



B2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
225 E Street N.W.
11th Floor
Washington, D.C. 20536



File: EAC 99 237 50016 Office: Vermont Service Center

Date: **DEC 21 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:



Public Copy

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

Roger 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 as a film actor and script writer. The director determined the petitioner had not established that he has earned sustained national or international acclaim.

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). It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on August 6, 1999, seeks to classify the petitioner as an alien with extraordinary ability as a stage arts designer/ arts director. The director denied the petition on October 20, 2000, acknowledging the petitioner's noteworthy achievements, but stating: "The record lacks demonstrable and sufficient unequivocal evidence of extraordinary ability through pertinent and extensive documentation, as it relates to the beneficiary's individual accomplishments as an artist/designer."

On appeal, the representative for the petitioner claims that the alien has met "at least 4 or 5 out of ten (10) categories of evidence required by the Immigration Regulation." The petitioner submits additional evidence in support of the appeal which will be addressed along with the initial evidence accompanying the petition.

By regulation, any document containing foreign language submitted to the Service 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). The petitioner submits numerous documents in support of the petition with incomplete translations or no translations at all. The petitioner provides a single translator's certification to cover all of the documents submitted in support of the petition. The certification from the translator dated April 6, 1999 states: "That I have made the attached translation from the annexed documents in the language and hereby certify that the same is a true and brief translation to the best of my knowledge." It should be noted that a "true and brief translation" certification does not comply with the Service regulation. The petitioner has failed to provide a "full English language translation" of the documents submitted that is certified as "complete and accurate" pursuant to 8 C.F.R. 103.2(b)(3). Furthermore, there was no translator's certification accompanying the documentation submitted by the petitioner on July 25, 2000, in response to the director's request for evidence, or for the documents submitted in support of the appeal. 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. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

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 representative asserts that the petitioner has achieved national acclaim by winning the following awards:

1. Certificate of Honor for "First Grade Prize of Stage Art Design" for "Flying Sky" in Chengdu International Television Arts Festival (1996)
2. Certificate of Honor for "Best Stage Art Designer" in the Shanghai International Music Drama Festival (1993)
3. Certificate of Honor for "First Grade Prize of Stage Art Design" in the Shenyang International Dance Festival (1992)

4. Certificate reflecting a Bronze Cup Award for "Flying Sky" in 1995's China MTV Music Competition sponsored by China Central Television
5. Certificate of Honor for "Stage Art Design Award" for "Flower Rain on the Silk Road" from the Culture Ministry of China (1995)
6. Certificate of Honor for "First Grade Prize of Stage Art Design" at the "Youth Singing and Dancing Grand Competition" sponsored by the Broadcasting Television Ministry of China (1994)
7. Certificate of Honor for the award of "Excellent Scene Design" for "Phoenix Sound of Mountain Qi" from the China National Musicians and Dancers Association (1994)
8. Certificate for the award of "Excellent Prize for Stage and Costume Designs" from the Culture Ministry of China (1987)
9. Certificate of Honor for "Second Grade Prize" in the 1985 National Stage Art Design Grand Competition from the Culture Ministry of China
10. Honor certificate for "Best Designer" in the 1998 Stage Artist Competition from the Beijing Culture Bureau
11. Honor certificate for "Best Stage Art Design" from the Culture Ministry of China (1997). A translation of this document has not been provided.

The petitioner has not provided evidence of the criteria used by the judges of these awards for determining the selection of winners. Further, other than some brief statements appearing in the testimonial letters, the petitioner has not submitted sufficient evidence to indicate the national significance of these awards or the number of award recipients.

While the Certificate of Honor for "First Grade Prize of Stage Art Design" in the Shenyang International Dance Festival (1992) was accompanied by a supporting article appearing in the People's Daily, it fails to provide convincing evidence of national acclaim. The petitioner's representative states: "The People's Daily is number one newspaper issued by the Chinese Central Government and is published in five languages throughout the world. This is a newspaper of the same level as 'USA Today' in Washington, D.C." In another part of the record, the petitioner's representative describes the People's Daily as "the popular news published by the Chinese Central Government with six languages published in the world." However, no further evidence regarding this publication or the extent of its circulation has been provided. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). It is worth noting that according to the article submitted, out of the fifty four entries evaluated in the Shenyang International Dance Festival, thirteen received prizes.

