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U.S. Citizenship and Immigration Services

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[redacted]

FEB 23 2004

FILE: WAC-02-248-52874 Office: CALIFORNIA SERVICE CENTER Date:

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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. 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 Citizenship and Immigration Services (CIS) regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an ethnomusicologist. 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 that, he 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.

Initially, counsel asserted that this classification was not applicable to the petitioner's field and requested that Citizenship and Immigration Services (CIS) consider the petitioner's scholarships instead. Counsel asserts that the petitioner received a scholarship at the University of California, Los Angeles (UCLA) and from the City

University of New York (CUNY). Counsel references a letter from Professor [redacted] of the University of North Carolina. Professo[redacted] does assert that the petitioner received a translation grant from CUNY, but does not explain how he has first hand knowledge of that grant. In response to the director's request for additional documentation, the petitioner submitted a January 20, 2003 letter from [redacted] President of the Keyan Foundation in South Gate, California. Dr[redacted] asserts that the petitioner "was the most recent recipient of our Special Achievement Award." The award itself is not in the record and Dr.[redacted] does not provide the exact date of the award. As such, the petitioner has not established that the Keyan Foundation issued the award to the petitioner prior to the date of filing.

The director concluded that the academic awards were not awards for excellence in the field and that the record lacked evidence of the significance of the award from the Keyan Foundation. The petitioner does not directly address this conclusion on appeal. We concur with the director for the reasons specified in his decision. This office has consistently held that academic scholarships are not awards for excellence in the field. We cannot conclude that the petitioner's inability to meet this criterion or its inapplicability to his field warrants consideration of evidence normally considered insufficient evidence of national or international acclaim. Thus, even if the petitioner had submitted evidence of his scholarships, they cannot be considered comparable evidence to meet this criterion. We also note that the petitioner has not established that the Keyan Foundation award was issued prior to the date of filing. Thus, we cannot consider it evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 evidence of his membership in the Society for Ethnomusicology (SEM) and a letter from the Director of the Persian Art Society located in California asserting that the petitioner has volunteered his time with the society. Counsel concedes, however, that no associations exist in the petitioner's field that require outstanding achievements of their members. Nevertheless, as evidence to meet this criterion, counsel references a letter from Ismail Sa'adat, Editor of *Ma'arif.* Mr[redacted] asserts that the petitioner serves on the advisory board of the journal. A journal is not a professional association. Thus, the petitioner's service on the advisory board is more related to 8 C.F.R. § 204.5(h)(iv) and (viii) and will be considered below. We cannot conclude that the inapplicability of a criterion to an alien's field warrants consideration of evidence that relates to other criteria.

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.

Counsel asserts that this criterion is not applicable to the petitioner's field, as his field is not covered in the general media. We note that the criterion permits published materials in major trade publications in addition to the general media. There are major trade publications in the petitioner's field, such as SEM's *Ethnomusicology.* The fact that the petitioner fails to meet a criterion does not make it inapplicable. Regardless, the petitioner does not claim to meet this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

As stated above, the petitioner served on an advisory board for *Ma'arif*. Mr. [redacted] Editor of the journal, asserts that they have "asked [the petitioner] for his editorial assistance and guidance." The petitioner submitted evidence of his book review published in *Asian Music, Journal of the Society for Asian Music* affiliated with Skidmore University. Finally, the petitioner submitted a letter from [redacted] Director of the Mahoor Music Institute, asserting that they "have called upon [the petitioner] to review books for us and evaluate the work of other experts in this specialty field." The director concluded that the petitioner had met this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner relies on his publications and witness letters to meet this criterion. Dr. [redacted] a professor of music at CUNY (where the petitioner obtained his Master's degree), asserts that the petitioner combines "a high level of artistry in music with historical research of great originality and significance." Dr. [redacted] continues that the petitioner "has published critical editions of several Persian-language treatises on music, which are of great importance to scholars interested in Middle Eastern, Central Asian, and South Asian music." Dr. [redacted] concludes that the petitioner is internationally recognized, but fails to provide examples of the petitioner's notoriety among those outside his immediate circle of colleagues.

