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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 99 045 50029 Office: CALIFORNIA SERVICE CENTER Date: JAN 29 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.

Marc 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 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.

The petitioner is a singer/entertainer.

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 not specified which criteria he claims to have met, but he has submitted evidence which appears to be intended to meet 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 submits a copy of a letter on the letterhead of "The Government of the Republic of Nagorno-Karabakh." The letter is signed by S. Grigoryan, identified as "The Government Department Chief." The letter indicates that the petitioner received the "Memorial Medal 'Artsakh'" in recognition of the petitioner's

performance at a charity concert in January 1996. *Artsakh* is the local name for Nagorno-Karabakh. Counsel states that the petitioner is one of "only seven individuals worldwide who have been awarded" the above medal, but the record contains no evidence to that effect. More importantly, there is no evidence that "the Republic of Nagorno-Karabakh" is generally recognized as an independent nation (rather than as a breakaway province of Azerbaijan, also claimed by Armenia). If the awarding "government" itself is not generally regarded as a nation, then it is very difficult to conclude that awards issued by it are nationally or internationally recognized.

The record contains a photocopy of one face of a medal, which shows a design but no inscription. The record contains no documentation to explain the nature or significance of this medal. The design may be an official emblem of Nagorno-Karabakh.

Counsel states that the petitioner has received appreciation plaques from various local/student Armenian cultural associations. These are not nationally recognized prizes or awards, but local acknowledgments. The record contains no evidence that the petitioner has received nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

> *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.*

A partially translated article from *Asbarez* discusses the *Voske Ashoon* Festival, attended by "more than 17 thousand Armenians." The partial translation includes the petitioner's name in a list of 13 "famous singers" who participated in the festival. There is no indication that any non-Armenians attended the event, which took place in Los Angeles. The Armenian-language article occupies three columns of text, with portions of one paragraph highlighted in yellow (representing, presumably, the translated portion). The partial translation does not show that the article is about the petitioner, or even that the article so much as mentions the petitioner a second time. The article serves only to demonstrate that the petitioner was one of several participants in a festival in Los Angeles that was, evidently, of interest only to Armenians.

The petitioner submits a copy of *Armenian National Magazine*, which counsel compares to "Times [sic] or Newsweek." The petitioner's photograph appears in an article which, according to counsel, "generally describes the state of affairs of Armenian popular music genre throughout the world." The article states that the petitioner is "Armenia's most popular singer and the best-selling recording artist in Armenia and the Diaspora." The article itself consists largely of criticism of Artur Shahnazarian, head of the Department on Promotion and Dissemination of National Culture at the Armenian Ministry of Culture. The article concludes with the following paragraph:

> This month, Shahnazarian tackled another musical giant. The long-running argument regarding the "value" and "authenticity" of Armenia's popular musical genre known as "rabiz" has been solved by Shahnazarian, who announced that rabiz cannot be performed in government-owned halls. That takes care of most public performance spaces in Armenia. So much for [the petitioner,] Armenia's most popular singer and the best-selling recording artist in Armenia and the Diaspora.

This is the only mention of the petitioner in the article, although a large photograph of the petitioner occupies nearly as much space as the actual text. The article as a whole is not "about the alien" as the regulation requires; it is about Artur Shahnazarian and his controversial policies. The reference to the petitioner as "Armenia's most popular singer" does not settle the issue, particularly given the near-total absence of other published materials

about the petitioner. We also note that this reference appeared only a few weeks before the petition was filed, in a publication whose headquarters are located in the city where the petitioner resides.

The record contains a complete, untranslated issue of *Kach Nazar*, an Armenian-language publication based in Glendale, California. Some of the magazine's advertisements are in English. The nature of these advertisements suggests predominantly local circulation; the establishments advertised are in the Glendale area, and many are restaurants or other establishments for which the clientele would be inherently local, and thus national advertising would not be cost-effective. A publication that circulates only in a small area of southern California, in a language spoken only by a small minority of Californians, is not major media. Pursuant to the plain wording of the regulations, we cannot consider untranslated published materials.

