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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 11 2004

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 folk musician who plays a Balkan string instrument called the gadulka. Counsel states "Bulgarian folk music typically consists of vocals performed generally by women . . . accompanied by an instrumental arrangement. . . . Because of his extraordinary musical talent [the petitioner] has performed all over the world with the top Bulgarian ensembles and is a member of the most exclusive group of folk instrumentalists who has [sic] made the Bulgarian folk music an international musical phenomenon."

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.*

In the 1980s, the petitioner received several awards from local, municipal, or district authorities. The petitioner has not established that these awards are nationally or internationally recognized. In 1980, when the petitioner was thirteen years old, the Regional Committee of the Dimitrovski Communist Youth Union recognized him "for his activities and his excellent performance at the international interschool festival in Poland." The record contains no documentation from officials of the "festival in Poland," which counsel identifies as "the International Teen Festival for Folk Music." Counsel offers no explanation for the absence of documentation from the awarding authorities in Poland, apart from a reference to the fact that Poland was a communist country in 1980. Counsel does not explain how an award from a "Teen Festival" could place the petitioner at the top of his field, when that field does not consist entirely of teenage musicians. Participation would appear to be limited to the least experienced musicians, rather than open to artists who have completed their studies and established independent careers as working musicians.

Counsel states that the International Children's Assembly presented the petitioner with a Flag of Peace Award in May 1979 "for his participation in the Finale for Young Talents." Counsel contends that this "meets the definition of either a major international award or a lesser international award." The petitioner was twelve years old in May 1979. The petitioner submits nothing to show that this purported award is for excellence in the field, rather than merely for "participation" in a festival event. Background materials in the record show that "[a]ltogether, 3,900 kids from 138 countries and 14,000 children from Bulgaria have taken part in" the first four Children's Assemblies, which took place between 1979 and 1989. Thus, if every one of these thousands of participants received a similar certificate, the weight of the evidence is necessarily diminished. The background materials about the assembly say nothing about any prizes or awards. Furthermore, the word "AWARD" appears to have been inserted into the English translation of the certificate. Below is a line-by-line comparison between the relevant portions of the Bulgarian original and the English translation:

МЕЖДУНАРОДНА DETCKA АСАМБЛЕЯ ЗНАМЕ НА МИРА	INTERNATIONAL CHILDREN ASSEMBLY FLAG OF PEACE **AWARD**
НА [the petitioner's name] . . .	to [the petitioner's name] . . .

The Bulgarian certificate uses the Roman "D" instead of the usual Cyrillic equivalent "Д." Using various online dictionaries as references, we find that МЕЖДУНАРОДНА DETCKA АСАМБЛЕЯ can be translated as "International Children's Assembly," and that ЗНАМЕ НА МИРА means "flag of peace." There is no corresponding Bulgarian word where the English translation shows the word "**AWARD**" (in a markedly different typeface).

Any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). If the translator included the word "award," when that word is plainly absent from the Bulgarian document, then the translator's competence is compromised and we cannot rely on the accuracy of any translation prepared by that translator. Alternatively, if the translator prepared an accurate translation which was then altered, then somebody has tampered with the evidence and the entire record of proceeding has been compromised. 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective

evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

Here, the "Flag of Peace" certificate, like many other documents in the record, was translated by counsel. Therefore, it is impossible to ignore the above irregularity when considering counsel's other claims and arguments.

Counsel submits a list of Grammy award winners, showing (in counsel's words) that "the Bulgarian State Female Vocal Choir indeed received the best Traditional Folk Recording award for the album Le Mystère des Voix Bulgares." The petitioner, a male instrumentalist rather than a female vocalist, was not a member of the choir. Furthermore, the record contains no evidence that the petitioner performed on that album. The petitioner has shown only that he played on a later live album recorded in 1993, which also capitalized on the earlier album's famous title. Counsel does not explicitly claim that the petitioner himself won the Grammy; instead, counsel states that the petitioner is "a leading musical contributor and performer for a folk ensemble recognized with a Grammy." The petitioner's after-the-fact involvement with a Grammy-winning ensemble is not comparable to the petitioner's receipt of a recognized award.

