U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] **Public Copy**

File: [redacted] Office: Nebraska Service Center Date: APR 2 3 2001

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)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

We note that the record contains a letter from an attorney, inquiring as to the status of the petition. The record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative, and there is no indication that this attorney was involved in the preparation either of the petition or of the appeal. Therefore, we consider the petitioner to be self-represented.

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 that she qualifies as an alien of extraordinary ability in her field of endeavor, and that the petitioner has failed to establish that she will continue working in that field.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

8 C.F.R. 204.5(h)(5) states, in pertinent part, that while no specific offer of employment is required under this visa classification, the petitioner must submit "clear evidence that the alien is coming to the United States to continue work in the area of expertise." This evidence can take the form of "a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States."

This petition seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese opera/ballet/modern dance performer and researcher." The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

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

Some of the awards the petitioner has received are provincial rather than national, but the record also documents several national-level awards. The petitioner won the First Place Award at the National Dancing Competition in 1993 and an Excellency Award at the 1994 Celebration of the 45th Anniversary of the Formation of the People's Republic of China. A certificate from the China Dancing Professionals Association indicates that the petitioner was "selected to be entered into the China's Top Ten Young Professional Dancers List" in 1997. The same association asserts that the awards presented to the petitioner are significant at the national level.

A letter from the Culture Department of the People's Republic of China states that the petitioner's 1994 Excellency Award "is the highest award achievable by artists in the arts communities. There were only two artists who achieved this honor in 1994." The same letter indicates that the petitioner was one of only six artists who received the "First Award" in 1996. A substantial cash sum accompanied each of these two awards.

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 is a member of the China Dancing Professionals Association. The petitioner submits an unsigned letter from that organization, which states:

> China Dancing Professionals Association is the most respected organization which is conferred with the highest authority in the dancing communities. The total number of admitted members is 685. Only those professionals who had accomplished outstanding achievements recognized by the influential authorities are admitted as members.

The association's Articles of Incorporation support the above characterization; its listed membership requirements include receipt of "awards presented by our association or international dancing committees" and achieving "high respect in the dancing committee." While the wording of this document is at times vague, the membership requirements clearly exceed simple involvement in the field of dance, or reaching a fixed level of training and experience. The association's small size, especially considering that China is the world's most populous nation, also speaks to its exclusivity. The petitioner has satisfied this criterion.

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.

The petitioner notes that her profile appears in the Directory of Chinese Professionals in Arts Development and Famous Figures of the Contemporary Arts Circles in China. The petitioner submits certificates reflecting her inclusion in these books, but the record does not contain the published materials themselves - i.e., copies of the petitioner's biographical sketches from the publications. We are unable to determine how many dancers are profiled in this manner, and thus how difficult it is to merit inclusion in these books.

The petitioner submits a translated article from a newspaper identified only as "Daily Newspaper." It is not clear whether this is the actual title of the publication. This Chinese-language newspaper appears to be a U.S. publication; it shows the date in English ("Friday, November 13, 1998") and contains a reference to a street address and telephone number in Alhambra, California. The address does not include the designation "USA," and the telephone number includes only the number and area code, rather than the international prefix which would be necessary in order to call California from outside the United States.

The petitioner asserts that her performances have earned favorable reviews in the media. No such reviews, however, appear in the record. The petitioner has not satisfied 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.

A certificate in the record indicates that the petitioner served "as an Evaluation Officer to the Evaluation Faculty Board of the Nationwide Dancing Competition" in China in 1997. With regard to that competition, a letter from the China Dancing Professionals Association states "[the petitioner] is regarded as one of the most influential dancing professionals in China. The Chinese National Dancing Contest is held in China at 5-year intervals, and only six examiners are selected from prominent dancing professionals." This evidence indicates that the petitioner has acted as a judge at the highest national level.

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

The petitioner described some of her dances in an article she wrote for Dance magazine. In a subsequent letter, the petitioner asserts that her "productions and research results were frequently published in 'Dance Magazine,'" but the record contains only one article from that publication. The article in question does not report "research results," nor does it otherwise qualify as a scholarly article, as opposed to a popular article for a less-specialized audience.

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

The petitioner claims such success, but the record contains no evidence such as box office figures to support this claim.

The director denied the petition, stating that the petitioner has failed to establish the significance of much of her evidence. The director emphasized that "the evidence does not indicate that the alien has a record of major commercial or critically acclaimed successes, or that the alien has performed in a critical role for distinguished organizations or establishment[s]." The director also asserted that the petitioner has not clearly explained how she intends to continue working in her field, as required by 8 C.F.R. 204.5(h)(5).

On appeal, the petitioner observes that she had already submitted a detailed statement of her goals as a dancer, instructor, and researcher. The director has not explained how this statement is

deficient. The petitioner also argues that she has submitted evidence to satisfy several of the regulatory criteria to establish sustained national acclaim.

Certainly, the director is correct in finding that the evidence of record does not directly establish commercial or critical success. These factors, however, are only two out of ten possible criteria. The petitioner can establish eligibility through any three of the criteria, provided the evidence is persuasive and credible. Of the ten criteria, there is no single criterion which the petitioner is required to meet.

The petitioner has submitted persuasive evidence that she has received several top national awards as a dancer; she is a member of what appears to be a very exclusive national association which requires outstanding achievements of its members; and she has acted as a judge of the work of other dancers at a major national competition. While further evidence of commercial success, publications about the petitioner, and so on would certainly strengthen the petitioner's claim, the absence of such evidence does not weaken her claim to an extent that undermines the existing evidence, or otherwise disqualifies the petitioner for the visa classification sought. The preponderance of evidence in the record supports the petitioner's claim of sustained national acclaim as a dancer.

In review, while not all of the petitioner's evidence carries the weight imputed to it by the petitioner, the petitioner has established that she has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in her field of expertise. The petitioner has established that she seeks to continue working in the same field in the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.