



U.S. Department of Justice

Immigration and Naturalization Service

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

[REDACTED]

File: [REDACTED] Office: Nebraska Service Center Date:

JUL 12 2001

IN RE: Petitioner: [REDACTED]
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)

IN BEHALF OF PETITIONER:

[REDACTED]

Public Copy

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.

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 has not established the sustained national or international acclaim necessary to show extraordinary ability.

On appeal, counsel argues that the director has misinterpreted both the regulations and the evidence.

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). These will be discussed 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) 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. He has claimed to have satisfied 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.

Counsel asserts that a performance by the petitioner "was voted as the most popular show in the song and dance category at the 1993 Spring Festival (Chinese New Year) show. The award was granted by the Central Television Station, the largest TV network in China." The translation of the prize certificate states: "[t]he performance named 'Two Trees' (Dance) You take part in is awarded the first in Class Dance in the performance choice made for the Spring Festival I most love in the [redacted] in 1993." Many of the newspaper articles in the record refer to this prize, which (along with the national television broadcast) support the claim that it is a well-known prize.

The petitioner has received various other awards from China's Ministry of Culture, as well as a "Performance Prize" at an international arts festival in Osaka, Japan. In recognition of the Japanese prize, China's Minister of Culture sent the petitioner a personal message of congratulations.

We note that some of the exhibits which counsel deems to be prizes are, in fact, simple acknowledgments of the petitioner's participation in various events. While these do not constitute prizes or awards, they in no way detract from the petitioner's other prizes.

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.

With the initial petition, the petitioner has submitted a copy of his membership certificate from the Beijing Dancers Association, but no documentation to establish the association's membership requirements.

Subsequently, the petitioner has submitted a brochure from the Chinese Dancers' Association, along with a "Summary Translation" which states:

Members of the Association are highly acclaimed art workers. In order to be accepted by the association, applicants need to bring their applications and resumes together with recommendations from two veteran experts or art organizations. Their career background and achievements are particularly important factors in deciding whether they will be accepted into the association.

The above information concerns the Chinese Dancers' Association; the brochure includes this name in English alongside the Chinese text. The petitioner's membership documents, however, repeatedly and consistently refer to the Beijing Dancers' Association. The petitioner has not established that these two organizations are in fact one and the same. Furthermore, while the Chinese Dancers' Association has some kind of minimum standards which prospective members must meet, it does not necessarily follow that those standards amount to outstanding achievements as judged by recognized national or international experts.

The director, in denying the petition, noted the lack of evidence that the Chinese Dancers' Association admits "only a small percentage" of dancers. On appeal, counsel states "the immigration regulations do not require the showing of 'only a small percentage.'" Counsel's argument is not persuasive. The stated purpose of all the regulatory criteria is to establish that the petitioner is among the small percentage at the very top of his field. If the evidence were to show that the petitioner is a member of the Chinese Dancers' Association, then he must establish that the Chinese Dancers' Association is an elite organization which admits only a select few into membership. An organization with an open admission policy does nothing to distinguish those at the very top of the field from the vast majority of others in that field.

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.

In denying the petition, the director stated:

The newspaper articles [the petitioner] has provided are mostly from the Asian community and do not represent much more distinguished journals or periodicals in the field. The documentation submitted does not sufficiently place the achievements of the petitioner apart from other dancers, who

also have received awards and prizes, or who have receive [sic] limited critical recognition for their work.

As counsel correctly observes on appeal, most of the articles in the record are from newspapers published in China and other Asian nations. Only a small number are from Chinese-language U.S. publications, which owing to their relatively narrow audience cannot be considered "major media." The petitioner has submitted ample evidence to show that he is not merely the subject of an occasional local review, but that he has commanded sustained attention in a variety of publications.

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

Counsel contends that the petitioner satisfies this criterion because he "has performed extensively outside of China including the United States, Canada, Japan, South Korea, Singapore, Taiwan, and Hong Kong."

This criterion is more suited to the visual arts than to the performing arts; every public performance is, by some standard, "display" of the performer's work, as is a broadcast or recording of such a performance. Thus, the fact that the petitioner has performed in front of audiences does not distinguish him from others in the field.

The regulations contemplate a more appropriate criterion, especially for aliens in the performing arts:

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

Although this is the only criterion to specifically mention the performing arts (while other, broader criteria certainly also apply), counsel does not claim that the petitioner has satisfied this criterion.

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

Counsel states that the petitioner satisfies this criterion because he "starred in several major dance performances with international reputation." Information in the record indicates that the petitioner "is the principal dancer in the Central Nationality Song

& Dance Emsemly"¹ which has toured internationally. The petitioner has also performed extensively with Yang Liping, identified by several sources as one of China's most popular and well-known dancers.

Choreographers [REDACTED] in a joint letter, state:

In the large-scale dance drama "The Love of Sun Stone," we invited [the petitioner] to play the male leading role. He is the most talent[ed] and powerful dancer in China at present. After the successful performance, China Central Television Corporation televised this dance drama nationwide.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. Therefore, under the existing regulations, 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.

¹Several documents refer to the "Emsemly" or "Emsembly," which appears to be a garbled version of the word "ensemble."