Of the claimed awards, the petitioner obviously did not receive one of them, and the claim regarding the Flag of Peace Award is corroborated only by a demonstrably faulty translation of a document that mentions "participation" but no award. Other awards are from schools or local officials, with no documentation showing that the awards are nationally or internationally recognized. The remaining award, from a competition apparently limited to teenagers rather than established, professional musicians, lacks primary corroboration and concerns an event 23 years prior to the petition's filing date. We cannot find that this material represents persuasive evidence of *sustained* acclaim.

> *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 translated article from the newspaper *Plovdiv* profiles the petitioner, identified as a "boy from the Sekirovo neighborhood in the city of Rakovski, Plovdiv region . . . only 15 years of age." The translation is dated 1980, but the original article is undated. For most of 1980, the petitioner was 13 years old, his 14th birthday occurring in October of that year. Therefore, the 1980 cannot be accurate unless the article incorrectly reported the petitioner's age. Counsel does not claim that *Plovdiv* circulates nationally or internationally; rather, it "was distributed in the Plovdiv area." In discussing the article, counsel acknowledges the claimed 1980 date and the textual reference to the petitioner's age of 15 years, but counsel does not mention the discrepancy with the petitioner's actual age in 1980.

Counsel states "[t]he second published material, Shiroka Luka Pee, is an internet article detailing the history and significance of the Shiroka Luka musical school and lists its most famous alumni. . . . [The petitioner's] name is listed as one of the six biggest names in gadulka music for the school's 30 years existence." Counsel states "the article is accessible to millions of web surfers," but the same can be said of millions of other web sites. The fact that virtually anyone with a computer *could* access the school's web site does not mean that significant numbers of people actually do so. Absent persuasive evidence of heavy readership, a music school's web site and newsletter do not amount to major media. Also, the legal standard is not whether the petitioner is among one particular school's most successful alumni, but rather, whether the petitioner has achieved sustained national or international acclaim.

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

Counsel cites several witness letters. A number of Bulgarians who have worked with the petitioner in Bulgaria attest to the petitioner's reputation in that country. Composer/conductor Dimitar Trifonov states that the petitioner "is one of the most prominent names in contemporary Bulgarian Folklore. I know him since our work in the Philippopolis orchestra. . . . [The petitioner] is an important ambassador of Bulgarian music and dance traditions." Nadka Karadjova, president of the Quartet Slavey, states that the petitioner "distinguished himself with his musical mastery as a soloist gadulka player" during the quartet's 1994 and 1999 tours, "and recorded two compact disks" with the group. These letters establish that individuals who have worked with the petitioner admire and respect his work, but this appreciation does not amount to national acclaim. The assertion that the petitioner "is one of the most prominent names" in his field is a claim, rather than *prima facie* evidence of such prominence. The attestations of the petitioner's close associates cannot establish acclaim and recognition outside of that circle of associates.

The petitioner also submits letters from individuals in the United States, mostly residing in North Carolina (the petitioner resides in South Carolina). Some of the witnesses assert that the petitioner is well known in Bulgaria, but they themselves are not Bulgarian, and they do not explain how they have direct knowledge of the petitioner's reputation in Bulgaria. None of the witnesses indicate that the petitioner is well known in the United States, where he has resided and worked since September 2001, a year and a half before the March 2003 filing date. The witnesses are music teachers and music students, such as Judy Stafford, who states that she "is a student of gadulka, and a supporter of Bulgarian music." Another witness, Bruce Sagan, states that "there are two week-long Balkan Music and Dance Camps (one on either coast). . . . I have taught gadulka at these camps but it is much better to have a native teacher such as" the petitioner.

The letters do not specify any particular contributions by the petitioner, nor do they explain how those contributions are of major significance. Simply being a skilled musician with a successful career is not inherently a contribution of major significance. Whatever recognition the petitioner may have earned in his native Bulgaria, the record does not show that the petitioner has sustained such recognition since arriving in the United States in 2001.