> *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.*

A letter from E. Petrosyan, on the letterhead of Ardzagank Studio, states that the petitioner "had been member of Jury of Spring 95, 96 and Fall 95, Fall 96 Folk, pop music festivals." The record contains no other information about these festivals or about the composition and selection of the jury. Not all instances of judging carry equal weight; judging a competition at a local school, for instance, is not as significant as judging a major national competition, broadcast on a top television network. Simply showing that the petitioner acted as a judge at some point in the past cannot suffice to satisfy the criterion.

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

The director of the Armenian State Philharmony [sic], identified only by the surname Movsesian, states that the petitioner "used to be Soloist of Armenian Philharmony in 1994-1996." The record contains no other information about this establishment, to show that it has a distinguished reputation.

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

Daniel Parseghian of Parseghian Video Productions lists seven albums and one EP that the petitioner has recorded for Parseghian Records, and states that the petitioner received between $10,000 and $23,000 per album. The $23,000 amount includes compensation for a three-song EP recorded with a 1998 album. The petitioner provides no evidence about the earnings of other artists, and hence no basis for comparison. Simply stating the petitioner's own earnings does not establish that those earnings are significantly high in relation to others in the field. On its face, this information shows only that the petitioner earned, on average, less than $18,000 per year as a recording artist between 1993 and 1998. This amount does not appear to be significantly high in relation to recording artists in the United States (the country where the recording sessions appear to have taken place, and where the record company is based).

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

Counsel states that the petitioner has released several albums and videotapes. The mere existence of recorded materials cannot suffice under this criterion; the petitioner must establish commercial success, at a level consistent with national or international acclaim. Rather than providing actual sales documentation, counsel observes "this is an ethnic market that is concentrated on the Armenian community specifically and generally

on the Middle Eastern and Transcaucasian communities." Counsel also observes that the petitioner has performed "in different parts of the world" including countries in Europe, Asia, and South America," but international touring does not automatically or inevitably result in acclaim. The petitioner does not provide the box office receipts required by the regulation, nor any evidence to show that the petitioner's ticket sales consistently make him a top concert draw.

Several witnesses attest in general terms to the petitioner's popularity. For instance, Daniel Parseghian states:

> [The petitioner] is known worldwide as the top male recording artist in the Armenian music industry today. For the past seven years his albums have consistently outsold any other artist in his field. His hit albums have soared him to fame worldwide.
>
> His live performances are consistently "SOLD OUT." He also sings regularly at special events and functions such as weddings, dinner dances and so forth. Such weekly performances are standard procedure for ethnic recording artists due to the limited size of their record purchasing market and limited air-play.

It is not readily clear how a "limited . . . market and limited air-play" are consistent with national acclaim in the United States. Counsel notes that Mr. Parseghian has specified the sums paid to the petitioner for each album, and counsel contends that these payments are some indication of the petitioner's commercial success. This argument is not persuasive, because these amounts were apparently paid to the petitioner before the albums were released, in which case they cannot provide any information about how many copies were later sold. Mr. Parseghian, as head of the record company, would arguably have access to documentation regarding the number of albums sold, but he provides no such figures. Instead, he comments on "the limited size of their record purchasing market."

Aramais Garibian, a commentator on 24-Hour Armenian-American TV, and Saro Mangasarian, director of the International School of Music, have both signed identical statements about the petitioner, indicating that the petitioner "is one of the Armenian nation's foremost popular singers. . . . His name and voice are well known for every Armenian."

Counsel states that the record includes a photograph of a gold record award issued to the petitioner in 1996 for sales of his album *Hye Yes Doo*. We cannot find such a photograph in the record, or any documentation about the award. The director did not state whether the photograph was in the record at the time of the denial, but the director did note the lack of information about the award. Official gold record awards in the United States are issued by the Recording Industry Association of America, in recognition of sales of 500,000 units.

