weight as the objective, documentary evidence contemplated by the statute and regulations. Counsel argues that the director had selectively quoted these letters, finding the passages least favorable to the petitioner's claim. But counsel, too, selects only those portions of the letters that place the petitioner's claim in the best light. The very fact that several witnesses speak more in terms of the petitioner's potential than his actual achievements demonstrates that there is no unanimous opinion that the petitioner has already reached the top of his field in terms of acclaim. (Assessments of the petitioner's artistic talent are unavoidably subjective, and therefore the test must be not whether the petitioner is one of the "best" pianists, but rather whether he is one of the most acclaimed.)

The objective materials in the record do not support the assertion that the petitioner is at the top of the field in terms of national or international acclaim. The record contains no evidence that the petitioner has commercially released any recordings, and many of his more prestigious concert appearances have resulted directly from his close relationship with Alexander Toradze, rather than from his own reputation as a musician. The record is also devoid of evidence that the petitioner sells more concert tickets than almost any other classical pianist. The handful of published articles in the record does not demonstrate that the petitioner is among the most talked-about pianists currently performing. Therefore, it is difficult to see any objective standard by which the petitioner could be considered to be at the top of his field – a field that includes *all* currently working classical pianists, not only "young pianists" in their twenties and early thirties.

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. Review of the record, however, does not establish that the petitioner has distinguished himself as a classical pianist 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 entire 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 burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.