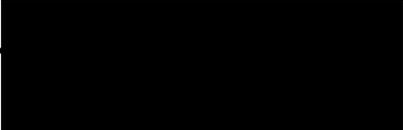




*Handwritten initials*

U.S. Department of Justice  
Immigration and Naturalization Service

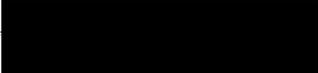
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



**PUBLIC COPY**

File:  Office: Vermont Service Center Date:

**AUG 23 2001**

IN RE: Petitioner:   
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:



*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 that 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 that 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 that 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*  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 Service 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.

The petitioner seeks classification as an alien with extraordinary ability as a dancer. 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 did not initially specify which of the ten criteria he claims to have met. In subsequent correspondence, counsel has asserted that the petitioner 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 1980, the Chinese Ministry of Culture and the Chinese Traditional Dancers Association awarded the petitioner (then thirteen years of age) "third prize for youth performance" at the First All-China Chinese Traditional Dance Competition. In 1988, the petitioner received "the outstanding participant Certificate of Honor" at the "National Arts Institute Second Chinese Dance 'Peach and Plum Cup' Competition." Finally, in 1992, the "Culture Department, Art Bureau" awarded the petitioner "the outstanding performer's award in the Dance Performer Basic Training Exchange."

The initial submission did not clearly establish the significance or prestige of the above awards and honors.

*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 Chinese Dancers Association, which, according to the record, "admits dancers . . . and other experts who have had remarkable achievements in organizing mass dance activities to memberships." The record further indicates that the Association has 3,500 members. This relatively small size (with regard to China's population of well over a billion people) tends to indicate that membership is not readily available to large numbers of dancers. This membership would appear to satisfy this criterion.

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

The petitioner submits several witness letters. [REDACTED], executive director of the Chinese Folk Dance Company at the New York Chinese Cultural Center, states:

[The petitioner] is one of China's premier dancers. He has won numerous national level awards and competitions in Chinese

traditional dance. . . . Since coming to the United States he has performed wonderfully and achieved strong audience acclaim at various programs for traditional Chinese arts. [The petitioner] is well known in China and in the Chinese artistic community in the United States as being one of China's greatest active dancers in traditional dance forms.

Professors of the Dance School of the Shen Yang Conservatory of Music and the National Chinese Opera Institute assert that admission into those schools is highly competitive, and that the petitioner distinguished himself while studying at those institutions. Officials of dance companies where the petitioner has worked attest to his discipline and talent. For example, [redacted], captain of the dance team of the China National Song and Dance Ensemble ("CNSDE"), "the highest-level ensemble in China," states:

[The petitioner's] art level reached a new peak when he worked in CNSDE. His performance won praise from the audience and approval from the artists and critics. He attended provincial and national competitions and received awards many times due to his superb skill, exquisite emotion, expression and deep characterization. Thus [the petitioner] became a bright dance star.<sup>1</sup>

Counsel asserts that the above letters, and others like them in the record, confirm the petitioner's original contributions of major significance. These letters, however, tend to describe the petitioner's career in rather general terms, and offer the opinion that the petitioner is a highly talented and successful dancer. While complimentary, these letters do not indicate that the petitioner is widely recognized for specific contributions which have had a measurable, national impact on the petitioner's field of dance. Simply listing the petitioner's accomplishments, many of which would be addressed by other criteria, cannot suffice in this regard.

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

Counsel cites "playbills and press clippings" as evidence to fulfill this criterion. All performing artists, however, "display" their work in the sense that the public witnesses their performances. Thus, the very act of public performance does not constitute an exhibition or showcase for the purposes of establishing sustained acclaim. For performing artists (as opposed

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<sup>1</sup>We note that the untranslated Chinese letter contains the date "1949," which never appears in the purportedly true and complete translation.

to visual artists, to whom the above criterion more clearly applies), the regulations contain a more appropriate criterion:

*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 copies of concert programs and photographs from various performances that he has given in the United States. These performances took place at venues such as middle schools and local cultural centers. The record does not contain direct evidence to show that the petitioner is among the most commercially successful dancers in the United States, and there is no evidence at all regarding the petitioner's commercial success in China or elsewhere.