In sum, the petitioner has not submitted evidence of box office receipts or record sales to establish commercial success. Because commercial success can be readily established by direct, objective evidence of the type described in the regulations, it cannot suffice for the petitioner merely to submit witness letters and other materials that describe the petitioner as a top-selling artist. The regulation at 8 C.F.R. § 103.2(b)(2)(i) states, in pertinent part:

> The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document . . . does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence . . . pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant

> secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In this instance, the petitioner has submitted no primary evidence, no secondary evidence, and at most only one sworn affidavit, with nothing to overcome the unavailability of both primary and secondary evidence.

The director denied the petition, noting Mr. Parseghian's assertion that the petitioner sells to a "limited . . . market" and thus "has not yet reached the pinnacle of his singing career at the international level." The director noted that the petitioner's audience is limited to comparatively small Armenian enclaves, and thus does not reflect acclaim at a national or international level.

On appeal, counsel states "Petitioner was bestowed a Gold Record in 1996 for selling one million records throughout the former CIS countries. The gold record was given to him by the recording company." The record contains no corroborating documentation; the petitioner does not even identify the recording company. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel states that the director used self-contradictory language, acknowledging that the petitioner "has been invited to perform worldwide," but concluding that "it has not been demonstrated that the petitioner is recognized internationally." Counsel contends "[t]he word 'worldwide' is synonymous with 'international.'" The flaw in this logic is apparent once one considers the statutory/regulatory standard of "national or international acclaim." If we construe the term "international" to mean simply "in more than one nation," then the term "national" would appear to mean "in one nation." Because everyone is in one nation or another, anyone with any kind of positive reputation at all could be considered to have "national acclaim" because the acclaim is within a nation. But obviously this interpretation is unacceptably broad and does not fit the regulatory requirement that the alien must be in the small percentage at the very top of the field. "National acclaim" is properly considered as acclaim *throughout* a given nation, rather than simply *within* such a nation. Similarly, limited acclaim is not "international" in a qualifying sense simply because an international border passes between segments of that audience. Otherwise, an entertainer with a purely local reputation in, for instance, San Diego and Tijuana would have an "international" reputation, as would an entertainer known only in the Niagara Falls area.

Isolated performances in a number of different countries do not automatically demonstrate national acclaim in each of those countries. The record contains negligible information about these performances. A world tour of sold-out football stadiums demonstrates international acclaim; a series of dates at small clubs or ethnic cultural centers does not carry the same weight, even if national borders fall between those venues.

Counsel then states that, even if the petitioner is not internationally acclaimed, he "enjoys 'national' stature and is recognized throughout the world as such." Counsel does not explain how recognition "throughout the world" differs from international acclaim. In any event, the petitioner must document, rather than simply assert, such acclaim.

Counsel states "[t]he Armenian nation and the concept of nation goes beyond the boundaries of a given geographic country. People of Armenian heritage live throughout the world." The statute and regulations offer no indication that the term "nation," as contemplated in the statute and regulations, applies to anything

other than an actual political entity with defined geographic borders. In any event, the Armenian people do have a home nation of Armenia, although the petitioner has submitted very little evidence from Armenia itself. We are not persuaded that an Armenian living in the United States is entitled to a different standard of evidence than applies to entertainers of other ethnicities who also reside in the United States.

Counsel offers the example of "Ravi Shankar, an internationally known sitar player. He is popular in various countries, yet certainly not all his followers understand or are Indians." Ravi Shankar is indeed well-known among non-Indians, but the petitioner has submitted no evidence that the petitioner is similarly recognized among non-Armenians. The head of the petitioner's record company acknowledges as much, and counsel has attempted to argue that the Armenian diaspora constitute, in the aggregate, a "nation."

Counsel asserts that the "petitioner's music appeals to American-Armenians, American-Arabs, American-Greek, American-Persian, American-Turkish and American-Russian people residing in the United States. This amounts to approximately 20 million people." This argument fails to persuade because (1) it is entirely unsupported and (2) it presumes that the petitioner's fan base includes *every* member of those ethnic communities. The petitioner has documented minimal media coverage in the United States, and what exists in the record is either in the Armenian language or obviously targeted at the Armenian community (more specifically the Armenian community in the Glendale area). The only documentary reference to Arabs, Greeks, and so on in the record is the catalog of Parseghian Photo and Records, which carries "a wide selection of Arabic, French, Greek, Italian and Spanish records and tapes." This by no means implies that an appreciable number of people in those ethnic groups listen to the petitioner's music.