On July 25, 2000, in response to the director's request for additional documentation, the petitioner submitted an Honor Certificate for "First Award of Stage Art Design" dated December 1999. This certificate was not accompanied by the criteria the judges used for determining the selection of winners or evidence of its national significance. Further, this award

was obtained subsequent to the filing of the petition. The petitioner must establish eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

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 representative claims that the petitioner's membership in three associations is further evidence of his extraordinary ability. The specified memberships include the National Dancers Association of China, the National Musicians Association of China, and the Dancers Association of Liaoning Province. As evidence of membership in the National Dancers Association of China and the National Musicians Association of China, the petitioner submits two letters and two membership certificates. The letter from Zuoguang Jia, Vice-Chairman of the National Dancers Association, offers some evidence regarding the qualifications required for induction as member of his organization. Zuoguang Jia states that members have "to be one of provincial or national competition's top three winners" and approved by two thirds of the voting body of the General Commission of the National Dancers Association. No evidence of membership requirements has been provided for the National Musicians Association of China and the Dancers Association of Liaoning Province. Furthermore, other than the assertion of his representative, there is no evidence on record of the petitioner's membership in the Dancers Association of Liaoning Province. Matter of Treasure Craft of California, *supra*.

The single letter from Zuoguang Jia briefly describing the induction requirements of the National Dancers Association is insufficient to demonstrate eligibility under this criterion. In regards to the three memberships claimed by the petitioner, the record does not contain the associations' bylaws, constitutions, or any other objective documentation to establish the associations' membership requirements, nor is there any indication that the associations enjoy significant recognition or prestige. In sum, there is insufficient evidence to indicate that these organizations require outstanding achievements of their members or that the petitioner was judged by national or international experts in consideration of his membership.

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 evidence that his name appears in The Great Dictionary of Famous Artists in Contemporary China as selected by the Chinese National Arts Research Institute. An article regarding the petitioner appears on page 588 of this publication. It should be noted that The Great Dictionary of Famous Artists in Contemporary China appears to have at least 890 pages devoted to contemporary Chinese artists. The petitioner has failed to provide supporting evidence regarding the extent of this publication's circulation or its national significance.

The petitioner also submits eight articles that mention him from publications including the Beijing Daily News, People Daily News, China Culture News, Da Gong News, China Television News, Beijing Broadcasting Television Program News Weekly Published Paper, and Wenhui Daily News. Other than offering his own brief description regarding each of these publications, the petitioner's representative has failed to provide evidence regarding these publications or the extent of their circulation. Matter of Treasure Craft of California, supra.

Numerous other articles submitted describe the musical group "All-4-One" and Paris Opera Ballet's tours of China. These articles are not accompanied by complete translations and do not appear to mention the petitioner. Without complete translations, it cannot be determined that the petitioner is the main subject of the articles, or that he was featured because of his achievements as a stage art designer. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles that never even mention the alien cannot satisfy this criterion. The evidence submitted is insufficient to demonstrate that the petitioner has attracted the sustained attention of the national press or major media.

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.

The petitioner submits a letter of congratulation dated May 29, 1995 resulting from his participation as a juror in the Tenth National Opera. Also submitted is a letter dated May 10, 1994 appointing the petitioner as a juror of stage art design for the Sixth National Music and Dance Artistic Collective Performance. This letter is supported by an article appearing in the Beijing Daily News dated May 12, 1994. The article states that the petitioner "was appointed as the Juror for this event of Youth Group." The article mentions that eighteen individuals were selected to judge this competition of one thousand contestants. Being selected as the judge of a "Youth Group" competition does not equate to judging the work of others in the same field for which visa classification is sought. Other than the article appearing in the Beijing Daily News, the petitioner has not provided any additional supporting evidence reflecting the national significance of these events or the criteria used for the selection of judges.