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

In response to a request for further information, the petitioner has submitted a letter to establish that he "was a principle [sic] dancer of the China National Song and Dance Ensemble." Given the assertions in the record about the ensemble, the petitioner's principal role for the group would appear to satisfy this criterion.

The director denied the petition, stating that the petitioner has not established that he has reached and remained at the peak of his field of endeavor. On appeal, counsel offers further evidence regarding the prizes which the petitioner has won, as well as a letter from Jia ZuoGuang, vice chairman of the Chinese Dancers Association. Counsel asserts that "Mr. [REDACTED] . . . is clearly one of the leading experts and innovators of Chinese dance in the world, and thus his statement should carry great weight." We note here that this visa classification exists for "the leading experts" themselves, and a letter from such an expert is persuasive only if it places the petitioner at a level comparable to the expert himself.

Jia ZuoGuang affirms that the Chinese Dancers Association "admits the dancers . . . who have had remarkable achievements in their undertakings." He also states that the petitioner "is one a few young dancers who merged the traditional opera dance, national dance and folk dance and created his own dance style." Mr. Jia then repeats prior assertions to the effect that the petitioner has toured several nations to popular and critical acclaim. The record contains no direct evidence regarding these international tours and performances, only letters asserting that the performances took place.

The petitioner submits a brief article, said to derive from Dance magazine, which states:

The Dance Competition of China is organized by the Chinese Dancers Association and the Cultural Ministry of China. The participants are the excellent dancers, choreographers, composers and dress designers who are selected . . . [by] local competition. . . . This competition was a major event.

The article indicates that the first such competition, in 1980 (in which the petitioner competed), involved "14 dance performances" and "206 programs" consisting of "solo dance, two people dance and three people dance," and resulted in the awarding of "72 performance prizes." Given these numbers, it appears that there were fewer than 600 dancers involved in the competition (given 206 programs and no more than three dancers per program), among whom 72 awards were distributed, giving participants better than a one in ten chance of receiving a prize. The then thirteen-year-old petitioner won third prize in the "youth performance" category, a category in which the petitioner was not competing against the most experienced and highly-trained dancers.

Counsel asserts that other documents on appeal discuss the 1988 award claimed by the petitioner, but the record contains no translation of the Chinese-language documents. Counsel states that 150 dancers participated in the Peach and Plum Cup competition in 1988, and that "10 dancers won the 'Excellent Dancer' prize." The translated certificate, submitted earlier, indicates that the petitioner "received the outstanding participant Certificate of Honor." The record fails to clarify whether "Excellent Dancer" and "outstanding participant" are simply differing translations of the same title, or else two entirely different titles. The appeal does not contain any discussion of the petitioner's 1992 award.

We cannot ignore the almost total absence from the record of contemporaneous evidence pertaining to the petitioner's career as a dancer in China. Apart from the aforementioned prizes and membership certificate from the Chinese Dancers Association, the record consists essentially of documentation of the petitioner's work in the United States (which does not establish national acclaim in the U.S.), and letters offering after-the-fact attestations regarding the petitioner's achievements in China. The individuals offering these letters are highly placed in the world of Chinese dance, and they clearly hold high opinions regarding the petitioner's skill as a dancer, but it remains that these witnesses were all directly involved in the training and employment of the petitioner. The record does not persuasively demonstrate that these witnesses' opinions were shared throughout the field in China, even by other experts with no such connection to the petitioner.

The petitioner has in fact fulfilled some of the regulatory criteria, but not the minimum of three required by the regulations. The overall picture presented by the evidence shows that the petitioner has enjoyed success as a dancer in China, attending some of the finest schools and performing for elite organizations, but the record does not establish a pattern of national recognition as one of China's top dancers. Furthermore, the record does not indicate that the petitioner has, since entering the United States in August 1996, two years before the October 1998 filing date, enjoyed a level of success or recognition that approaches national or international acclaim. Therefore, whatever acclaim the petitioner may have earned in China does not appear to have been sustained following his arrival in the United States.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a dancer 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 a dancer, but is not persuasive that the petitioner's achievements have set him, and continue to 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.