

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Bz

FILE:

[REDACTED]
EAC 02 251 52027

Office: VERMONT SERVICE CENTER

Date:

APR 05 2005

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a cellist. The petitioner initially submitted evidence relevant to six criteria. The director reviewed all ten regulatory criteria, specifically addressed the petitioner's evidence in relation to four criteria, but determined that none of the evidence established the requisite sustained acclaim. On appeal, counsel contends that the director "simply declared the evidence to be insufficient, without explanation," did not consider the record "as a whole," and was "in error in interpretation of the applicable statutory standards." In support of his appeal, the petitioner submits two additional reference letters, petitioner's own letter, a discography and a photocopy of two compact discs.

Although the director did not specifically address evidence relating to the second, eighth, and tenth criteria, we affirm the director's decision that the petitioner did not establish that he is a cellist of extraordinary ability. As discussed below, the evidence submitted on appeal does not alter our conclusion and we find no errors of law in

the director's decision. The evidence submitted and counsel's contentions are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The director correctly determined that the petitioner did not meet this criterion. The petitioner submitted evidence of six awards for his cello playing in Poland and receipt of a scholarship to study music at Yale University. Counsel contends that the director erroneously interpreted the statute by determining that these awards did not establish extraordinary ability because they were received when the petitioner was a student over a decade ago. However, the statute requires that extraordinary ability be established by evidence of sustained national or international acclaim. Musical competitions are inherent to the education of a music student. Competitive awards earned as a student are simply not evidence of sustained acclaim as a professional musician.

The petitioner's six awards were received when he was an undergraduate (or even younger) student in Poland. Presumably, the petitioner was competing with other students and not established musicians. Similarly, the petitioner's scholarship at Yale University was granted to further his musical education and is not equivalent to a prize or award granted to a professional musician.

Even if we were to accept counsel's undocumented contention that "most of international and national competition has age limit [sic] and many recipients are students when they win major national or international prizes,"¹ the petitioner's awards would only document his past national acclaim as a cello student in Poland and would not establish sustained international acclaim as a professional musician or sustained national acclaim in the United States. The petitioner has submitted no evidence that the awards he won as a student in Poland garnered international acclaim. The petitioner presented evidence that he participated in five international cello competitions throughout Europe from 1988 to 1991 (again, while a student), but no evidence that he received any award or prize at any of these competitions or that his mere participation garnered sustained international acclaim. Most importantly, the petitioner had been a professional cellist in the United States for at least six years before he filed his petition.² If truly a musician of extraordinary ability, the petitioner should have been able to establish and sustain acclaim in this country during that time.

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 director found no evidence to meet this criterion. However, the record contains documents relevant to this criterion that merit brief discussion. In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition

¹ We cite counsel's contention for the sake of argument, but do not accept it as true. The unsupported assertions of counsel do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

² The petitioner entered the United States on an F-1 visa to study music in 1993. In 1996, he changed status to that of an H1-B nonimmigrant to play cello with the New Haven Symphony Orchestra, and was twice extended that status. In 2002, the petitioner was granted another change of status to that of an O-1 nonimmigrant to continue his work with that orchestra.

for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. In addition, the regulation requires that members must be selected at the national or international level, rather than the local or regional level.

The petitioner submitted evidence of his membership in various orchestras and musical ensembles as well as his participation in several master class seminars. Yet the petitioner has not sufficiently established that his membership in these orchestras and ensembles or his master class participation was secured based on his outstanding achievements. Although he was once a principal cellist for a national orchestra in Poland, the petitioner has only played with local or regional orchestras and musical ensembles since his arrival in the United States. This work shows the petitioner's employment as a musician in this country, but does not establish his membership in associations based on outstanding achievement. In addition, the record contains no documentation regarding the requirements for the master class seminars that would show that the petitioner's participation in the seminars was not merely educational, but was earned by virtue of his outstanding achievements as a cellist. Accordingly, the petitioner has not met this criterion. Playing as a cellist in an orchestra or musical ensemble is more relevant to the eighth category and will be discussed below.

Published material 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.