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

The petitioner has submitted letters from various witnesses, mostly from individuals who have met the petitioner during productions employing his stage design. We discuss representative examples here. Tsung Yeh, Conductor of the Florida Orchestra, describes the petitioner as "a world class stage designer." Tsung Yeh "came to know Mr. Meng during the 1997 New York Philharmonic Chinese tour." Babby Lee, President of Sho Pro, Inc., a company specializing in promoting cultural exchange performances, describes the petitioner's work as playing "a distinctive role in furthering bi-national cultural awareness." Babby Lee further states: "The lighting design and stage sets combining traditional arts and colors of the east with the modern

technology of the west was truly amazing.” Joe Slone, President of Impact Productions, became familiar with the petitioner through his “business association with the Central Song and Dance Troupe of China where [the petitioner] previously served as a stage designer.” Joe Slone, like many of the other witnesses, briefly describes the petitioner’s awards and memberships, but offers little evidence regarding the petitioner’s national or international acclaim.

The petitioner also submits letters from representatives of various ministries of the Chinese government. Xin Gu, of the Department of Show Exhibition Arts, indicates that the petitioner was often invited by “the national famous arts performing troupes to be in charge of stage design work for large-scale music and dance dramas and to participate in the performance with these troupes during their visits to foreign countries.” Zouguang Jia, Vice Chairman of the Chinese Dancers Association, states: “In my mind, [the petitioner] is an excellent stage designer. I am familiar with him because we once have worked together for a period of time.” Zouguang Jia also mentions the petitioner’s stage design productions, qualifications, and memberships. Zhengzhou Pan and Zuguang He offer similar discussions regarding the petitioner.

While the witness letters submitted praise the petitioner’s experience and accomplishments, they are insufficient to establish that the petitioner is, nationally or internationally, among the best known individuals in his artistic field. The majority of the witness letters submitted are from various individuals who have collaborated with the petitioner on productions involving his stage design. The structure of the regulations illustrates the Service’s strong preference for verifiable, documentary evidence, rather than subjective opinions from witnesses selected by the petitioner.

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

The representative notes that the petitioner served as a stage designer in 1993 for the “National New Year’s Eve Celebration” appearing on television. The representative also states that the beneficiary was appointed by the Cultural Ministry to serve as stage designer for the Eleventh Asian Olympic Games Art Festival in 1990. The representative adds that the petitioner handled stage design for Ricky Martin, Yany, and several other Hong Kong and Taiwanese singers during their musical tours of China. These assertions of the petitioner’s participation are supported by news articles, photographs, and testimonial letters reflecting his contributions as a stage designer to the overall productions. It should be noted that stage design is just one part of an overall production and does not necessarily reflect a leading role, such as a starring actor, lead singer, producer or director. Simply establishing one’s participation in these productions does not satisfy this criterion. Eligibility for this visa classification must rest on the petitioner’s individual achievements, rather than relying on the petitioner’s performance as one of many contributors to a large scale production. Further, mere participation as a stage art designer in various one-time productions is not indicative of playing a “leading or critical role” in an organization or establishment, and does not constitute evidence of sustained national acclaim.

The petitioner also submits a playbill from the National Academic Ballet Theater of the Republic of Belarus which lists him as a "producer." On appeal, the petitioner submits evidence that he is the President of Wang Shi Da Industry and Development Corporation, a company that markets real estate, petroleum, commercial chemicals, automobile fittings, advertising services, and cultural development programs. While functioning as a company president and producer may be indicative of leadership roles, it should be noted that the petitioner seeks classification for extraordinary ability as a stage arts designer. Evidence of the petitioner's work as a producer and company president cannot qualify him for an employment based visa for prospective work in a field other than stage art design.