The petitioner is currently a Ph.D. student at UCLA and submits letters from faculty in the departments of Iranian Studies and Ethnomusicology. Dr. [redacted] Director of Iranian Studies at UCLA, asserts that the petitioner has distinguished himself as a sitar player and in academics by obtaining two Master's degrees. The petitioner is not seeking classification as an extraordinary sitar player, but an ethnomusicologist. An academic degree is the typical and expected result of academic study. The petitioner's choice to obtain two Master's degrees does not reflect on his alleged acclaim in his field. Dr. [redacted] further asserts that the petitioner distinguished himself through his published work and his teaching skills. These claims are reiterated by other references [redacted] Director of Outreach for the Department of Ethnomusicology at UCLA and Deputy Chair of the applied ethnomusicology section of the International Society for Ethnomusicology, states that the petitioner is "a fine published scholar" and "a strong teacher." Dr. [redacted] a professor of Ethnomusicology at UCLA, praises the petitioner's scholarly work and teaching. While these professors in the petitioner's field assert generally that his scholarly work has been impressive and has contributed to the field, they do not identify a specific contribution or explain how the field has been influenced by the petitioner's work. The petitioner also submitted a letter from a professor of Art History at UCLA. Dr. [redacted] praises the petitioner's musical talent and historical knowledge.

Dr. [redacted] a professor at the Near Eastern Languages and Cultures Department at UCLA provides more detail. Dr. [redacted] explains: "Instead of doing what most scholars do, which is rely on the treatises of the most recent masters for their musicological research and exposition, [the petitioner] has single-handedly taken on the enormous task of analyzing the original texts of ancient Persian music treatises, proffering new discoveries about the musical structure and theory in different regions of greater Persia." [redacted] concludes:

> [The petitioner's] research is a first-hand examination of the roots, structure, theory and early history of Persian music, and is considered important both by scholars and musicians alike for the new, intricate structures it has revealed, and for its contribution to increasing historical authenticity of Persian classical music as it is played today.

In addition to letters from his academic colleagues, the petitioner submitted highly laudatory letters from professors of religious studies at other universities. [redacted] a professor in the Department of Religious Studies at the University of North Carolina at Chapel Hill, asserts that the petitioner has rare knowledge of ancient Persian writings on Persian and Indian music. [redacted] an assistant professor of philosophy and religion at Colgate University, provides similar information, asserting that while there has been some attention in the West to Middle Eastern music, it has been focused on Arab and South Asian music. Professor [redacted] reiterates that the petitioner's five published articles are "remarkably original and significant contributions to our body of knowledge." The petitioner has not established that these professors have expertise in the petitioner's field of ethnomusicology.[1]

[redacted] Assistant Endowment Campaign Director for the Los Angeles Philharmonic, praises the originality of the petitioner's scholarly work and musical abilities.

The petitioner also submitted letters from those with more expertise in his field. Dr. [redacted] a music professor at San Diego State University, asserts that the petitioner has made two contributions to the field. First, the petitioner is dedicated to "pure" Iranian music as opposed to the "hybridizing" music common today. Second, the petitioner is preserving pure Iranian music through translations and interpretations of ancient Iranian treatises.

[redacted] a member of the World Music Screening Committee of the Grammy Awards, provides:

> [The petitioner] has published critically acclaimed, ground-breaking works on the repertoire of Persian music and has been invited to give lectures at a number of American universities such as Columbia University, Colgate University and [the] University of Georgia. His contributions in the field of music research have been pivotal and pioneering, such as editing and publishing important and previously unpublished works in the area of Persian music history and theory. He has also made substantial new discoveries about the musical systems in different regions of Iran from the 12th to the 18th centuries. [The petitioner's] seminal research and landmark contributions have garnered him international recognition in the field of ethnomusicology and have propelled him to the top of this highly specialized field.

The record does not contain any published reviews from critics or other experts in the field corroborating the claim that the petitioner is "critically acclaimed." The director concluded that the petitioner had not demonstrated how his articles, while original, constitute contributions of major significance that have changed the field. The petitioner does not directly address this concern on appeal. Assertions, mostly from those in the New York or Los Angeles area, that the petitioner is internationally acclaimed for his contributions are insufficient. The letters are very general, and fail to provide specific contributions and explain how those contributions have been utilized in the field, such as inclusion in ethnomusicology curriculum. The petitioner is a Ph.D. student. In order to obtain a graduate degree, it is generally required to perform some type of original research. That the petitioner's writings have been original is not evidence that they are contributions of major significance to the field. As will

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[1] Colgate University's website, www.colgate.edu, does not include any information on ethnomusicology, suggesting it is not have a significant program in this area. Professor's [redacted] homepage on the site does not reflect that he has any expertise in ethnomusicology. The University of Georgia, according to its own website, www.uga.edu, offers courses listed in the "Musicology/Ethnomusicology" subject matter. Professor [redacted] is not listed as one of the professors who teaches these courses.