The director correctly concluded that the petitioner had not met this criterion. The petitioner submitted two articles concerning orchestras in which he had played, but neither article is about – or even mentions – him. Although the petitioner claims he is shown in the two photographs accompanying the articles, his figure is only vaguely discernable in the blurred background of one photograph and is an unclear profile image in the other. The captions do not identify the petitioner.

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

The petitioner submitted six letters of recommendation from colleagues as evidence relevant to this criterion. The director did not specifically address these letters, but found no evidence of the requisite sustained acclaim by independent experts. On appeal, the petitioner submits two additional letters by purportedly independent experts. Review of all eight letters reveals that although the petitioner is well-respected as an excellent cellist by his colleagues, he has not made original artistic contributions of major significance in cello playing or classical music that reflect sustained national or international acclaim.

In fact, the letters speak predominately of the petitioner's value as an excellent cellist to the regional musical community in Connecticut or his past acclaim in Poland. Steven Thomas, also a cellist with the New Haven Symphony Orchestra, states that the petitioner is "indispensable" to the orchestra and that his presence "adds prestige to New Haven and the State of Connecticut." James Sinclair, Music Director of Orchestra New England, states that the petitioner is "one of the most important cellists in the area of Connecticut... [and] an important part of music-making in Connecticut." Seven of the eight letters in the record are written by colleagues of the petitioner who work principally in Connecticut. The remaining letter is written by a Danish colleague who has performed with the petitioner in Connecticut and New York.

The letters praise the petitioner's education, experience, technical skills, talent, musicianship and professionalism. While undoubtedly valuable, these qualities are not exceptional or extraordinary in well-respected musicians. None of the letters evidence that the petitioner's talents and skills constitute original contributions of major significance to the field of cello playing (or classical music in general) that has earned the petitioner sustained national or international acclaim.

Most importantly, all of the letters are written as recommendations or "in support of" the petitioner's immigration case. A cellist of extraordinary ability, as defined in the statute and regulations, should be able to present independent and unsolicited evidence of his major artistic contributions.

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

The director found that the petitioner did not meet this criterion but did not specifically address the relevant evidence. Although this category relates most directly to the visual arts, the petitioner attempts to meet this criterion with numerous programs from his musical performances at various venues in Europe and the United States since 1981. Even if we accept these programs as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4), the majority of these programs document student performances insufficient to meet this criterion. Frequent performances are intrinsic to the musical profession – let alone, music education – just as display of art is inseparable from the profession of a visual artist. Yet the regulation requires that evidence under this criterion demonstrate sustained national or international acclaim, not simply document an alien's continued employment in his or her field. None of the programs submitted rise to this level. The petitioner is listed as principal cellist on only three programs. Although the petitioner once performed at Carnegie Hall, he did so as part of an orchestra with five other cellists. He is not listed as a principal or featured soloist. Notably absent from the record is evidence that any of these performances won critical acclaim or media coverage indicative of the petitioner's sustained national or international acclaim.

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

The petitioner attempts to meet this criterion with the eight letters previously mentioned in relation to the fifth category. The director correctly determined that the petitioner did not meet this criterion, but did not specifically address these letters or other relevant evidence. The petitioner is principal cellist with the New Haven Symphony Orchestra and was formerly the principal cellist of the Polish Chamber Philharmonic Orchestra. Although the petitioner's positions are and were important to these orchestras, they did not apparently constitute a leading or critical role that would demonstrate the petitioner's own sustained national or international acclaim. In addition, the petitioner has submitted no independent evidence of the distinguished reputation of these two orchestras.

It is expected that distinguished orchestras would receive frequent media coverage and that individuals who play a leading or critical role for the orchestras would be interviewed or featured in at least some of that coverage. The petitioner submits no such evidence. The only two newspaper articles submitted do not mention the petitioner. The petitioner claims to have recorded six compact discs with the Polish Chamber Philharmonic Orchestra, but submitted copies of only two discs. The petitioner is listed on the face of only one disc. No documents were submitted to show that the petitioner played a leading role in these recordings that won