Counsel offers the speculative and hypothetical claim that "the same issue would not be raised if the artist were of Cuban ethnicity," owing to "their political clout." Because this is an admittedly imaginary example, no evidence exists to support counsel's argument. If a Cuban artist's reputation were confined entirely to, say, the Cuban community in Miami, then such artist would not have a national reputation. Some Cuban artists, such as the late Desi Arnaz and Gloria Estefan, have achieved fame beyond the Cuban exile community, but at that point any reasonable comparison between them and the petitioner ceases.

Counsel suggests that "if permitted to expand, Petitioner would be a superstar. . . . We are confident that once Petitioner is given the authorization to be employed in the United States, that ingenious agents and musical entrepreneurs would be successful in promoting Petitioner's success even more." We do not accept this argument, noting that Parseghian Records, based in California, has been selling the petitioner's recordings since 1993. Once these recordings were released and available for sale in the United States, the petitioner's immigration status was utterly irrelevant to the continued availability of those recordings. The record amply demonstrates that the petitioner has been performing in the United States, regardless of his immigration status. Recordings by foreign artists who never spent a significant amount of time in the United States have, on many occasions, become major hits. Therefore, we reject the speculative assertion that the lack of permanent resident status is the primary obstacle between the petitioner and "superstar" status.

Much of the evidence concerns the petitioner's activities in the United States. Therefore, it is entirely appropriate to judge the petitioner's evidence by United States standards, where the most popular singers and entertainers are recognized by audiences from a broad range of ethnic/national backgrounds. The statute and regulations demand national or international acclaim; the petitioner cannot arbitrarily replace these requirements with a standard of acclaim among Armenians in the United States, any more than we could consider the reputation of an American artist in Armenia, whose reputation was confined to American enclaves in that country.

Following the initial appeal, the petitioner submits supplemental materials. Counsel asserts that "it has been very difficult to obtain" documents from Armenia, but it remains that the burden is on the petitioner to provide qualifying evidence. The petitioner submits a copy of his latest CD, which counsel states "is distributed worldwide." Particularly in light of the dawn of the Internet, it is easier than ever to distribute a product "worldwide"; this does not mean that it sells in significant numbers. The CD is on Star Records, based in Glendale. The song titles are listed in Armenian. The existence of commercial recordings by the petitioner is not evidence of commercial success, nor does it otherwise reflect sustained national or international acclaim.

The petitioner submits photographs of the medal from Nagorno-Karabakh, discussed above, and a 1999 statuette which, counsel states, is from the Armenian Musical Federation of America. At best, this statuette reflects recognition by Armenians in the United States, which the director never contested.

A poster advertises that the petitioner and several other "Armenian and Persian" artists were scheduled to appear at a "New Year's Eve Party" at the Hollywood Park Casino in 1999. This advertisement is consistent with recognition within an ethnic enclave in the Glendale area.

The petitioner submits two letters from senior citizen health care facilities in southern California, thanking the petitioner for his volunteer performances. Such volunteer work is indeed generous and admirable, but it does not require or reflect sustained national or international acclaim. One of the letters specifically indicates that the petitioner performed "for the Armenian Senior Citizens."

The record consistently indicates that the petitioner's reputation is heavily concentrated in the Armenian community in the Glendale/Los Angeles area. Attestations of greater acclaim or recognition are vague and undocumented, consisting primarily of general assertions made by witnesses or publications within the Armenian community in the Glendale/Los Angeles area. This is in no way a dismissal of, or statement of bias against, the Armenian community. Rather, it is an acknowledgment that one cannot establish national acclaim in the United States by arbitrarily excluding that vast majority of Americans who are not of Armenian origin or descent.

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 singer or entertainer 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 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.