be discussed below, while one of the petitioner's references asserts that his work has been widely cited, the record contains no evidence to support that assertion. While the record does include a letter from Hooman Asadi, a professor of music at the University of Tehran who has known the petitioner for ten years, this single letter does not establish that the petitioner's contributions have had a significant impact in Iran.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence of his book review published in the *Journal for the Society for Asian Music* and several foreign-language articles published in *Mahoor* and *Ma'arif*, journals based in Iran. The articles are commentary on early musical treatises. In his request for additional documentation, the director requested evidence as to the significance of the articles. In response, counsel asserts that the only evidence of the significance of an individual's work is expert testimony from others in the field. We cannot concur. Dr. [redacted] asserts that the petitioner's work has been widely cited. While frequent citation can serve as evidence of an article's influence, the record contains no evidence to support Dr [redacted] assertion. Moreover, the record contains no letters from ethnomusicology professors around the United States asserting that the petitioner's analysis of treatises has been incorporated into their curricula.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel initially asserted that the petitioner met this criterion through his lectures at Tehran University, UCLA, the University of Georgia, CUNY, and Colgate University. The petitioner submits evidence corroborating that, as a Ph.D. student, he has served as the instructor for entry-level classes in his field. In 1999, the petitioner gave a lecture on the rise of Persian classical music and also performed. In 1997, the petitioner performed the sitar with his wife at the University of Georgia. This performance took place after a lecture by Dr. [redacted] entitled "Contemporary Iranian Intellectual Life."

In response to the director's request for additional documentation, the petitioner submitted evidence that after the date of filing, he gave a lecture at the SEM 2002 annual meeting and performed at San Diego State University and other locations. The petitioner also submitted evidence that he had recently been invited to open a program on Persian music at the Los Angeles County Museum of Art. The invitation came from an adjunct professor at UCLA.

The director concluded that this criterion relates to visual artists and that the evidence submitted was not comparable to the display of artwork at exclusive exhibitions by visual artists. The petitioner does not directly challenge this conclusion on appeal and we concur with the director's conclusion for the reasons expressed in his decision. As noted above, the petitioner seeks classification as an extraordinary ethnomusicologist, not a sitar performer.

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

The petitioner relies on his lectures, performances, and course instruction at UCLA as evidence to meet this criterion. We cannot conclude that a guest lecturer or performer plays a leading or critical role for the University or museum as a whole. While the petitioner has taught introductory level courses at UCLA, we note that he is

still a Ph.D. student. We cannot conclude that every graduate student permitted to teach an introductory level course serves a leading or critical role for the university as a whole.

The petitioner also submitted evidence that he serves on the Board of Directors for the Los Angeles based World Percussion Academy. The record contains no evidence, however, that the academy enjoys a distinguished reputation nationally.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Counsel asserts that this criterion does not apply to the petitioner's field. We note that an alien need only receive high remuneration in relation to others in his field to meet this criterion. As such, we are not convinced the criterion itself is inapplicable to the field. Regardless, the record contains no evidence to establish that the petitioner receives a high remuneration in relation to other ethnomusicologists. As stated above, the petitioner is still a Ph.D. student.

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

While the petitioner has recorded his performances on compact discs, he does not claim to meet this criterion.

Comparable evidence pursuant to 8 C.F.R.204.5(h)(4).

Initially, counsel argued that high remuneration, major media coverage, and nationally recognized prizes are not available in the petitioner's field. Counsel asserted that as comparable evidence, the petitioner was submitting evidence of "receipt of significant recognition from historians and ethnomusicology experts (extracted from the O-1 regulations)." Counsel appears to be referencing the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iv)(5) that provides: "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." This criterion, however, relates to nonimmigrant aliens of extraordinary ability in the arts. 8 C.F.R. § 214(o)(3)(ii) provides that, in relation to nonimmigrants, extraordinary ability in the arts means distinction. The regulation continues that 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." This standard appears lower than the "national or international acclaim" required for the immigrant classification sought. Thus, we do not find that the criterion is comparable to the ten criteria discussed above, designed to demonstrate national or international acclaim.

On appeal, the petitioner asserts that the director used unrealistic standards and requested evidence regarding commercial success, major awards, and press coverage when these criteria do not apply to his field. The director advised the petitioner of all of the ten criteria and the evidence that would be required to meet those criteria. The director did not state that the petitioner was precluded from eligibility for failing to establish commercial success, major awards, and press coverage. Rather, the director found that the petitioner did not meet at least three criteria. While we concur with the petitioner that he need not meet any specific criteria, the director did not hold otherwise. For the reasons discussed above, we concur with the director that the petitioner did not meet at least three criteria.

Finally, the petitioner asserts that the director failed to give sufficient weight to the opinions expressed in the reference letters. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. While we have considered the letters above, they were not sufficiently supported by objective evidence of the petitioner's acclaim in the field.

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 an ethnomusicologist 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 indicates that the petitioner shows talent as an ethnomusicologist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.