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

Counsel asserts that the petitioner's "musical talent was displayed during hundreds of artistic exhibitions and showcases," specifically concerts and radio performances. The petitioner has not shown that he was a "headline" performer at any of these performances, or that the performances were otherwise intended to highlight his work on the gadulka. Furthermore, every musician who performs in public "displays" his or her work in this manner. Because not every public performance or broadcast carries equal weight, another regulation exists that is specific to the performing arts:

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

The petitioner submits evidence showing that he performed on an album by the Bulgarian Women's Choir, and is credited as an arranger on a *Le Mystère des Voix Bulgares* album. The petitioner also recorded an album as a member of the Philippopolis Folk Group, and is credited as a soloist on one of the album's ten tracks. Philippopolis also performs with a seven-member dance troupe. The petitioner submits evidence

showing that he has been involved with various ensembles, such as the Quartet Slavey, but this evidence does not include box office receipts or other evidence of commercial success.

While *Le Mystère des Voix Bulgares* has enjoyed commercial success, the record does not establish the success of the particular album on which the petitioner performed. Furthermore, as is evident from the title (which translates as "The Mystery of Bulgarian Voices"), the group's focus is on vocals, with the instruments providing background accompaniment. The group's commercial success, therefore, is primarily due to the skill and renown of the vocalists.

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

Counsel states:

> [The petitioner] has been a lead gadulka player for the following world famous ensembles: (1) the Bulgarian Woman Choir; (2) the Mystery of the Bulgarian Voices choir; (3) the Bulgarian National Ensemble Philip Koutev; (4) the Bulgarian National Radio Orchestra; (5) quartet Slavei; (6) Formation Still; and (7) the Philippopolis Folk Group. . . . The fame, critical acclaim, and distinction of those ensembles is well documented and beyond doubt. . . .
>
> The leading and critical role [the petitioner] played for the above enumerated ensembles is documented by both the fact that he was featured as a lead musician on their award winning albums, concerts, tours, and promotional materials, and by the assessment of individuals [within those ensembles].

Several of the ensembles have only one gadulka player, making the reference to "lead gadulka" somewhat misleading. The record contains minimal evidence to establish that the gadulka is frequently highlighted in Bulgarian folk music; even counsel acknowledges that Bulgarian folk music focuses on vocal performance. Promotional materials in the record rarely focus on the gadulka or, if vocalists are present, on the instrumentalists at all.

The director denied the petition, noting that the petitioner's "last award was nineteen (19) years ago)," and that the record lacks evidence to show that the recent popularity of Bulgarian folk music is attributable to any significant extent to the petitioner's work. The director discussed the various regulatory criteria at 8 C.F.R. § 204.5(h)(3) and explained why the petitioner had failed to meet the standards therein.

On appeal, counsel states that the director's decision "contains factual and legal errors requiring reversal." Counsel cites only one specific claimed error, contending that the director has impermissibly required "the receipt of a major international award and a showing of at least three other categories." It would, indeed, be erroneous to require a major international prize *and* (rather than *or*) evidence under three of the ten lesser criteria. The AAO, however, can find nothing in the director's decision setting forth such a requirement, and counsel does not quote the passage purported to contain this requirement. Rather, on page 2 of the decision, the director clearly acknowledges that the ten criteria apply only if the alien has *not* received a major, internationally recognized award.

Counsel's other initial statements on appeal are only vague allegations rather than specific arguments, for instance the assertion that the director's "factual findings and conclusions are not supported by the record and common sense." Counsel states that the petitioner "reserves the right to further develop the arguments" in a brief to be

submitted within 30 days, i.e. on or before January 8, 2004. On March 23, 2004, the AAO received a brief that is almost exactly identical to an earlier brief submitted in response to a request for further evidence that repeats several arguments already discussed above. The appeal brief contains only grammatical corrections and other minor, non-substantive changes, such as the substitution of "in addition" with "further." Counsel has also added a sentence at the end, which reads "[a]ppellant respectfully requests a leave to file late this appeal brief. Appellant was awaiting additional evidence which did not arrive." The brief contains no direct reference to the director's decision. Thus, counsel's only new, substantive argument on appeal concerns an error that the director did not make. Counsel's appellate submission fails to rebut or overcome the grounds for denial.

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 musician 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.