The record is unclear regarding which organizations or establishments the petitioner claims to be representing. Further, the petitioner must demonstrate the distinguished reputations of these institutions. The petitioner has not submitted evidence to satisfy this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submits an employment letter from S.A. Culture and Performance, Inc., offering the beneficiary a "starting salary of \$400 per week, plus \$200 compensation for teaching art class, or the fee of \$200 per show if any public stage performance occurs."

The petitioner provides evidence of four contracts between the Hua Wen Chinese Folk Culture and Art Developing Company and Wang Shi Da Industry Developing Company for Whitney Houston's Concert in Shanghai; the Culture Bureau of Beijing City and himself for the Spring Festival Party of Beijing City; the Hua Wen Chinese Folk Culture and Art Developing Company and himself for national shows of the "To Quit Drug" program; and the Grand Era Culture and Art Developing Company and himself for the China National Original Created Music Festival.

The petitioner also submits salary records and income tax receipts for 1997, 1998 and 1999. The incomplete translation provided by the petitioner reflects an annual after-tax income in United States dollars of \$35,730 in 1997; \$36,226 in 1998; and \$36,320 in 1999. These tax records directly contradict an article appearing in the People Daily/The Earth Weekly dated May 13, 2000, which was submitted by the petitioner. The article states:

In stage art design community, the highest salary owners are those people who both sign a contract with the national group and have a personal cultural enterprise. Such as famous stage designer, [the petitioner], completed twelve sets of stage design in which he signed in 1999, and earned RMB800,000.00 (U.S.\$100,000).

This article claims the petitioner earned the equivalent of \$100,000 in 1999. But according to the tax documentation submitted by the petitioner for 1999, he earned the equivalent of \$50,204, which resulted in an after-tax income of \$36,320. The petitioner has failed to resolve this conflicting evidence provided in support of the record. The petitioner has not submitted income

tax receipts or any other documentary evidence to demonstrate that he received additional remuneration for the various contracts mentioned above.

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

The representative for the petitioner claims the publication entitled The Stage Art Design Works of Meng Xianfa was "in the first three Best Sellers for 120,000 copies sales." This assertion regarding the number of copies sold does not appear to be supported any evidence in the record. The representative mentions the publication set "records in the Wen Hui News Golden Billboard," but a review of the evidence submitted finds no supporting documentation in regards to this claim. On appeal, the petitioner submits a copy of The Stage Art Design Works of Meng Xianfa, but no further evidence regarding the number of copies sold is provided.

Also submitted on appeal was a marketing prospectus for the Wang Shi Da Industry Developing Corporation. A review of this publication revealed a notable discrepancy in the evidence provided by the petitioner. Page 20 of the publication contains several photographs. The photograph marked as number 1 (appearing in the upper left hand corner) shows a picture of "Chinese President Mr. Jiang, Zeming and the French Premier attending the ballet show entitled 'Giselle.'" The seat appearing in the next row back, between the Chinese President and the gentleman to his left (the French Ambassador to China), is clearly empty. This photograph is in stark contradiction to two photocopies of the same photographic picture submitted by the petitioner in support of the original petition and again in response to the director's request for additional information. A review of these two photocopied photographs shows what appears to be an alteration inserting the petitioner's face between the heads of the Chinese President and French Ambassador to China. Thus, the petitioner appears to have submitted questionable and conflicting evidence in support of his petition.

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 (BIA 1988).

It must be emphasized that merely submitting evidence intended to address at least three of the criteria is not necessarily sufficient to demonstrate that the beneficiary has sustained national or international acclaim at the very highest level. The petitioner must clearly establish that he is within the small percentage at the very top of his field.

For comparison, the Service has long held that athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. See 56 Fed. Reg. 60897, 60899 (November 29, 1991). Likewise, it does not follow that all contributors to a popular production

on a national level, such as a theatrical or musical performance, should necessarily qualify for an extraordinary ability immigrant visa. To do so would contravene Congress' intent that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

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. The petitioner has failed to demonstrate receipt of an internationally recognized award, or that he meets at least three of the criteria of which must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as a stage arts designer/ arts director 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 in his field, but is not persuasive that the petitioner's achievements have consistently 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.