



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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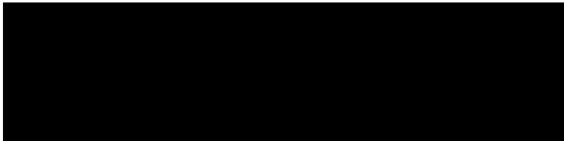
File: [Redacted] Office: Nebraska Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

11 DEC 2001

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 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, 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 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

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(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.

This petition seeks to classify the petitioner 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 has submitted evidence which, he 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.

The record reflects that the petitioner won several Chinese awards for dance between 1986 and 1993. While counsel attested to the prestigious nature of these awards, the petitioner submitted no evidence to support those assertions. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, at least some of the awards appear to be local, not national. In his decision, the director concluded that the petitioner had not established that the awards represented national or international acclaim. On appeal, counsel merely reiterates that the petitioner received the awards. The petitioner failed to submit any new information regarding the significance of these awards on appeal.

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 National Dance Artists Association and was honorary president of the Shanghai Song and Dance Troupe. The petitioner also submits reference letters in support of this criterion, which counsel discusses as evidence of outstanding achievements as judged by national or international experts. This criterion, however, cannot be divided into a membership part and an achievement part to be met independently. A petitioner must establish that he is a member of an association and that *the association* requires outstanding achievements of its members. Whether experts have recognized the petitioner's achievements is simply irrelevant to this criterion if the association of which the petitioner is a member does not require outstanding achievements. The petitioner failed to submit any official documentation regarding the membership requirements for the China National Dance Artists Association. Similarly, the petitioner has not provided evidence regarding the requirements for the Shanghai Song and Dance Troupe. Auditioning for a performing troupe is not an outstanding achievement.

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 submits several articles in Chinese language newspapers allegedly about his work and himself. While counsel summarized the articles, the petitioner failed to provide complete translations as required by 8 C.F.R. 205.5(h)(3)(iii) and 8 C.F.R. 103.2(a)(3). Furthermore, while counsel asserts that several of the articles were published in major newspapers, the petitioner did not provide any evidence of the circulation of these papers.

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.

Counsel asserts that the petitioner meets this criterion by judging the Third All China "Peach Cup" Dance Contest and the 1994 First Miss Shanghai Beauty and Talent Pageant. While the petitioner submitted a letter appointing him as judge to the "Peach Cup" Dance Contest, the petitioner failed to submit any evidence to support counsel's assertion that this is a prestigious contest. Regarding the beauty pageant, while the talent portion may include some dancing, judging a beauty pageant is simply not judging the work of others in the field of dancing.

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

Counsel asserts that the petitioner meets this criterion based on his role as a "major dance performer" in the China Shanghai Folk Song and Dance Troupe; performing as a leading male dancer of that troupe in 1992; and through his participation as a "main performer" in the "Dance in Chinese Wind '97" and the Seattle "Chinese Culture Show." This assertion is supported by a joint letter from Qing Zhi Wen, Vice Chairman of the China National Dance Artists Association and Ma You Dao, Art Director General of the Shanghai Song and Dance Troupe and programs. While it appears that the petitioner did play a leading or critical role for the China Shanghai Folk Song and Dance Troupe, the petitioner did not submit any evidence to establish that the troupe has a distinguished reputation. On appeal, the petitioner submitted two programs for a Shanghai International Fashion Culture Festival and another event identified only in Chinese at which the China Shanghai Folk Song and Dance Troupe performed. These programs fail to establish the reputation of the China Shanghai Folk Song and Dance Troupe.

The programs for the Dance in Chinese Wind '97 and Chinese Culture Show merely list the petitioner as one of the performers. The petitioner has not established that he played a critical role in those performances. Moreover, the programs suggest these performances brought together several Chinese dancers from various places for a one-time performance. These performances cannot be considered an organization or establishment.

The director also concluded that the petitioner had not established that he would substantially benefit the United States. On appeal, counsel argues that the petitioner's participation in cultural events would substantially benefit the United States. Cultural enrichment is a valid benefit to the United States, and we do not concur with the director's conclusion on this point. The evidence submitted, however, does not establish that the petitioner has sustained national or international acclaim.

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 an artist 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 set



him significantly above almost all others in his field. 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.